TAXAND

GLOBAL GUIDE TO M&A TAX

2022 EDITION

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FOREWORD

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Global M&A in 2021 was busier than ever. More deals were inked and deal values reached previously unseen levels. This was a bit surprising considering that the world was dealing with COVID-19 and just a year earlier, the global markets had come to a grinding halt. Several factors have played a role in getting us to where we are currently. To start with, the markets have learned to live with COVID-19, a Black Swan event that we had not seen, nor perhaps expected to see in our lifetimes. The pandemic "financial crisis" was at its low point at the beginning of summer of 2020, but, by mid-summer, the pace of global deals had started to pick back up. By the end of 2020, global M&A activity had reached the USD3.6 trillion level, according to Refinitiv data, a mere 5% decline versus 2019. This, despite continuing lock downs and supply chain disruptions. By the time 2021 arrived, the deal market was in hyperdrive. Having learned lessons well from the 2007 financial crisis, dealmakers clearly looked for opportunities during the pandemic and then recorded the most robust M&A market in history. It did not hurt that most dealmakers - and policy makers for that matter - believed that in one key global market, the USA, the federal government was going to raise the capital gains tax rate with an effective date in 2022. As a result, there was virtually a sprint to get deals done before tax rates rose. Further, ongoing historically low interest rates and continued high levels of so called, "dry powder" - capital available to invest - added fuel to the 2021 M&A blaze. For reference, private equity funds ("PE funds"), hedge funds and sovereign wealth funds together are reportedly in possession of almost USD2 trillion of "dry powder" raised over recent years. Other external factors that proved not to dampen the historic M&A market were the run up in inflation, reaching 40-year highs and spiking energy prices. Finally, certain industries led in M&A and were clearly a strong play during periods of lockdown. For example, according to Bain & Company's 13th annual Global Private Equity Report, roughly one in three buyouts involves technology assets. Further, growth in sectors such as healthcare, fintech, and business services means technology is currently a key investment component in more than half of all deal activity. At the other end of the spectrum, M&A in areas such as luxury brands and the travel industry suffered during 2021, as a result of lockdowns and the pandemic.

Enter 2022. The first quarter of 2022 brought with it additional macroeconomic factors that at some point are likely to impact M&A. The war in the Ukraine is one such notable factor in so many ways, but specifically considering the M&A environment, we know and already see the direct impact in particular on energy and other key commodity supplies and their pricing. In the transactional environment, whether the conflict will directly impact the overall number of global deals and, or, how it will rather be more broadly impactful on a range of macroeconomic data points that ultimately impact supply chains, the cost of goods or R&D resources in the technology space, amongst many other things remains to be seen; but ultimately there will be changes, including those which influence both business models and valuations..

Another key factor that will likely affect the M&A ecosystem, whether in 2022 or 2023, is the increase in interest rates by Central Banks. For years, dealmakers have had the luxury of access to cheap cash. If there are only a few rate hikes and inflation starts to come under control, perhaps it is not the "speed bump" or wall that many think it may become. Further, with the dramatic drop in the value of public equities – currently, for the year, the Nasdaq composite index is down roughly 29% and the S&P 500 index is down roughly 19.74%, perhaps public corporate acquirors will be the most affected from a deal perspective as their stock is worth less as currency for deals. As the overall economy grapples with a declining public equities market, inflation, conflicts across the globe, interest rate hikes, supply chain disruptions, increasing energy and labor prices, investors will be keen to search out the best available returns. According to McKinsey's latest private markets report, PE funds have outperformed most of their public market counterparts since 2009. In 2021, PE activity generated an IRR of 27%, the highest among all private asset classes. According to a Limited Partner ("LP") survey put out by Prequin in Q4 of last year, 95% of the LPs who responded said that the performance of their PE portfolios met or exceeded their expectations in the past year notwithstanding a prediction of some cooling in 2022. Nearly 90% of those LPs said that they expect to increase or maintain their PE allocations this year, and 95% said they will do so over the long run.

A few more figures to digest. According to Dealogic data, the value of global M&A activity was down in Q1 of 2022 by 29%, when compared to Q1 of 2021. Moreover, deal volumes dropped to USD1.01 trillion from roughly USD1.4 trillion in Q1 of 2021. There was also a 29% drop in cross border deals. Notwithstanding all the challenges in the market, PE transactions remained relatively strong in Q1. There were 13 PE transactions worth more than USD10 billion, compared to 12 from Q1 of last year. In terms of total volume, PE transactions accounted for roughly $USD204.5 billion in Q1. In 2021, the total value of M&A came in at USD5.9 trillion, up from USD3.7 trillion in 2020, according to the Bain Consulting report.

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Regardless of the macroeconomic factors mentioned above, dealmakers appear relatively optimistic on the level of activity for 2022 and appear to be taking into account at least the following:

- ***Private Equity Dry Powder:*** High levels of dry powder available to buyout funds will continue to contribute to a push for global M&A. Estimates from Preqin suggest that the global PE industry recorded roughly USD1.78 trillion of dry powder in February. With such cash hoards, funds should be well-positioned for the foreseeable future in M&A even in the face of rising interest rates. If dealmakers fear that a recession or worse is on the horizon for 2023 and try to exit beforehand, 2022 could shape up to be a very active year for deals.
- ***Special Purpose Acquisition Companies ("SPACs") or "Blank Check" Companies:*** SPACs have been in existence in one form or another since the 1980s. Simply defined, a SPAC is a non-operating publicly listed company the sole purpose of which is to identify and purchase one or more private companies. It is an alternative to the IPO route traditionally taken by private companies. In 2021, according to data from SPACInsider, the market witnessed an explosion of IPO value raised in Q1 – 314 listings raising just north of USD100 billion. The following three quarters saw 367 listings totaling roughly USD72 billion. Q4 was still respectable showing 179 SPAC IPOs raising roughly USD35 billion whereas Q3 had 104 SPAC IPOs raising roughly USD20 billion. By the end of Q1 2022, there were roughly 600 SPACs out looking for deals. While the US remains the leader on the SPAC front, a number of European exchanges and regulators have started looking at their listing rules in an effort to become more competitive by attracting such companies. SPAC IPOs in 2021 represented roughly 9% of the European volume. That figure is expected to grow significantly over the next few years. As the popularity of SPACs grow, this should provide an additional source of funds helping to facilitate transactions either with sponsors exiting portfolio companies or the purchase of private companies looking to go public without the hassles of the traditional IPO route.
- ***Shareholder Activism:*** Over the last decade, shareholder activists have forced spin-offs or other divestitures of non-core assets, requiring companies to focus on their strengths and create more nimble and flexible models to gain competitive advantages. With the Tax Cuts and Jobs Act of 2017, US tax reform made taxable dispositions of assets, as opposed to tax free spin-offs, less burdensome and, therefore, more attractive in many cases for US multinationals than they have been historically. Further, current macroeconomic factors may very well spur activists to push for divestitures. For example, several multinational companies have recently hurried to leave Russia while staying on the sidelines from an M&A perspective. Activist investors pressured boards to enter sales scenarios or break-ups in order to unlock value for investors at the very moment when public market valuations are severely depressed. In any event, shareholder activism should continue to drive M&A opportunities.

This edition of the Taxand Global Guide to M&A Tax has been designed as a desktop reference guide to span the continents. Providing an "at a glance" insight into the tax treatment of mergers and acquisitions globally. It is intended to provide a basic introduction to the tax rules which have a bearing on M&A transactions in each of the fiscal environments within its scope and to facilitate understanding and conversation between global M&A team members. It should be viewed as a resource (rather than an encyclopedia) to help those working on international transactions to find common ground and mutual understanding. National Taxand teams in each of the covered jurisdictions made essential and invaluable contributions to our Guide and we are most grateful for their participation and support in this project. We are pleased to offer to you this volume, as an example of the benefits that cross-border cooperation and collaboration can provide.



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1. INTRODUCTION

a. Forms of Legal Entity

Argentine law provides for several types of legal entity through which business activities may be carried out in Argentina. The corporation, Sociedad Anónima ("SA"); the wholly owned corporation, Sociedad Anónima Unipersonal ("SAU"); and the limited liability company, Sociedad de Responsabilidad Limitada ("SRL") are the most common types of business organisations used as investment vehicles. Act No. 27,349 issued on 12 April 2017 created a new type of legal entity, the simplified corporation, Sociedad Anónima Simplificada ("SAS"). All of these entities provide shareholders/quota holders with limited liability with respect to third parties.

SA, SRL, SAU and SAS are subject to the same tax treatment in Argentina.

b. Taxes, Tax Rates

Federal taxes[1]

i Corporate Income Tax ("CIT") and Income Tax ("IT")

The tax rate applicable in Argentina for legal entities for fiscal periods commencing as from 1 January 2021 is 35%/30%/25%, depending on the entity's accumulated net income. Also, an additional withholding tax on dividends or distributed profits is applied.[2]

The income of Argentine resident individuals and "undivided estates" (see explanation below) located in Argentina is subject to tax on a progressive scale that ranges from 5% to 35%.

In Argentina, following the death of an individual resident or until the successor is determined for the estate distribution, the deceased's patrimony is sometimes considered as an artificial person to act in trade in some circumstances, e.g. to pay taxes. This is known as an "undivided estate". In this sense, the undivided estate of deceased taxpayers who were Argentine residents on the date of their death, are also considered to be Argentine residents for taxation purposes.

Non-resident individuals or legal entities without a permanent establishment in Argentina ("Foreign Beneficiaries") are taxed only on income arising from Argentine sources at rates from 12.25% to 35%.

Please note that these rates may be reduced in certain scenarios from 0% to 15% due to the application of a Double Taxation Treaty ("DTT"). However, the provisions of the applicable DTT should be considered in each particular case.

1 Due to our country's political organization system, there are three different taxing authorities in Argentina: the Federal Government, the Provinces (together with the Autonomous City of Buenos Aires) and the Municipalities. Each one has powers to impose taxes.

2 For tax periods 2021 onwards, a dividend tax of 7% shall apply on distributions made to Argentine resident individuals and non-Argentine resident shareholders.

ii Value Added Tax ("VAT")

VAT applies to the sale of goods located in Argentina, the provision of services in Argentina and the final import of goods. Under certain circumstances, services rendered outside Argentina which are effectively used or exploited in Argentina are subject to VAT ("import of services").

The general rate is 21% although, in certain cases, a reduced rate of 10.5% or an increased rate of 27% could be applicable.

Exports of goods and services are subject to a 0% VAT rate and Argentine exporters are allowed to recover input VAT paid to their suppliers on the acquisition of goods and services related to export operations.

iii Personal Assets Tax ("PAT")

From fiscal year 2019 onwards all individuals resident in Argentina and "undivided estates" located in Argentina are subject to PAT on their worldwide assets held at 31 December of each year, as follows.

In Argentina, following the death of an individual resident or until the successor is determined for the estate distribution, the deceased's patrimony is sometimes considered as an artificial person to act in trade in some circumstances, e.g. to pay taxes. This is known as an "undivided estate". In this sense, the undivided estate of deceased taxpayers who were Argentine residents on the date of their death, are also considered to be Argentine residents for taxation purposes.

Taxable assets which exceed the non-taxable minimum threshold		Pay AR$	plus %	Over the exceeding amount of AR$
More than AR$	To AR$			
0	3,000,000, inclusive	0	0.50%	0
3,000,000	6,500,000, inclusive	15,000	0.75%	3,000,000
6,500,000	18,000,000, inclusive	41,250	1.00%	6,500,000
18,000,000	100,000,000, inclusive	156,250	1.25%	18,000,000
100,000,000	300,000,000, inclusive	1,181,259	1.50%	100,000,000
300,000,000	Onwards	4,181,250	1.75%	300,000,000

In addition, increased tax rates are applicable for assets located abroad in accordance with the following table:

Total value of the assets located in Argentina and abroad		The total value of the assets located abroad that exceed the non-minimum threshold not computed against the assets located in Argentina will be subject the % rate
More than AR$	To AR$	
0	3,000,000, inclusive	0.70%
3,000,000	6,500,000, inclusive	1.20%
6,500,000	18,000,000, inclusive	1.80%
18,000,000	Onwards	2.25%



It should be noted that the increased rates would not apply to the extent that the taxpayer repatriates a certain portion of funds derived from the realisation of specific assets located abroad.

Individuals resident abroad as well as undivided estates located abroad are subject to the PAT at a 0.50% rate applicable to the assets located in Argentina.

A local corporation must pay the PAT for the holding of its equity participation by individuals and undivided estates resident or incorporated in Argentina or abroad as of 31 December each year. The applicable tax rate is 0.50% and is levied on the book value of the equity participation.

iv Tax on Credits and Debits in Argentine Bank Accounts ("TDC")

This tax is levied upon debits and credits in bank accounts opened in Argentine Financial Institutions (such as banks) and upon other transactions which, due to their special nature and characteristics, are similar or could be used in place of a bank account, such as payments on behalf of or in the name of third parties, procedures for the collection of securities or documents, notes and transfers of funds made by any means, when these transactions are performed by Argentine financial entities.

The general rate of the tax is 0.6% although there are reduced rates of 0.075% and increased rates of 1.2%.

v Excise Tax (or Internal Tax)

In general, these taxes are levied on the consumption of certain goods. The sale of tobacco, alcoholic beverages, sumptuary goods, the provision of cellular and satellite phone services to consumers, soft drinks, syrups, extracts and concentrates, motorcars and engines, insurance policies and other goods are taxed. The applicable rates vary according to the goods concerned and in general, are imposed on the sales price.

Provincial taxes

vi Gross Turnover Tax ("GTT")

The GTT is a local tax levied on gross revenues resulting from commerce, industry, profession, business, services or any other activity conducted on a regular basis within the respective jurisdiction. Each of the provinces and the Autonomous City of Buenos Aires applies a different tax rate depending on the type of activity. The tax rate will depend on the local jurisdiction involved. In the Autonomous City of Buenos Aires, the tax rates vary from 0.75% to 15%.

vii Stamp Tax ("ST")

The ST is a local tax levied on public or private instruments executed in a province or in the Autonomous City of Buenos Aires or, when executed abroad, when said instruments have effects in one or more provincial jurisdictions.

As regards the Autonomous City of Buenos Aires, the general ST rate amounts to 1% and unless the Tax Code provides a specific treatment, the tax is computed with respect to the economic value of the instrument.

viii Free Transmission of Goods Tax

The Province of Buenos Aires establishes a tax on free transmission of assets levied upon the enrichment obtained as a result of any transfer received for no consideration, including: inheritance, legacies, gifts, inheritance advances, and any other transfer that implies an economic enrichment in exchange for nil consideration.

ix Municipal taxes

Municipal taxes are imposed for the provision of various services related to industrial safety, public hygiene, lighting, etc. Please note that the municipal tax treatment must be analysed in each jurisdiction and in the Autonomous City of Buenos Aires.

c. Differences between income shown on tax returns and local financial statements

The values reflected in tax returns may show certain differences from the financial statements, regarding the differences in the concept of accrual of revenues and expenses, the utilisation of amortisation rules, the deductibility of certain expenses and the treatment of applicable exemptions, among others.

2. RECENT DEVELOPMENTS

On 29 December 2017, Act No 27,430 (the "Tax Reform Act"), was published in the Official Gazette. The Tax Reform Act introduces several modifications to the former tax regime. The Tax Reform Act is generally effective 1 January 2018. Specifically, the Tax Reform Act introduces amendments to the IT Act (both at corporate and individual levels), VAT law, tax procedural law, criminal tax law, social security contributions rules, tax on fuels and tax on the transfer of real estate, among other things.

On 29 December 2019, the Official Gazette published Act No. 27,541, which once again implemented significant modifications to the tax regulations in force in Argentina, even leaving without effect some of the modifications previously introduced by the Tax Reform Act and its implementing regulations. In this sense, Act No. 27.541, declares a public emergency in economic and financial, tax, administrative, pension, tariff, energy, health and social matters and grants special powers to the National Executive Branch until 31 December 2020.

Also, Act No. 26,190, as amended by Act No. 27,191, sets forth the Renewable Energies Promotional Regime which tends to incentive the use of renewable energy sources for the production of electricity, and which foresees significant tax benefits such as anticipated VAT refund, accelerated depreciation and a tax certificate, among others.

As of 1 September 2019, new foreign exchange restrictions were reinstated in Argentina.

Measures in response to COVID-19

The pandemic declared by the World Health Organisation due to the global spread of the epidemic generated by the coronavirus, COVID-19 forced governments around the world to take immediate and extraordinary actions to cope and overcome this crisis. Although many of these measures have since expired in Argentina, we include below a number of headlines as these may still be relevant in the context of tax due diligence processes in Argentina.

In particular, in order to avoid the expansion and to mitigate the effects of the coronavirus in Argentina, the Argentine Government took several measures. In this regard, although the Argentine Federal Tax Authority ("AFIP") suspended the deadlines applicable to administrative proceedings dealing with the application, collection and supervision of federal, social security and customs taxes from 18 March 2020 to 29 November 2020, no deferrals were generally contemplated for filings of tax returns and/or tax payments at the federal level (except for specific cases).



An Economic Emergency Program (the "Program") was created addressed to employers and employees affected by the health emergency. Among the benefits provided by such Program, we would highlight: (i) the postponement for the deadline payments or reduction of social security contribution; (ii) allocation of a complementary salary by the National Government for employees of the private sector; etc.

Other measures related to tax deferrals that were taken by the federal authorities included:

- Extension of specific deadlines in PAT.
- A new moratorium was established for fiscal, customs, social security debts, or fines related with said concepts.
- Suspension of the exclusion procedure and ex officio deregistration from the Simplified Regime for Small Taxpayers for taxpayers who do not meet the requirements of such regime.
- Extension of the entrance into force of the new debit and/or credit notes issuance regime up to 1 July 2020.
- Extension of the term for the communication to AFIP of some tax free reorganisations.
- Extension of deadlines and specific payment facilities in IT.
- Extension of deadlines for VAT.
- Extension of deadlines for tax return filing and payment of social security contributions.
- Suspension of tax claim proceedings.
- Suspension of precautionary injunctions to micro, small and medium size companies.

At the federal level, temporary rate reductions on TDC were granted for employers in specific activities within the healthcare business.

Note that a one off tax on big fortunes was approved by the legislative branch in order to outweigh the economic effects of the Pandemic. At the provincial level, specific measures were implemented by certain tax authorities to counteract the economic impact of COVID-19.

3. SHARE ACQUISITION

a. General Comments

From a buyer's perspective:

The procedure is simple and without substantial tax cost. The Argentinean company retains its tax losses and credits in the hands of the buyer. The company retains its asset basis and depreciation terms. Any liabilities of the company, including tax liabilities, that are not satisfied in connection with the acquisition will continue to be liabilities of the company and thus, it is typical to perform a due diligence process and then to also include representations, warranties and indemnities considerations in the purchase agreement If the Argentine company's shares are purchased by an Argentine company, the acquisition cost of the shares cannot be depreciated for Corporate Income Tax ("CIT") purposes. Regarding acquisitions or investments, the Tax Reform Act allows the application of certain actualisation methods established in the CIT Act under certain conditions. Under the Tax Reform Act, taxpayers are allowed to adjust the tax base of certain assets purchased after 1 January 2018, to take into account the effects of inflation.



From a seller's perspective:

The procedure is simple. However, the revenues obtained could be subject to Gross Turnover Tax ("GTT"). The sale of SA, SAU, and SAS shares or SRL quotas by Argentine or foreign companies and Argentine or foreign Individuals is subject to corporate income tax or income tax accordingly. Although the tax debts are transferred to the buyer, the directors of the Argentinian company who were in charge during the period of such tax debt would remain jointly and severally liable if the Argentinian company does not pay the tax debt claimed by the Argentinian Federal Tax Authority ("AFIP").

b. Tax Attributes

No restrictions should apply to the use of tax attributes following change in control.

c. Tax Grouping

Tax grouping is not allowed in Argentina.

d. Tax Free Reorganisations

Argentina's CIT Act provides for three different types of tax free reorganisation procedures: merger, spin-off or transfer within the same economic group. The law sets forth special provisions required to achieve a tax free reorganisation in which the assets and tax status of a company may be transferred with attractive tax benefits. If the law's requirements and regulatory provisions are met, the tax free reorganisation is not subject to either federal taxes (i.e. CIT and VAT) or, in certain cases, to provincial taxes (i.e. GTT and ST). Failure to comply with these requirements triggers the collapse of the tax free reorganisation regime and it therefore, becomes subject to applicable federal and provincial taxes.

For a merger or spin-off to qualify as a tax free reorganisation under Argentina's CIT Act and for the tax status to transfer to the continuing or surviving company, the following general requirements must be met:

- The owners of the previous company or companies must have held at least 80% of their capital in the two years prior to the reorganisation. This requirement is mandatory only with respect to the transfer of tax losses and promotional regime benefits.
- Capital must be maintained at the moment of and after the reorganisation.
- The companies must have been conducting the same or related business prior to the date of reorganisation.
- The same or related activities of the previous company must be continued for at least two years from the date of the reorganisation.
- A tax report must be filed with the Argentinian Federal Tax Authorities ("AFIP").

Compliance with all requirements established under a merger or spin-off scenario is required when qualifying a transfer within the same economic group as a tax free reorganisation. Exceptions are made in fulfilling the requirement of related activities prior to the tax free reorganisation, the requirement of conducting business prior to the tax free reorganisation and certain capital requirement differences.



e. Purchase Agreement

The Purchase Agreement may be subject to Stamp Tax ("ST").

The ST rates vary according to the jurisdiction involved.

As an international standard, the following items are listed in a stock purchase agreement:

- Name of company.
- Par value of shares.
- Name of purchaser.
- Warranties and representations made by the seller and purchaser.
- Possible employee issues such as benefits and bonuses.
- How many shares are being sold.
- Where and when the transaction takes place.
- Indemnification agreement over costs that are unforeseen.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

Gains from the transfer of SA, SAU and SAS shares, SRL quotas and other securities are subject to Argentine IT, regardless of the type of person who obtains the income.

Capital gains obtained by Argentine corporate entities derived from the sale, exchange or other disposition of shares are subject to Corporate Income Tax ("CIT") at the rate of 35%/30%/25% for fiscal years beginning as from 1 January 2021. Any loss derived from the transfer of shares may only be offset against profits of the same source from the same type of transactions.

Income obtained by Argentine resident individuals from the sale of shares is subject to Income Tax ("IT") at a 15% rate on net income, unless the securities were traded on a stock market or have public offering authorisation, in which case, under certain conditions, an exemption applies. Any loss derived from the transfer of shares may only be offset against profits of the same source from the same type of transactions.

Capital gains obtained by non-Argentine resident individuals or non-Argentine entities from the sale, exchange or other disposition of shares are exempt from income taxes to the extent the shares are issued by an Argentine company and are authorised for public offering by the Argentine Securities Exchange Commission ("CNV"). The exemption on the sale of Argentine shares applies only to the extent that the foreign beneficial owners reside in and their funds come from, jurisdictions considered as cooperative. If the exemption does not apply, the gain derived from the disposition of shares is subject to Argentine income taxes at either (1) a 15% rate on the net income or (2) a 13.5% rate on the sales price unless the seller resides or channels its funds through non-cooperative jurisdictions in which case the rate increases to 31.5%. Please note that these rates may be reduced in certain scenarios due to the application of a Double Tax Treaty ("DTT").



In addition, some indirect tax may apply to the transfer of shares. At the federal level TDC may apply and at provincial level, GTT, ST and Free Transfer of goods tax also may apply.

The Argentine CIT/IT Act defines "non-cooperative jurisdictions" as those countries or jurisdictions that have not entered into an agreement to exchange information for tax purposes or a non-double taxation treaty with Argentina with a broad exchange of information clause, as well as those countries that entered into such agreements but do not effectively comply with such exchange of information provisions. The agreements and conventions above mentioned must comply with the international standards of fiscal transparency and information exchange regarding fiscal matters to which Argentina has agreed to be subject to. The regulatory decree of the IT Act, establishes the list of "non-cooperative jurisdictions".

g. Share Purchase Advantages

- The purchaser of shares will not be subject to tax in connection with the transaction.
- Corporate Income Tax losses and tax credits remain in the company and consequently, are "transferred" to the purchaser.
- Capital gains derived from the transfer of shares obtained by Argentine individuals and non-Argentine residents are taxed on a perception basis (cash-basis accounting method).
- A share acquisition has tax advantages over an asset purchase, especially when the main assets of the target are real estate.

h. Share Purchase Disadvantages

- The disadvantage of a share purchase is that the liabilities of the target remain in the company and consequently, are "acquired" by the purchaser.
- The company retains the depreciation terms of its fixed assets. It is not possible to perform a step-up in value of the assets.

4. ASSET ACQUISITION

a. General Comments

From a buyer's perspective

The procedure is complex. The tax losses of the seller's company are not transferred to the buyer unless the transfer is of a going concern under a tax free reorganisation provisions. The business' non-assessed tax and social security liabilities are not transferred from the seller to the buyer if the appropriate notification to the Argentinian Federal Tax Authorities ("AFIP") is made prior to the transfer of the assets and if the AFIP does not take any action afterwards, within a certain period of time. However, the business' unpaid assessed tax and social security liabilities are transferred to the buyer.

The buyer depreciates the acquisition cost of the portion of the purchase price corresponding to the fixed assets. However, the portion of the purchase price that exceeds the purchase price of the fixed assets and inventories is considered goodwill of the buyer and is not subject to tax depreciation in Argentina.



From a seller's perspective

The procedure is complex. The sale of assets is subject to taxation. The tax impact for the seller is made up of income taxes, VAT on the transfer of certain assets (VAT is usually not an economic cost for Argentinian taxpayers), TDC, GTT (generally fixed assets are exempt from this tax) and ST on certain agreements. The seller's tax losses are not transferred to the buyer, unless the transfer is of a going concern under a tax free reorganisation. The seller always remains liable for tax debts related to the assets.

b. Purchase Price Allocation

There are no specific rules governing the allocation of purchase price. Market valuation is used in certain cases; for example, transactions in which the price is undetermined, transactions in immovable assets and transfer of ongoing concern, among others.

c. Tax Attributes

The only way to transfer tax attributes is to carry out a tax free reorganisation within the same economic group.

As mentioned above, Argentina's CIT/IT Act provides for a type of tax free reorganisation procedure which consists of a transfer of assets within the same economic group. The transfer will qualify as a tax-free reorganisation under Argentina's CIT/IT Act if certain requirements are met. In this case, attractive tax benefits would apply. Failure to comply with these requirements triggers the collapse of the tax free reorganisation regime.

d. Purchase Agreement

The Purchase Agreement may be subject to ST. The ST rates vary according to the jurisdiction involved, in the range of 0,8% and 1,5% (tax rates are higher in case of real estate transactions.

e. Depreciation and Amortisation

The CIT/IT Act does not provide for amortisation periods. In general, accounting rules are applied and straight line depreciation is commonly used. As a general rule, Argentina's CIT/IT Act does not allow the amortisation of intangibles such as goodwill, trademarks and similar assets. However, depreciation of intangible assets with limited economic useful life, such as concessions, patents and licenses can be deducted for these purposes.

f. Transfer Taxes, VAT

The tax impact for the purchaser would be VAT on the transfer of movable assets other than shares, TDC on Argentine bank accounts and ST on certain agreements. In general, real estate transfers are not subject to VAT. However, if the seller uses the premises as a fixed asset, the seller must pay VAT in some specific cases, if the property is sold within 10 years after the date the seller obtained permission to use the premises.



g. Asset Purchase Advantages and Disadvantages

The disadvantage of this alternative is that the sale of assets will be subject to taxation.

In addition, the unpaid assessed tax and social security liabilities of the seller will be transferred to the purchaser.

The other disadvantage of this alternative is that the income derived from the sale of assets obtained by an Argentine entity is subject to taxation on an accruals basis. The seller's tax benefits (such as promotional regimes and tax exemptions) may not be available or be "transferred" to the buyer.

The advantage of this alternative is that the non-assessed tax and social security liabilities of the business will not be transferred from the seller to the purchaser if the appropriate notification to the AFIP is made prior to the transfer of the assets and if the AFIP does not take any action afterwards within 3 months from the notification.

An additional advantage is that the purchaser may depreciate the acquisition cost of the portion of the purchase price corresponding to the fixed assets. The purchaser may not deduct the depreciation of trademarks.

Another advantage is that for assets acquired since tax periods commencing as of 1 January 2018, taxpayers are entitled to update the cost of the assets.

5. ACQUISITION VEHICLES

a. General Comments

The structuring of investments in Argentina may be achieved by using local and foreign companies, trusts and mutual funds.

b. Foreign Acquisition Vehicle

In general, it is possible to acquire assets through a foreign vehicle directly, except that regulatory restrictions apply (for example, in case of rural lands and border areas). The possession of assets by foreign entities simplifies taxation because, in general, it may reduce local tax impact. If the acquired assets will be used in a business or other activity, it would be advisable to use a local vehicle.

c. Strategic vs Private Equity Buyers

There is no special tax treatment applicable to investments carried out by partnerships and joint ventures organised abroad.



6. ACQUISITION FINANCING

a. General Comments

Currency controls in Argentina, abandoned between late 2015 and 2016, were reinstated in September 2019 and are now in place for an indefinite period. Since exchange control regulations in Argentina are prone to change regularly, applicable regulations should be checked on a case by case basis.

b. Foreign Acquirer

It is advisable to invest from a jurisdiction which has a DTT in force with Argentina, in order to mitigate the tax impact. In general, tax treaties may allow a tax rate reduction in case of distribution of dividends and sale of shares. They could also establish certain protections.

Argentina has a DTT in effect with Australia, Belgium, Bolivia, Brazil, Canada, Chile, Denmark, Finland, France, Germany, Italy, Mexico, the Netherlands, Norway, Russia, Spain, Sweden, Switzerland, the UK, the United Arab Emirates and the State of Qatar. The treaties signed with the Republic of China, Japan, Luxembourg, Austria and Turkey are still undergoing the respective ratification procedures. There is currently no DTT in effect between Argentina and the United States.

c. Debt

There are no specific limitations on the use of debt.

i Limitations on Interest Deductions

The Tax Reform Act provides a new limitation on the deduction of interest expense arising from debts owed to related parties (either local or foreign) and replaces the previous rule applicable to a debt to equity ratio exceeding 2:1. The new limit will be the greater of 30% of earnings before interest, depreciation, and amortisation, or an amount to be fixed by the executive authority. If deductible interest is less than the deductibility threshold, the unused limitation can be carried forward for three tax years. Likewise, if the interest amount exceeds the limit, the difference can be carried forward for five tax years.

Notwithstanding the above, the limitation will not apply on the following situations:

Subjective exceptions:

- Interest paid by Argentine financial institutions, financial trusts, leasing companies, or any other entity to be determined by the Argentine Government (considering the nature of its main activity).

Objective exceptions:

- Commercial debts.
- The amount of interest income earned by the Argentinian entity.
- Interest with respect to which it can be shown that the recipient paid IT in Argentina.

These rules are effective for tax years beginning on or after 1 January 2018.



ii Related Party Debt

In the case of related party debt, the IT Act limits the deduction of interest and exchange differences. In addition, interest on related party debt is subject to transfer pricing rules.

iii Debt Pushdown

Common strategies to push down debt on acquisitions include a leveraged buyout of the target company. Under this scenario the AFIP does not allow Argentinian entities to deduct interest payments if the proceeds of the loan are applied to the acquisition of an Argentinian company's shares.

In this regard, the Argentinian Federal Tax Authority ("AFIP") has issued administrative rulings in the last years that have not allowed such interest deductions. There is also a precedent from Argentina's Federal Tax Court upholding the AFIP's position, which was subsequently confirmed by the Federal Court of Appeals (and the Federal Supreme Court for procedural reasons). Although there are also recent judicial precedents supporting the opposite position, the Federal Supreme Court issued a decision against the taxpayer on 15 July 2021.

If the Argentinian entity finances the acquisition by issuing private bonds with public offering, this provides a strong case to sustain the interest deduction. Private bond law states that the interest payments are fully deductible for income tax purposes if certain requirements are met. The AFIP does not allow the interest deduction in such a case. However, there is a precedent from Argentina's Federal Tax Court allowing the deduction in this case, which has also been confirmed by the Federal Court of Appeals (and the Federal Supreme Court for procedural reasons). The second part of the leveraged buyout is the merger between the buyer entity and target entity. In order to perform a merger under the tax free reorganisation regime certain requirements must be met.

d. Hybrid Instruments

An alternative to debt pushdowns in the context of an acquisition is the use of hybrid instruments. Case by case analysis should be performed.

e. Other Instruments

There are tax benefits applicable to listed notes, financial trusts, mutual funds and loans executed by multilateral organisations.

f. Earn-outs

Earn outs are common and are generally structured as an increase in purchase consideration.



7. DIVESTITURES

a. Tax Free

In the case of listed shares, the divestiture is not subject to tax.

b. Taxable

Please refer to our comments inserted above.

c. Cross Border

There are no specific rules to note here.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Argentinian federal tax is imposed on worldwide net income of Argentine resident individuals and legal entities.

b. CFC Regime

There are CFC regulations by which most foreign vehicles would be considered transparent for tax purposes. In this regard, the new CFC legislation implemented under the Tax Reform Act requires specific and detailed analysis to determine whether the Argentine resident should be taxed, even where no dividend or profit distributions were made by the foreign controlled vehicle.

c. Foreign Branches and Partnerships

Foreign branches of an Argentine entity would be considered transparent for tax purposes. Argentine branches of foreign companies would be taxed as corporations.

d. Cash Repatriation

Dividends distributed by foreign companies to Argentine individuals are subject to IT in Argentina under tax rates ranging from 5% to 35%. If the dividends are distributed to local companies they are subject to CIT in Argentina at one of 35%/30%/25% tax rates depending on the profits obtained in the tax period..

Another way of structuring the cash repatriation is the redemption of shares. In this sense, if a foreign company redeems shares, (i) a taxable dividend is generated if the Argentine company has retained profits and (ii) also IT derived from capital gains is triggered estimated between the net worth of the Argentine company and the acquisition cost of the shares.



Also, an additional cash repatriation technique is for an Argentine resident (individual and/or legal entity) takes up a loan from a foreign beneficiary. In this sense, as a general rule, interest paid by an Argentine borrower to a foreign lender would be deemed Argentine source income subject to income tax withholding in Argentina at the time payment takes place. Also, the Argentine resident should pay the VAT derived from the interest accrued under the loans at the time interest payments take place or at the maturity date, whichever occurs first.

In case the debts are obtained with related parties certain conditions should be met in order to determine the interest expenses and FX differences for income tax purposes.

In addition, note that certain local jurisdictions have created GTT withholding regimes that may apply to interest received by foreign lenders. Finally, it is important to bear in mind the foreign exchange restrictions that have been reinstated in Argentina in order to make payments to foreign related parties.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real-Property-Rich" Corporations

The sale of real estate is subject to tax on net income. The final corporate income tax of Argentine legal entities is calculated at the end of the fiscal year by applying the 35%/30%/25% corporate income tax rates, as appropriate, for fiscal years beginning as from 1 January 2021. The net income arising from the real estate transaction is equal to the difference between the sale price and the acquisition cost of the land plus the depreciated construction and improvement cost. The depreciation of the premises and improvements takes place at a rate of 2% per year; for real estate, the depreciation is 2% per year over 50 years.

Inflation has recently been high in Argentina and until 1 January 2018, inflation adjustments were not allowed for tax purposes. Therefore, until fiscal years beginning on or after 1 January 2018, any capital gain from the sale of real estate could be high since the real estate cost is historical.

The Tax Reform Act creates a Revaluation of Assets Regime for Taxation and Accounting Purposes and foresees a regime of actualisation of assets.

Under the Tax Reform Act, taxpayers are allowed to adjust the tax base of certain assets purchased after 1 January 2018, to take into account the effects of inflation.

Rollover transactions are applicable in Argentina whenever a depreciable asset is sold and replaced. Income derived from the sale transaction may be assigned to the new asset's cost, resulting in a deferral of recognition of built-in gains. General depreciation rules provided in the CIT/IT Act are then applied on the cost of the new asset reduced by the assigned income amount. This option is available to the extent that both operations are performed within a one-year term.

In general, real estate transfers are not subject to VAT. However, if the seller uses the premises as a fixed asset, the seller must pay VAT in some specific cases, if the property is sold within 10 years after the date the seller obtained permission to use the premises.

The sale of real estate may be subject to GTT. Generally, the sale of fixed assets is exempt from GTT.

The sale of real estate is subject to the ST in the Autonomous City of Buenos Aires at a rate of 3.6%. If the real estate is in a jurisdiction other than the Autonomous City of Buenos Aires, the tax treatment may vary.



An alternative is to sell the Argentine entity's shares. In general terms, real estate investments in Argentina are usually structured under two possible scenarios:

- Direct acquisition of the real property made by a local vehicle (e.g. an Argentine corporation or branch); or
- Acquisition of shares in an Argentine corporation that owns the real property.

The applicable tax treatment for each of the referred scenarios would have certain advantages and disadvantages. The chosen alternative will depend on the purpose of the transaction.

There are no specific rules regarding shares of "real-property-rich" entities.

As mentioned, capital gains obtained by non-Argentine resident individuals or non-Argentine entities from the sale, exchange or other disposition of shares is exempt from IT/CIT if the shares are issued by an Argentine company and they are authorised for public offering by the Argentine Securities Exchange Commission ("CNV"). The exemption on the sale of Argentine shares applies only to the extent that the foreign beneficial owners reside in, and their funds come from, jurisdictions considered as cooperative. If the exemption does not apply, the gain derived from the disposition of shares is subject to Argentine IT at either (1) a 15% rate on the net income or (2) a 13.5% rate on the sales price unless the seller resides or channels its funds through non-cooperative jurisdictions in which case the rate increases to 31.5%. These rates may be reduced due to the application of a Double Tax Treaty ("DTT").

b. CbC and Other Reporting Regimes

On 20 September 2017, General Resolution AFIP N° 4130-E ("GR N° 4130-E") was published in the Official Gazette, in which the AFIP set forth an annual information regime related to Country-by-Country Reporting ("CbCr"), aligned with BEPS Action 13. This obligation applies to multinational enterprise groups ("MNE Groups") with total consolidated revenue equal to or greater than EUR 750 million, or its equivalent in the local currency converted to the exchange rate as of 31 January 2015, for the fiscal year prior to the year being reported. CbCr introduced by GR N° 4130-E consists of an annual information return through which MNE Groups must identify the jurisdictions in which they operate, the entities that are part of the group and the economic activities they perform. In addition, MNE Groups must provide information related to revenue allocation, profits, accrued and paid IT, number of employees, and other information for each jurisdiction in which they perform activities through subsidiaries or permanent establishments.

GR 4130-E provides an additional reporting regime applicable to Argentine entities belonging to MNE Groups. Those entities must report the ultimate parent company of the MNE Group or the entity that actually filed the CbCr in its respective jurisdiction, should it differ from the ultimate parent company. The CbCr deadline is the last business day of the twelfth month following the end of the ultimate parent's reporting year. The regime is applicable for tax periods of the ultimate parent company beginning after 1 January 2017. Failure to comply with the obligations set forth in GR 4130-E will result in the penalties established in the Procedural Tax Law. Moreover, taxpayers will be subject to inclusion in a higher tax audit category, the suspension or exclusion from Special Tax Regimes in which they might be registered and/or the suspension of the Certificates of Exclusion or Non-Withholding proceedings that may have been requested by the taxpayer.

10. TRANSFER PRICING

Argentina's CIT/IT Act also provides transfer pricing provisions under which any payment to a non-Argentinian related party made by an Argentinian taxpayer must be made under the arm's length principle. This provision basically holds that any transaction between related parties must be regarded as entered into between independent parties. As evidence of compliance with the arm's length standard, local taxpayers must prepare and submit a transfer pricing study that includes comparability and economic analyses. Transfer pricing studies must include the functions, activities and risks borne by each party in the transaction and an explanation of the transfer pricing method used. Failure to submit the transfer pricing study and information returns is subject to severe penalties.

Local taxpayers carrying out transactions with non-resident related parties are also required to maintain additional documentation, which must demonstrate the correct determination of the prices or profit margins that are reported in the information returns and the acceptability of the comparability criteria used in determining such prices.

Note that, in accordance with Section 17 of the IT Act, transactions entered into by Argentinian entities, among others, with companies domiciled, registered or located in low-tax or null-tax jurisdictions listed in its regulatory decree (whether or not related to the Argentine entities) will not be considered to conform to the arm's length principle and therefore, will be subject to the transfer pricing rules.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

Act No. 27,440 introduced significant changes to the Argentine Capital Markets regulations. Among other changes, this law amends the Mutual Funds and Trusts' regulations and provides certain tax benefits for new taxation for publicly offered mutual funds and trusts.

In this sense, said law establishes that closed mutual funds and trusts would be "transparent" for income tax purposes.

Foreign investors, Argentine resident individuals and undivided estates would be entitled to low tax rates (from 15% to 0%) on distributions made by Closed Mutual Funds or Financial Trusts to the extent certain conditions are met. As noted in section 1, to explain the concept of undivided estates; in Argentina, following the death of an individual resident or until the successor is determined for the estate distribution, the deceased's patrimony is sometimes considered as an artificial person to act in trade in some circumstances, e.g., to pay taxes. This is known as an "undivided estate". In this sense, the undivided estate of deceased taxpayers who were Argentine residents on the date of their death are considered Argentine residents for taxation purposes.

Also, certain Argentine entities (e.g. S.R.L.) are considered "transparent" under US law in order to consolidate the results.

b. Use of Hybrid Instruments

There are no hybrid instruments in Argentina.



c. Principal/Limited Risk Distribution or Similar Structures

It will depend on the kind of transaction to be executed. In general, the distribution of the risk may be established contractually.

Also, the full range of risk allocation models are possible from principal though to limited risk distributors and commissionaires, among others.

d. Intellectual Property

Registration of contracts establishing licenses of trademarks, patents and other industrial rights as well as transferring technology confers very important benefits in regard to the taxation of royalties paid to foreign right holders.

e. Special Tax Regimes

- The main available national regimes that establish tax benefits in Argentina are:
- "Regime for the Promotion of the Knowledge Economy" (Act No. 27,506).
- "National Promotional Regime for the Use of Renewable Sources of Energy" (Act No. 26,190 and Act No. 27,191 as amended).
- "Permanent nature of the Productive Recovery Programme". (Act No. 27,264).
- "Promotional regime for entrepreneurial activity". (Act N° 27,349).
- "Regime of Regulation and Promotion for the Production and Sustainable Use of Biofuels" (Act No. 26,093).
- "Investment Act for Cultivated Forest" (Act No. 25,080).
- "Industrial Promotion Scheme" (Acts No. 21,608 and No. 23,658).
- "System of exports that are commercialised under the modality of "Turnkey Contract"(Decree No. 870/2003).
- "Drew-Back Regime" (Decree No. 177/1985 as amended)
- "Customs-Free Zones" in certain Argentine local jurisdictions.
- "Productive Financing Regime"(Act No. 27,440).
- "Investment Promotion Regime for the Exploitation of Hydrocarbons" (Decree No.929/2013).
- "Mining Investment Law" (Act No. 24,196).

For example, the most common tax benefits foreseen in said regimes are, among others: i) Anticipated VAT refund; ii) Accelerated amortisation of certain assets for IT purposes; iii) Tax certificate to be applied to the cancellation of certain taxes (e.g. IT, VAT); iv) Fiscal Stability; v) Exemption from customs import; and vi) Exemption in ST and GTT to the extent the Argentine local jurisdiction has adhered to the regime involved.



12. OECD BEPS CONSIDERATIONS

On 7 June 2017, Argentina signed the "Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting" to update most of its DTT in line with BEPS. Congressional approval has not been given yet. Note that certain DTT have already included these modifications.

On 29 December 2017, the Tax Reform Act was approved (effective as of 1 January 2018) and many of the changes introduced are in line with OECD and BEPS standards, regarding thin capitalisation rules, permanent establishment assessment rules, "sixth method" regarding transfer pricing rules, Country by Country reporting, Mutual Proceeding Arrangements, Advance Pricing Proceedings and other matters.

Also, in line with the OECD, in Argentina a tax information regime was implemented. In this regard, General Resolution AFIP N° 4697/2020 provides for the obligation of Argentine entities to disclose the "Beneficial Owners" of their shareholders and/or related entities and the implementation of a Registry of foreign entities obtaining passive income.

BEPS measures are not new in Argentina. During recent years the Argentine tax authorities have challenged tax motivated transactions and structures on the basis of the 'substance over form' principle as construed in case law. In addition, an Argentine government commission was created to review the country's tax treaty network to determine whether there was potential for abuse, and new tax information reporting requirements were created, among other measures.

13. ACCOUNTING CONSIDERATIONS

From an accounting viewpoint, it is necessary to distinguish transactions between unrelated parties (business combinations) from transactions within the same economic group (corporate reorganisations) because the accounting treatment depends on this distinction.



14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

If an Argentinian company does not have sufficient reserves to make a distribution, certain alternatives are available, including a loan or a contract for the provision of services.

b. Application of Regional Rules

Argentina applies only internal law and international treaties to which Argentina is a party.

c. Tax Rulings and Clearances

There are binding rulings (regarding general consultation carried out by taxpayers), advanced pricing agreements (regarding transfer pricing) and mutual agreement procedures (regarding DTT).

15. MAJOR NON-TAX CONSIDERATIONS

In general, there are no restrictions applicable to foreign investors. As of 1 September 2019, new foreign exchange restrictions were reinstated in Argentina. The formation of a corporation is relatively simple and easy, though there are certain restrictions regarding fields, lands and border areas.



16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %
Australia	10 / 15	0 / 12	10 / 15
Belgium	10 / 15	0 / 12	3 / 5 / 10 / 15
Bolivia	No limit	No limit	No limit
Brazil	10 / 15	0 / 15	10 / 15
Canada	10	0 / 12.5	3 / 5 / 10 / 15
Chile	10 / 15	4 / 12 / 15	3 / 10 / 15
Denmark	10 / 15	0 / 12	3 / 5 / 10 / 15
Finland	10 / 15	0 / 15	3 / 5 / 10 / 15
France	15	0 / 20	18
Germany	15	0 / 10 / 15	15
Italy	15	0 / 20	10 / 18
Mexico	10 / 15	0 / 12	10 / 15
Netherlands	10 / 15	0 / 12	3 / 5 / 10 / 15
Norway	10 / 15	0 / 12.5	3 / 5 / 10 / 15
Russia	10 / 15	0 / 15	15
Spain	10 / 15	0 / 12	3 / 5 / 10 / 15
State of Qatar	5 / 10	0 / 12	10
Sweden	10 / 15	0 / 12.5	3 / 5 / 10 / 15
Switzerland	10 / 15	0 / 12	3 / 5 / 10 / 15
United Arab Emirates	10 / 15	0 / 12	10
United Kingdom	10 / 15	0 / 12	3 / 5 / 10 / 15

Please note that the treaties signed with the Republic of China, Japan, Luxembourg, Austria and Turkey are still undergoing the respective ratification procedures.



17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Tax contact person available to discuss income and non-income tax matters.
2	Tax Due Diligence	General	A current organisation chart, including all entities by full legal name, jurisdiction, date and place of formation, entity type, class of shares, and ownership percentages. Include a full history of each entity in the structure.
3	Tax Due Diligence	General	A summary of all audits (including status) for any tax at federal, provincial and municipal level. Provide all significant audit correspondence. Indicate whether the statute of limitations has been extended for any period.
4	Tax Due Diligence	General	Details of any preliminary restructuring necessary to effect the proposed acquisition of the Company, including any plan to remove cash/settle intercompany balances. Include any related tax analysis.
5	Tax Due Diligence	General	A summary of all material tax attributes and their years of expiration. In addition, a summary of any limitations with respect to the use of such attributes.
6	Tax Due Diligence	General	Audited financial statements. Copies of the tax provision work papers supporting the Company's most recent financial statements. Copy of the Company's most recent tax provision calculation for the current period.
7	Tax Due Diligence	General	A broad review of the Company´s obligation as withholding agent on the different withholding tax regimes (national, provincial and municipal). Tax returns submitted as "withholding agent" on the different tax regimes.
8	Tax Due Diligence	General	A schedule of any significant recent acquisitions or dispositions or indemnities. Include copies of acquisition agreements. In addition, provide any related tax due diligence reports, structure slides and a description of the manner in which the basis of any asset was stepped-up.
9	Tax Due Diligence	General	Copies of any tax sharing or indemnity agreements. Include a description of any other arrangement pursuant to which tax liabilities could be inherited or have been indemnified against (including several liability).
10	Tax Due Diligence	General	A schedule of related party transactions including the amounts and description of each, to the extent not reflected in the financial statements. Transfer Pricing reports.
11	Tax Due Diligence	General	A report that describes the tax status of the Company and a list of all local tax jurisdiction in which it is authorised to do business.
12	Tax Due Diligence	General	A summary description of any significant tax incentives or negotiated tax arrangements granted to the Company or an affiliate.
13	Tax Due Diligence	General	Copies of memoranda, opinions, ruling requests, or other documentation regarding tax positions taken by the Company and its affiliates relating to any material transactions or tax planning ideas. Information about administrative and judicial claims.
14	Tax Due Diligence	General	A list and description of any country, provincial, state or local tax credits or incentives.

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Nº	Category	Sub-Category	Description of Request
15	Tax Due Diligence	General	Debt Status and Compliance Status from the AFIP website (www.afip.gov.ar).
16	Tax Due Diligence	General	Complete texts of all certificates, agreements, letters or similar documents for Company which are currently in effect or pending before any tax authority.
17	Tax Due Diligence	General	Letters of auditors and/or reports prepared by legal counsel regarding pending/ongoing tax administrative and/or tax judicial processes against the company or filed by the Company (including current tax assessments) in the last five years.
18	Tax Due Diligence	General	A list of tax amnesties under which the Company may have scheduled debt over the last five tax years and the months elapsed of the current fiscal year.
19	Tax Due Diligence	General	Sums and balances.
20	Tax Due Diligence	General	A schedule of tax loss and tax credit carry forward (including, date incurred, amount and expiry date) for the Company as of the end of the most recent fiscal and as expected as of the closing date.
21	Tax Due Diligence	General	Inform sub-diaries purchases and sales.
22	Tax Due Diligence	General	Agreements and offer letters.
23	Tax Due Diligence	General	A list of agreements or commitments, especially those agreements related to a finance, royalty or service.
24	Tax Due Diligence	General	Copies of all tax returns of any kind filed within the last six years and receipts for taxes paid.
25	Tax Due Diligence	Income Tax	Information on all material differences between accounting and taxable income as of the most recent income tax filing date for the Company, including detail of each book-tax adjustment item.
26	Tax Due Diligence	Income Tax	Copies of all estimated tax payments made for the following two fiscal years.
27	Tax Due Diligence	Income Tax	Tax returns, proofs of the reception of tax returns and copies of the receipts of the last six years. Provide working papers with adjustments made.
28	Tax Due Diligence	Income Tax	Estimated transaction expenses related to the proposed transaction.
29	Tax Due Diligence	Income Tax	A schedule of tax amortisation intangibles and goodwill and the projected run-off.
30	Tax Due Diligence	Income Tax	Copy of the Company's calculations for its interest expense limitations, if any.
31	Tax Due Diligence	Income Tax	Schedule of the Company's outstanding debt obligations (including debt to related parties) setting forth principal and accrued interest. For each obligation, include a schedule of any differences between the accrual and payment of interest. Also include copies of any calculations related to interest deductions attributable to original issue discount and applicable high yield discount obligations.

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Nº	Category	Sub-Category	Description of Request
32	Tax Due Diligence	Income Tax	Description of the Company's significant tax accounting policies. Include a description of the tax accounting method used with respect to deferred or unearned revenue (including deposits) recorded in the financial statements.
33	Tax Due Diligence	Income Tax	Current estimate of taxable income for the following two fiscal years.
34	Tax Due Diligence	Value Added Tax	Tax returns, proofs of the reception of tax returns and copies of the receipts of the last six years. Provide working papers.
35	Tax Due Diligence	Presumed Minimum Income Tax	Tax returns, proofs of the reception of tax returns and copies of the receipts of the last six years. Provide working papers.
36	Tax Due Diligence	Personal Assets Tax	Tax returns, proofs of the reception of tax returns and copies of the receipts of the last six years. Provide working papers. Confirm if the taxpayer qualifies as a compliant taxpayer.
37	Tax Due Diligence	Turnover Tax	Tax returns, proofs of the reception of tax returns and copies of the receipts of the last six years. Provide working papers.
38	Tax Due Diligence	Other taxes applicable to the Company	Tax returns, proofs of the reception of tax returns and copies of the receipts of the last six years. Provide working papers.

ARGENTINA

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The Australian taxation system is complex and cannot be explained briefly without omitting some details that may be relevant to particular factual circumstances. The taxation system in Australia has also undergone, and will continue to undergo, significant reform. Accordingly, the following comments should only be used as a guide to a range of tax imposts that are commonly relevant in undertaking M&A transactions in Australia. Foreign investors also need to consider the tax regime in their home jurisdiction and any double taxation agreement between Australia and that jurisdiction.

1. INTRODUCTION

a. Forms of Legal Entity

Typical legal structures that are encountered in an M&A context in Australia include:

- Companies incorporated in Australia, including Australian subsidiaries of foreign companies. The most common type of company is a proprietary company limited by shares;
- Registered foreign companies carrying on business through a permanent establishment in Australia;
- Partnerships and limited partnerships;
- Joint ventures; and
- Trusts (the most common type of trust, again in an M&A context, being Australian unit trusts).

b. Taxes, Tax Rates

The main taxes imposed in Australia are:

- Federal income tax, (including tax on net capital gains). The tax rate payable by companies is 30% (25% for certain small businesses in the 2021-22 income year). Income tax payable by resident individuals is applied progressively with the lowest rate being 19% on taxable income above the tax free threshold of AUD 18,200 and the highest rate being 45% (excluding certain other levies));
- Withholding tax in respect of certain amounts paid to non-residents (the withholding rate is 10% for interest payments and 30% for unfranked dividends (that is, dividends paid out of untaxed profits) and royalty payments – subject to any limitations in accordance with Australia's double taxation agreements);
- Indirect taxes, such as goods and services tax ("GST") (our VAT equivalent) which is a broad-based tax of 10% on most goods, services and other items sold or consumed in Australia;
- State based taxes such as payroll tax, land tax and duty (the liability threshold and rates of these state based taxes differ in each of the Australian states and territories); and
- Employment related taxes and withholdings, including fringe benefits tax (levied on the employer at a current rate of 47% for most fringe benefits) and superannuation guarantee (currently 10%).

A company incorporated in Australia, or foreign incorporated companies which have either their central management and control in Australia or their voting power controlled by shareholders who are resident in Australia, will be a resident of Australia for tax purposes.



Non-residents of Australia are, ordinarily, only taxable on income derived from sources in Australia and capital gains made from the sale of Australian real estate, resource interests and business assets (see the section on Capital Gains Tax below).

Residents of Australia are taxable on their worldwide income (that is, from sources both in and outside Australia). Certain income of individuals that are temporary residents of Australia may be exempt from Australian income tax (e.g. foreign source income and some capital gains).

Income tax is levied on taxable income. In determining taxable income, allowable deductions are offset against assessable income. In general, tax losses from prior years can be carried forward (but not back) indefinitely. Where the taxpayer is a corporation, a loss may only be offset against future taxable income if the corporation satisfies the continuity of ownership test or, in some cases, the same business test. Capital losses can only be offset against capital gains arising in the same or future tax years.

Wholly owned groups of Australian resident entities (including companies, partnerships and trusts, but excluding branches) may elect to consolidate for the purpose of calculating the group's Australian taxation position. The principal benefits of forming a consolidated group include the lodgement of only one Australian income tax return on behalf of the group, the ability to ignore (for tax purposes) any intragroup transactions (e.g. asset transfers, loans, payments of dividends, returns of capital) and the effective offset of losses within the group.

Typically, trusts are taxed as a flow through entity, but certain trusts carrying on a trading business can be taxed as a company. Limited partnerships are taxed as a company (subject to the concession discussed below).

Australia has concessional tax regimes for eligible managed investment trusts, venture capital limited partnerships ("VCLPs") and early stage venture capital limited partnerships ("ESVCLPs").

2. RECENT DEVELOPMENTS

a. Transfer Pricing

On 13 March 2019, the Australian Taxation Office ("ATO") released Practical Compliance Guideline PCG 2017/1 (PCG 2019/1), setting out its guidance on transfer pricing issues related to inbound distribution arrangements. PCG 2019/1 contains a risk assessment framework and four schedules covering general and more specific industry distribution arrangements.

b. Hybrid mismatch

On 24 July 2019, the ATO released Practical Compliance Guideline PCG 2019/6 OECD hybrid mismatch rules, concept of structured arrangements (PCG 2019/6). The document provides guidance to taxpayers to assess the risk of the hybrid mismatch rules applying to their circumstances. Further detail is set out below under 'Use of hybrid instruments'.

c. Intellectual property

On 22 January 2020, the ATO released Taxpayer Alert TA 2020/1 which sets out the types of arrangements relating to offshore transfers of intellectual property that the ATO considers high risk from an Australian taxation perspective. At a high level, the ATO has indicated that it is generally concerned with cross border arrangements under the Australian transfer pricing and general anti-avoidance provisions.



d. Foreign investment in Australian entities

On 22 January 2020, the ATO released Taxpayer Alert TA 2020/2 regarding the mischaracterisation of arrangements connected with foreign investment into Australian entities. Amongst other things, the ATO has indicated that it will focus its attention on arrangements that do not comply with the Australian withholding tax rules, the deductibility of returns (e.g. whether the investment is debt or equity and whether the thin capitalisation rules should apply), gains on the exit from the investment and the application of the general avoidance rules.

e. COVID-19

As part of the response to the COVID-19 pandemic in Australia, the Australian government implemented a number of tax related measures. Some of the measures that may be most relevant in an M&A context are:

- Administrative concessions in determining whether a foreign company may be considered to have central management and control in Australia or a permanent establishment in Australia for the purpose of determining residency for Australian tax purposes.
- A concessional approach to the companies applying the Australian thin capitalisation rules where balance sheets are impacted by COVID-19.
- Wage subsidies to eligible employers that have suffered declines in turnover during the COVID-19 crisis. The threshold shortfalls (15%, 30% or 50%) broadly depend on the annual revenue of the relevant entity. The wage subsidy scheme operated until 28 March 2021.
- Instant asset write offs for assets valued at less than AUD150,000 and accelerated depreciation provisions for businesses with an aggregated turnover of less than AUD500 million, for new assets that are first used or installed ready for use for a taxable purpose between 12 March 2020 and 30 June 2021.
- Deferral of certain tax payment obligations for eligible businesses.

State governments in New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania and the Northern Territory also introduced various measures to defer, waive or discount payroll tax and, in some states, land tax liabilities.

All of the above measures were subject to change as the COVID-19 pandemic developed, including the eligibility requirements such as thresholds and the time for which the measures were/will be available. Whilst certain measures may no longer be operative, it is likely to be important to review eligibility and compliance as part of M&A tax due diligence processes.



3. SHARE ACQUISITION

a. General Comments

Foreign investment is regulated principally by the Foreign Acquisitions and Takeovers Act 1975 ("FATA"). A share acquisition may be subject to Foreign Investment Review Board ("FIRB") approval. As a consequence of the COVID-19 crisis, many acquisitions that would not typically require such approval, now do. The FIRB approval process is subject to change and should be considered carefully.

The purchase of shares means that the purchaser acquires the entire company including all assets and all liabilities including any historical liabilities (including tax liabilities). However, for tax purposes where an eligible head entity is established as the purchaser of 100% of the shares in the target, the wholly-owned groups of Australian resident entities (including companies, partnerships and trusts, but excluding branches) may elect to consolidate for the purpose of calculating the group's Australian taxation position.

Consolidated groups are treated as a notional single entity for Australian tax purpose. Under the single entity rule, the assets and liabilities of target are regarded as that of head company and transactions within the tax consolidated group are disregarded for income tax purposes. In an M&A context, the tax cost base of certain assets of a target entity can be reset when the target joins a tax consolidated group. The result of these rules is to effectively remove any preference from a tax perspective for acquiring either shares in the target or its assets.

The gain on the sale of shares is generally capital in nature and may be subject to preferential (discounted) tax rates if the seller is an individual, superannuation fund or trust. The Australian capital gains tax rules do not impose a separate tax but set out rules that result in net capital gains being included in assessable income and subject to ordinary income tax.

Foreign persons are not generally taxed on gains from the sale of a shares except where the company holds certain interests in land (defined broadly). In those circumstances where the shares are indirectly taxable Australian real property, the sale can be subject to capital gains tax (refer below).

Certain venture capital and private equity disposals may be considered revenue transactions by the Australian Tax Office ("ATO") and subject to tax as ordinary income (not a capital gain) subject to structuring and application of tax treaty relief.

b. Tax Attributes

A share acquisition generally does not result in the recognition of gain or loss at the target entity level. The tax attributes of a company generally survive a share acquisition, although some attributes, such as losses, will be subject to a limitation following change of ownership. That is, the company can continue to carry forward its tax losses indefinitely provided that it satisfies the "continuity of ownership test" (that is, same majority ownership) or alternatively the "same business test" or the "similar business test" (which applies to losses incurred in an income year beginning on or after 1 July 2015). Many M&A transactions will obviously result in a failure of the continuity of ownership test which would then require satisfaction of the alternative test in order to carry forward and utilise losses. This will ultimately require an assessment of the circumstances of the target post-closing of the transaction.



c. Tax Grouping

Wholly owned groups of Australian resident entities (including companies, partnerships and trusts, but excluding branches) may elect to consolidate for the purpose of calculating the group's Australian taxation position.

The principal benefits of forming a consolidated group include the lodgement of only one Australian income tax return on behalf of the group, the ability to ignore (for tax purposes) any intragroup transactions (e.g. asset transfers, loans, payments of dividends, returns of capital) and the effective offset of losses within the group.

There are special rules that give foreign owned groups with multiple Australian holding companies flexibility in defining the consolidated group. The Australian headquartered company for the group is primarily responsible for the group's income tax liability.

Other members can be jointly and severally liable if the head company defaults in respect of payments of the group's income tax liability unless a Tax Sharing Agreement ("TSA") is in place for the group. Certain groups may also form a group for GST purposes with similar principles to those described above applying to those groups. The liability for other taxes (e.g. fringe benefits tax) is not impacted by the formation of a consolidated group or GST group and will remain the responsibility of the individual group members.

d. Tax Free Reorganisations

Australia has a number of capital gains tax ("CGT") rollover provisions that are subject to specific conditions. That is, a capital gain or capital loss may be deferred or disregarded until a later CGT event occurs. For example a capital gain may be deferred if a shareholder disposes of their shares in a company in exchange for shares in the purchaser or the purchaser's ultimate parent. The rollovers contain very prescriptive conditions that must be satisfied based on the relevant circumstances.

Further, all transactions within a tax consolidated group (e.g. the transfer of assets between members of the tax consolidated group) are ignored for Australian income tax purposes.

Transactions within a GST group are also effectively ignored for GST purposes.

e. Purchase Agreement

In a share sale, the company continues to retain its historical, actual and contingent liabilities on completion including any tax liabilities. To mitigate the risks associated with these inherited liabilities, the purchaser would generally require the seller to provide sufficient representations, warranties and indemnities for an appropriate period of time under the Purchase Agreement. Given that most large corporates would form tax consolidated groups in Australia, one particular tax issue relating to share acquisition relates to secondary liabilities. Members of a consolidated group can be jointly and severally liable for all group liabilities if the head company defaults unless a valid Tax Sharing Agreement ("TSA") is in place for the group and the terms of that TSA relating to the exit of the target company from that consolidated group are complied with.

For a group liability to be covered by a TSA, the TSA must be in place before due date of the tax liability. The TSA will not be valid in relation to a tax debt that was due and payable prior to the date of execution.



Without a valid TSA, an entity acquired from within a tax consolidated group may be liable for the liabilities of the group that relate to the period of its membership.

Further, purchasers can be subject to withholding obligations depending on the residency of the seller and the nature of the asset.

Foreign resident CGT withholding tax can apply at 12.5%.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

Transfer taxes are imposed by the States and Territories in Australia.

Marketable securities duty no longer applies to a transfer of shares but landholder duty can be imposed on the transfer of shares relating to a landholder. Purchasers will need to confirm whether the target is a landholder and whether a relevant acquisition is being made. The landholder provisions relate to the jurisdiction in which the land is situated.

GST will not apply to a transfer of shares.

Capital gains are an item of statutory income. Typically foreign investors will derive all capital gains on assets that are not taxable Australian property, free of any Australian tax. However, a membership interest in a company will be taxable Australian property where both the non-portfolio interest test (10% or more) and the principal asset test are satisfied.

The principal asset test applies in relation to certain membership interests held by a foreign resident entity in another entity, and is satisfied if the market value of the other entity's taxable Australian real property ("TARP") assets exceeds the market value of its non-TARP assets. Generally speaking, this will be where 50% or more of the value of the entity is attributable to interests in Australian land (defined broadly).

g. "Purchase accounting" applicable to share acquisitions

This section is left intentionally blank.

h. Share Purchase Advantages

The seller will typically be better placed to avail itself of certain tax concessions (CGT discounts or exemption) from a share sale as opposed to a sale of business by the company and subsequent distribution of profits. A share sale may achieve lower transfer taxes, such as duty (usually payable by the purchaser), which may otherwise apply to asset sales provided that the share sale would not be subject to the landholder duty regime. See below.

i. Share Purchase Disadvantages

From the purchaser's perspective, one disadvantage is that the company acquired under a share purchase continues to retain its historical, actual and contingent liabilities on completion including any tax liabilities. There is also the risk of joint and several liability for certain taxes (e.g. where the company is acquired from a tax consolidated group). To mitigate the additional risks associated with a share purchase, the purchaser would generally engage in extensive and detailed due diligence to detect liabilities and risks associated with the target company and require the seller to provide sufficient representations, warranties and indemnities for an appropriate period of time under the purchase agreement. The requisite coverage would typically be consistent with international standards for share acquisitions. Refer above.



Another possible disadvantage is that the assets of the company acquired under a share purchase would not have their tax cost reset (that is, the assets would retain their existing cost base). A share acquisition may more closely align with an asset acquisition if the target company joins a tax consolidated group with the purchaser which would then require the tax cost of the assets of the company to be reset based on the purchase price for the shares (subject to some adjustments), broadly in proportion to market value.

4. ASSET ACQUISITION

a. General Comments

Asset acquisitions are not as common as share acquisitions where the entire business is being acquired. One of the reasons for this is that the seller will typically have a less onerous tax outcome in a share sale compared with the underlying assets being sold and proceeds then being distributed by way of distribution. The purchaser is also not likely to be subject to duty on a share acquisition, unless the landholder regime applies.

For the purchaser, an asset acquisition type outcome can be achieved through the operation of the tax consolidation regime.

b. Purchase Price Allocation

The purchase price must be allocated on a fair and reasonable basis.

c. Tax Attributes

An asset acquisition generally results in the recognition of a gain or loss by the selling company as well as at the owner level if the proceeds of sale are distributed. Other tax attributes (e.g. tax losses) are not capable of being transferred under an asset acquisition.

The advantage of the purchaser receiving a step up in cost base for an asset sale can be replicated under the tax consolidation regime.

d. Tax Free Reorganisations

Tax free reorganisations are only possible within a tax consolidated group.

e. Purchase Agreement

Purchasers can be subject to various withholding obligations depending on the residency of the seller and the nature of the asset. Foreign capital gains tax ("CGT") withholding tax (non-final) can apply at 12.5% and in addition certain property sales may be subject to Goods and Sales Tax ("GST") withholding (currently 10%). Specifically, foreign resident CGT withholding applies to the disposal of certain taxable Australian properties.

The assets subject to the foreign resident CGT withholding tax are:

- Taxable Australian real property (defined broadly) with a market value of AUD750,000 or more;
- An indirect Australian real property interest (broadly a 10% or more interest, such as shares, in an entity whose underlying value is principally attributable to an Australian real property); or
- An option or right to acquire such property or interest.

The withholding will be required unless the vendor can provide the purchaser with a "clearance certificate" (mainly in cases involving the sale of Australian real property). The clearance certificate is issued by the ATO and certifies that withholding is not required (e.g. because the vendor is an Australian resident). For other transactions such as share acquisitions, withholding will not be required if the vendor can make a valid declaration that it is an Australian resident or that the shares are not indirect Australian real property interests (please see above).

Where withholding is required, the purchaser must pay 12.5% of the purchase price to the ATO. The seller can claim a credit for the foreign resident capital gains withholding payment by lodging a tax return for the relevant year.

GST withholding can apply to a purchaser of:

- A new residential premise; or
- Potential residential land included on a property subdivision plan.

If GST withholding applies, the purchaser must withhold and pay either:

- One eleventh of the contract price (for fully taxable supplies);
- 7% of the contract price (for margin scheme supplies); or
- 10% of GST exclusive market value of the supply (for supplies between associates for consideration less than GST inclusive market value).

f. Depreciation and Amortisation

Cost bases for depreciation will be reset for plant and equipment. Purchase price allocation must be on a fair and reasonable basis.



g. Transfer Taxes, VAT

GST will apply to an asset transfer where the seller is registered or required to be registered for GST. The rate is 10%.

Various exemptions are available including GST free treatment for the sale of a going concern.

Duty will be imposed on the sale of dutiable property which includes land and various business assets.

h. Asset Purchase Advantages

The historical risk and liabilities of the company are not taken on by the purchaser. There is less tax due diligence required. The purchaser may be able to recognise the price paid for the assets in the tax cost of those assets (refer above).

i. Asset Purchase Disadvantages

Potentially greater duty liability of business sale. The seller is likely to strongly favour a share sale and this may impact the commercial negotiation of the deal. The parties will need to make an assessment of whether the asset purchase qualifies as a GST-free supply of a going concern.

5. ACQUISITION VEHICLES

a. General Comments

The typical corporate acquisition structure would involve establishment of an Australian incorporated purchaser. This allows for ease of contractual dealing and allows for the financing of the acquisition to be put in place having regard to Australian tax requirements (including thin capitalisation and transfer pricing).

b. Domestic Acquisition Vehicle

A wholly owned special purpose Australian company is typically established as the purchaser.

c. Foreign Acquisition Vehicle

It is uncommon for an M&A transaction to be conducted in Australia without establishing an Australian entity for the purpose of acquiring a target.



d. Partnerships and joint ventures

Joint ventures can be either incorporated or unincorporated. An incorporated joint venture involves the incorporation of a separate limited liability company, which is established for the purpose of undertaking a particular purpose. An unincorporated joint venture is a purely contractual arrangement between two or more entities. No separate entity is established to undertake the project. From an income tax perspective, in a true unincorporated joint venture where each participant is entitled to its share of the output of the joint venture which it uses or trades on its own behalf, the participants account for their own assessable income and deductible expenses.

However, if the joint venture extends to the sale of the output, the unincorporated joint venture will most likely be a partnership for income tax purposes on the basis that the participants are in receipt of income jointly.

A partnership is not a separate legal entity but is often governed by a partnership agreement. Each of the participants in a partnership is jointly and severally liable for partnership debts. From an income tax perspective, a partnership is not a separate entity. Each partner will be taxed on their respective share of the net income of the partnership or can claim a deduction in respect of their share of any partnership loss.

M&A activity in Australia is not typically undertaken using unincorporated joint ventures or partnerships.

e. Strategic vs Private Equity Buyers

This section is left intentionally blank.

6. ACQUISITION FINANCING

a. General Comments

For financings involving foreign lenders, interest withholding tax of up to 10% and the potential additional requirement to gross up for interest payments will need to be taken into account. Interest withholding tax can be reduced under one of the Double Taxation Agreements concluded with Australia, including the United States and United Kingdom that offer an interest withholding tax exemption for interest paid to a "non-related financial institution". However, lead arrangers and other lenders typically like to set up the financing to be as flexible as possible going forward in terms of sell down options and secondary trading. This means structuring the financing so that it falls within what is called the "section 128F withholding tax exemption" under Australian law. The exemption from interest withholding tax under section 128F of the Income Tax Assessment Act 1936 (Cth) is for interest paid to foreign lenders on debentures or debt interests that pass the "public offer test". Companies can have a debt to equity ratio of 1.5:1 before debt deductions (e.g. for interest) begin to be denied (although this recent tightening up of the rules is subject to a number of qualifications, so please refer to the relevant section in this publication for further details).



Tax consolidated groups

It is common for Australian companies in the same corporate group to become part of a tax consolidated group. This makes the ultimate Australian parent company primarily liable for the group's income tax liabilities. If the parent fails to pay any tax liability, then each of its Australian subsidiaries will be jointly and severally liable for the entire group's tax liability. This creates issues where you have debt facilities involving non-recourse special purpose vehicle ("SPV") borrowers, or group security arrangements that involve cross guarantees being provided by certain members of the group but not others (e.g. concepts of obligors/non-obligors or restricted subsidiaries/unrestricted subsidiaries). In these scenarios there are potential risks of cash leakage because obligors or non-recourse SPV borrowers could become jointly liable for the tax liabilities of other members of the group that sit outside the lenders' security net. The solution for this is to ensure that appropriate tax sharing agreements ("TSAs") and tax funding agreements ("TFAs") are put in place among all of the members of an Australian tax consolidated group. If a group tax liability is covered by a valid TSA, the Australian parent company and each Australian subsidiary will not be jointly and severally liable for that group tax liability. Instead, depending on the allocation of the group tax liability under the TSA, an Australian subsidiary may be liable for all, part or none of the group tax liability. A valid TSA will essentially ensure that each member of the group is only responsible for its own tax liabilities (despite being part of a tax consolidated group). Facility agreements will often contain covenants and conditions precedent ("CPs") that require TSAs and TFAs to be maintained at all times during the term of the relevant financing.

b. Equity

Australia has a favourable holding company regime for most jurisdictions. This includes no withholding tax on conduit foreign income, no CGT on share sales (that are not TARP) and no tax on foreign non-portfolio dividends.

Further treaty benefits are available, with the US and UK being the most preferred treaty jurisdictions for financing arrangements.

c. Debt

In Australia, the financing arrangements must qualify as a debt interest for the returns to be deductible.

The Debt/Equity Rules contain the provisions which classify interests in companies as either debt interests or equity interests for certain taxation purposes. The rules are complex but the financing arrangement must in substance be a loan and it must be structured accordingly.

Interest withholding

Interest withholding tax is an issue that appears on the radar of many non-Australian lenders to Australian borrowers. Interest withholding tax is typically 10% of the gross interest paid. Financing arrangements will typically include a gross up clause such that the additional cost is ultimately borne by the Australian borrower. However, a number of exemptions are potentially available.

Australia taxes non-residents on their Australian sourced income. Unless an exemption applies, an Australian entity making certain payments (including payment of interest) to a non-resident (e.g. foreign lender) is required to withhold tax (usually 10% of the payment) from such payments and remit the tax to the Australian Taxation Office. The rate of withholding tax may be reduced by any relevant Double Tax Agreement.

Also, interest withholding tax is unlikely to be applicable if the loan is made through the Australian branch of an international bank.

Thin capitalisation

The deductibility of interest is limited to certain borrowers under Australia's thin capitalisation regime.

The safe harbour limit is based on a ratio of 1.5:1 on a debt to equity basis (that is 60% on a debt to total asset basis). The debt/equity rules in Division 974 of the Income Tax Assessment Act 1997 determine whether an interest is a debt interest or an equity interest.

In addition, there is a de minimis threshold for application of these rules of AUD2 million of debt deductions, meaning that the thin capitalisation rules will not apply for any given year in which the interest deductions of a taxpayer and its associates are AUD2 million or less.

If funding of an entity exceeds the debt to equity ratio, deductions relating to debt in excess of this level nevertheless may be allowed if the entity can establish that an arm's length financier would have lent a higher amount to the entity, considered on a stand-alone basis (i.e. without parent company guarantees). In addition to this so called "arm's length debt test", companies can rely on the worldwide gearing test, which is available to inward investing entities. Under the worldwide gearing test, a company can gear its Australian operations consistently with the level of gearing across the corporate group.

In order to push down debt, a new Australian holding company would be established, which would elect to form a consolidated group with the acquired entity and debt deductions (subject to thin cap and transfer pricing limits) would be deductible against the assessable income of the tax consolidated group.

d. Hybrid Instruments

Following the OECD Base Erosion and Profit Shifting ("BEPS") Action recommendations, the OECD released its Action 2 Report, Neutralising the Effects of Hybrid Mismatch Arrangements (Action 2 Report).

In the context of financing arrangements, hybrid instruments may give rise to interest payments that are deductible under Australian tax rules but non-assessable in the country of residence of the lender.

The Action 2 Report sets out recommendations for countries to make changes to their domestic law to neutralise the effect of the hybrid mismatch arrangements and includes changes to the OECD Model Tax Convention to address such arrangements.

In Australia, the Board of Taxation ("Board") provided their report to Government on the implementation of the OECD hybrid mismatch rules. Based on the Board's recommendation, the Australian Government legislated to address the mismatch by:

- Denying deductions in Australia where the payment would have been deductible in the country of residence of the lender; and
- Including an amount in the taxpayer's assessable income where the payment would have been non-assessable in the country of residence of the lender.

e. Other Instruments

This section is left intentionally blank.

f. Earn-outs

Earn-outs are subject to a special tax regime in Australia. Eligible earn-out arrangements are taxed on a look-through basis such that the original share disposal is the subject of taxation. This is different to the previous rules regarding earn-outs which valued the earn-out right as part of the consideration for the disposal of the shares.



7. DIVESTITURES

a. Tax Free

Non-residents may not be subject to tax in Australia unless disposing of certain assets (refer to section 3.e above).

b. Taxable

Most gains realised on divestitures will prima facie be subject to tax in Australia (subject to the comments above regarding non-residents).

c. Cross Border

Refer to section 7.b above.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

Australia taxes residents on worldwide income and non-residents on Australian source income, subject to the application of applicable treaties.

b. CFC Regime

Australia operates a CFC regime that applies to two lists of countries. Listed countries include the UK, US, France, Germany, Canada, Japan and New Zealand. For listed countries the only type of income attributed under the CFC rules is eligible designated concession income ("EDCI"), which is a small list of certain types of income subject to exemption in the listed country, for example EDCI would include capital gains from tainted assets of a New Zealand CFC.

For unlisted countries (all other countries), CFC attribution will depend on whether the relevant CFC passes the "active income test". The active income test looks to certain types of "adjusted tainted income" ("ATI"), which includes passive income, income from the sale of goods to Australian associates of the CFC (tainted sales income) and income from the provision of services to Australian residents (tainted services income). The CFC will be subject to attribution on its ATI if its ATI exceeds 5% of its gross turnover.

c. Foreign Branches and Partnerships

Broadly, foreign branches will be subject to equivalent taxation as a foreign company. Certain foreign income derived by an Australian company in carrying on business through a permanent establishment in a country with which Australia has a tax treaty is not subject to tax in Australia if the branch passes the active income test.

Where the foreign branch fails the active income test, the exemption does not apply to the same types of income that would be subject to CFC attribution if the branch were a foreign company (i.e. EDCI for listed countries and ATI for unlisted countries).

d. Cash Repatriation

No restriction. The requirements in the foreign jurisdiction would need to be considered.



Foreign dividends or distributions paid on equity interests as defined for Australian income tax purposes are generally exempt from tax when received by a resident corporate tax entity that holds at least a 10% participation interest in the foreign company. The exemption also applies to distributions received indirectly (e.g. via a trust) by resident companies. However, the exemption does not apply to dividends paid on legal form shares that are treated as debt interests. The hybrid mismatch rules, which apply to income years commencing on or after 1 January 2019, may also operate to limit the exemption (see the Group taxation section for more information).

Under the conduit foreign income rules, foreign sourced income may flow through interposed Australian companies to non-residents without being subject to Australian withholding tax.

Other foreign income of Australian resident corporations is subject to tax; however, in most cases, an offset for foreign income tax paid is allowed to the extent of Australian tax payable on such income.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Please also refer to section 3.e above.

A common vehicle for passive investments in Australian real estate is a unit trust. A unit trust is usually a "flow-through" vehicle for Australian tax purposes, with tax paid by the unit holders of the trust on their share of the net income of the trust according to their own tax profile.

For widely held trusts, flow through treatment will only be available where the trust is not carrying on a trading business.

Payments to non-residents of Australian sourced rent and capital gains on "taxable Australian real property" ("TARP") are also subject to withholding at the rate of 30%/Top marginal tax rate as a non-final tax. Different withholding rules can apply to distributions comprising interest, dividends and royalties.

If an Australian unit trust qualifies as a 'managed investment trust' ("MIT"), "fund payments" (e.g. Australian source rent) from the trust to non-residents may be subject to withholding at a concessional rate of 15% where the unitholder is resident of an information exchange country. Using a MIT is the market standard approach to structuring an investment from offshore into Australian real estate.

The trustee of the trust will not be subject to tax in respect of the fund payments.

The MIT withholding is a final tax on the relevant distributions, that is foreign investors are relieved of the compliance burden of filing Australian tax returns in respect of those distributions.

b. CbC and Other Reporting Regimes

Australia has implemented CbC reporting. Reporting obligations apply to significant global entities ("SGE"). Broadly, an entity is an SGE for an income year if it is either:

- A global parent entity with annual global income of AUD1 billion or more; and
- A member of a group of entities consolidated (for accounting purposes), where the global parent entity has an annual global income of AUD1 billion or more.

The reporting obligations require lodgement of a CbC report, master file and local file.

The statements require the SGE to report details, by jurisdiction, regarding their global and local operations and activities, transfer pricing policies, international related party dealings, revenues, profits, and taxes paid. Australia is one the jurisdictions that have signed the CbC Multilateral Competent Authority Agreement to facilitate the exchange of CbC reports between tax authorities in different jurisdictions.

10. TRANSFER PRICING

Australia adopts the OECD transfer pricing model and related party transactions are subject to arm's length requirements and substantiation.

An Australian entity will receive a "transfer pricing benefit" when the amount of profits accruing to that entity is less than the amount that might have been expected to accrue had the lender and borrower been dealing independently with each other within the meaning of the Associated Enterprises article contained in an applicable tax treaty. The Associated Enterprises article and the determination of the existence of a "transfer pricing benefit" are to be determined consistently with OECD guidance.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

This section is left intentionally blank.

b. Use of Hybrid Instruments

On 25 October 2018, the ATO released PCG 2018/7. PCG 2018/7 sets out the ATO's compliance approach to restructures out of existing hybrid arrangements to avoid the potential application of the hybrid mismatch rules. These rules, which generally took effect from 1 January 2019, address certain hybrid arrangements that exploit differences in the tax treatment of an entity or financial instrument under the laws of two or more countries.

PCG 2018/7 sets out six restructuring scenarios to which the Commissioner would not seek to apply the general anti-avoidance rules. In each scenario, there is a straightforward restructuring which removes the hybrid element of the existing arrangement but maintains the surrounding facts and circumstances. The guideline also lists various factors which the ATO expects to be present for a restructure to qualify as low risk.

c. Principal/Limited Risk Distribution or Similar Structures

This section is left intentionally blank.



d. Intellectual property (licensing, transfers, etc.)

"Intellectual property" is defined for Australian tax purposes as consisting of the rights a person has under a law of the Commonwealth as:

- The patentee, or a licensee, of a patent; or
- The owner, or a licensee, of a registered design; or
- The owner, or a licensee, of copyright.

Notably, trademarks are not included in this definition. Their tax treatment is, therefore, often different than for other intellectual property.

Intellectual property within the above definition will be a depreciating asset. Consequently, a trade mark is not a depreciating asset. All intellectual property rights are capital gains tax ("CGT") assets and each is a separate CGT asset.

e. Special tax regimes

Australia has concessional tax regimes for eligible venture capital limited partnerships ("VCLPs") and Venture Capital Management Partnerships ("VCMPs"). VCLPs are treated as flow through partnerships.

Capital gains made on assets held by a VCLP or a VCMP will be taxable to a partner in the same way as interests on assets held by an ordinary partnership.

As a VCLP is a partnership, any capital gains or losses made on the partnership's CGT assets are made by the partners individually and each partner's entitlement is calculated according to the relevant partnership agreement.

12. OECD BEPS CONSIDERATIONS

Australia has implemented the OECD BEPS directives in various legislative amendments (refer to the transfer pricing comments above).

13. ACCOUNTING CONSIDERATIONS

a. Combinations

This section is left intentionally blank.

b. Divestitures

This section is left intentionally blank.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

To pay a dividend the Company must have sufficient profits and must also satisfy the requirements of section 254T of the Corporations Act, which states that a company must not pay a dividend unless:

(a) The company's assets exceed its liabilities immediately before the dividend is declared and the excess is sufficient for the payment of the dividend;

(b) The payment of the dividend is fair and reasonable to the company's shareholders as a whole; and

(c) The payment of the dividend does not materially prejudice the company's ability to pay its creditors.

b. Substance Requirements for Recipients

This section is left intentionally blank.

c. Application of Regional Rules

This section is left intentionally blank.

d. Tax Rulings and Clearances

Tax conditions are integrated in the FIRB approval process. The tax outcomes of the acquisition including the financing must be disclosed as part of the FIRB approval process.

15. MAJOR NON-TAX CONSIDERATIONS

a. Registration of Foreign Companies

Foreign companies who wish to carry on business in Australia directly must be registered with the Australian Securities and Investment Commission ("ASIC"). As a result of becoming registered, the foreign company will need to comply with certain parts of the Corporations Act such as maintaining a registered office and a local agent, ensuring its company name and Australian Registered Body Number (which is assigned to the company by ASIC upon registration) appear on all company documentation and complying with the financial reporting obligations prescribed in the Corporations Act.

b. Foreign Investment Review Board

If a foreign company intends to acquire land or shares in an Australian company or invest in a new business in Australia, the company may be required by the FATA to notify the Foreign Investment Review Board regarding the proposal. FIRB will examine the acquisition proposal and will make recommendations to the Australian commonwealth government as to whether or not these proposals are suitable under the Australian government's policy.

c. Australian Competition and Consumer Commission

Completion clearances may also be required.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends [A]	Interest [B]	Royalties [C]	Footnote Reference
Argentina	10 / 15	12	10 / 15	[1] [2]
Austria	15	10	10	
Belgium	15	10	10	
Canada	5 / 15	10	10	[3]
Chile	5 / 15	5 / 10 / 15	5 / 10	[4] [5] [6]
China	15	10	10	[7]
Czech Republic	5 / 15	10	10	[8]
Denmark	15	10	10	
Fiji	20	10	15	
Finland	0 / 5 / 15	0 / 10	5	[9] [10] [11]
France	0 / 5 / 15	0 / 10	5	[12] [10] [11]
Germany	5 / 15	0 / 10	5	[13] [10] [11]
Hungary	15	10	10	
India	15	15	10 / 15	[14]
Indonesia	15	10	10 / 15	[15]
Ireland	15	10	10	
Israel	0 / 5 / 15	0 / 5 / 10	5	[16] [17]
Italy	15	10	10	
Japan	0 / 5 / 10 / 15	0 / 10	5	[18] [10] [11]
Kiribati	20	10	15	
Korea	15	15	15	
Malaysia	0 / 15	15	15	[19]
Malta	15	15	10	[20]
Mexico	0 / 15	10 / 15	10	[21] [22]
Netherlands	15	10	10	
New Zealand	0 / 5 / 15	0 / 10	5	[23] [10] [11]
Norway	0 / 5 / 15	0 / 10	5	[9] [10] [11]
Papua New Guinea	15 / 20	10	10	[24]

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Jurisdiction	Dividends [A]	Interest [B]	Royalties [C]	Footnote Reference
Philippines	15 / 25	15	15 / 25	[25] [26]
Poland	15	10	10	
Romania	5 / 15	10	10	[27]
Russia	5 / 15	10	10	[28]
Singapore	0 / 15	10	10	[29]
Slovakia	15	10	10	
South Africa	5 / 15	0 / 10	5	[4] [10] [11]
Spain	15	10	10	
Sri Lanka	15	10	10	
Sweden	15	10	10	
Switzerland	0 / 5 / 15	0 / 10	5	[30] [31] [11]
Taipei	10 / 15	10	12.5	[32]
Thailand	15 / 20	10 / 25	15	[33] [34]
Turkey	0 / 5 / 15	0 / 10	10	[35] [36]
United Kingdom	0 / 5 / 15	0 / 10	5	[9] [10] [11]
United States	0 / 5 / 15	0 / 10 / 15	5	[37] [38] [11]
Vietnam	10 / 15	10	10	[39]

Footnotes	
A	Generally, the Australian domestic dividend withholding tax ("DWT") rate for dividends paid to non-residents is 30%. However, dividends paid to non-residents are not subject to DWT to the extent that they are "franked" (i.e. the dividend has been paid out of profits that have previously been taxed in Australia).
B	The Australian domestic interest withholding tax rate ("IWT") for interest paid to non-residents is 10%. There are certain exemptions that may be available (e.g. for interest paid in relation to certain publicly offered company debentures and debt interests).
C	The Australian domestic royalty withholding tax rate for royalties paid to non-residents (except in respect of an Australian PE of a resident of a treaty country) is 30% on the gross amount of the royalty.



Footnotes	
1	Dividends - maximum rate of 15%. 10% rate applies to franked dividends paid by an Australian company to a person which holds directly at least 10% of the voting power of the paying company (although Australia does not impose DWT on franked dividends). 10% rate also applies to dividends paid by an Argentine company to a person which holds directly at least 25% of the capital of the paying company.
2	Royalties: maximum rate of 15%. 10% rate applies to the gross amount of royalties for copyright, industrial or scientific equipment, the supply of scientific, technical or industrial knowledge, associated ancillary assistance and other technical assistance. 10% rate also applies to the net amount of royalties for certain technical assistance. 3% rate applies in the case of Argentina to the transfer of news by an international news agency to an Australian resident.
3	Dividends - maximum rate of 15%. 5% rate applies to franked dividends paid by an Australian company to a company which holds directly at least 10% of the voting power of the paying company (although Australia does not impose DWT on franked dividends). 5% rate also applies to dividends paid by a Canadian company (other than a non-resident owned investment corporation) to a company that controls, directly or indirectly, at least 10% of the voting power of the paying company.
4	Dividends - maximum rate of 15%. 5% rate applies to dividends paid to a company which holds directly at least 10% of the voting power of the paying company.
5	Interest - maximum rate of 10% for Australian sourced interest and 15% for Chilean-sourced interest. 5% rate applies to interest derived by a financial institution which is unrelated to and dealing wholly independently with the payer.
6	Royalties: maximum rate of 10%. 5% rate applies to the gross amount of royalties for industrial, commercial or scientific equipment.
7	China does not include Hong Kong and Macau for these purposes.
8	Dividends - maximum rate of 15%. 5% rate applies to franked dividends paid by an Australian company in some circumstances (although Australia does not impose DWT on franked dividends). 5% rate applies to dividends paid by a Czech company to a company which holds directly at least 20% of the capital of the paying company.
9	Dividends - maximum rate is 15%. 5% rate applies to dividends paid to a company which holds directly at least 10% of the voting power of the paying company. An exemption applies to dividends paid to a company that has owned at least 80% of the voting power of the paying company for the 12 months ending on the date the dividend is declared and meets certain public listing conditions.
10	Interest - maximum rate of 10%. An exemption applies to interest derived by an unrelated financial institution dealing wholly independently with the payer, or a government, local authority or central bank of the other country.
11	Royalties: maximum rate of 5%. Refer the relevant definition of “royalties”.
12	Dividends - maximum rate of 15%. An exemption applies to dividends that have borne the normal rate of company tax and are paid to a company which holds directly at least 10% of the voting power (in the case of Australia) or capital (in the case of France) of the paying company. 5% rate applies to other dividends paid to a company which holds directly at least 10% of the voting power (in the case of Australia) or capital (in the case of France) of the paying company.



Footnotes	
13	Dividends - maximum rate of 15%. 5% rate applies to dividends paid to a company which holds directly at least 10% of the voting power of the paying company throughout a 6 month period that includes the dividend payment date, unless it was paid by a German Real Estate Aktiengesellschaft with listed share capital. An exemption applies to dividends paid to a company that has owned at least 80% of the voting power of the paying company for the 12 months ending on the date the dividend is declared and meets certain public listing conditions.
14	Royalties: maximum rate of 15%. 10% rate applies to the gross amount of royalties for the use of, or right to use, industrial, commercial or scientific equipment, and for certain ancillary technical or consultancy services relating to such equipment.
15	Royalties: maximum rate of 15%. 10% rate applies to the gross amount of royalties for the use of, or right to use, industrial, commercial or scientific equipment, the supply of scientific, technical industrial or commercial knowledge, and the supply of ancillary assistance relating to such equipment.
16	Dividends - maximum rate of 15%. 5% rate applies to dividends paid to a company (other than a Real Estate Investment Fund resident in Israel) which holds directly at least 10% of the voting power of the paying company throughout a 365 day period that includes the dividend payment date. An exemption applies to dividends paid to certain recognised pension funds or a government, local authority or central bank of the other country, which holds less than 10% of the voting power in the paying company.
17	Interest - maximum rate of 10%. 5% rate applies to interest derived by an unrelated financial institution dealing wholly independently with the payer, or certain recognised pension funds (unless the recipient is in a position to control or influence the key decision-making of the issuer of the debt). An exemption applies to interest paid to a government, local authority or central bank of the other country.
18	Dividends - maximum rate of 15% for dividends paid by a Japanese company that is entitled to a deduction for the dividends in Japan if more than 50% of its assets consist, directly or indirectly, of real property situated in Japan. 5% rate applies to dividends paid to a company which holds directly which holds directly at least 10% of the voting power of the paying company. An exemption applies to dividends paid to a company which holds directly at least 80% of the voting power of the paying company for the 12 month period ending on the date that the dividend is declared, and satisfies certain limitation on benefits conditions. 10% rate applies to all other cases. There are special rules for real estate investment trusts ("REITs").
19	Dividends - maximum rate of 15% for Australian sourced unfranked dividends. An exemption applies to franked dividends paid by an Australian company to a company which holds directly at least 10% of the voting power of the paying company (although Australia does not impose DWT on franked dividends). An exemption also applies to certain Malaysian sourced dividends.
20	Dividends - maximum rate of 15%. In the case of Malta, DWT on the gross amount of the dividends cannot exceed the tax chargeable on the profits out of which the dividends are paid.
21	Dividends - maximum rate of 15%. An exemption applies to franked dividends paid by an Australian company or dividends paid from the net profit account by a Mexican company, that are paid to a company which holds directly at least 10% of the voting power in the paying company (although Australia does not impose DWT on franked dividends).
22	Interest - Maximum rate of 15%. 10% rate applies to interest that is: paid to a bank or insurance company, derived from bonds and securities that are regularly and substantially traded on a recognised security market, paid by banks (except where the preceding apply), or paid by the purchaser to the seller of machinery and equipment in connection with a sale on credit. An exemption applies to certain interest from investment of foreign exchange assets of Government and other central banking functions.

Footnotes	
23	Dividends - maximum rate is 15%. 5% rate applies to dividends paid to a company which holds directly at least 10% of the voting power of the paying company. An exemption applies to dividends paid to a company which owns directly or indirectly, at least 80% of the voting power of the paying company for a 12 month period ending on the day the dividend is declared and meets certain public listing conditions. An exemption also applies to dividends paid to a government or local authority (including a government investment fund) of the other country which no more than 10% of the voting power in the paying company.
24	Dividends - maximum rate of 15% for Australian sourced dividends and 20% for PNG sourced dividends.
25	Dividends - maximum rate of 25%. 15% rate applies where relief by way of rebate or credit is given to the recipient.
26	Royalties: maximum rate of 25%. 15% rate applies to royalties paid by certain approved Philippines enterprises.
27	Dividends - maximum rate of 15%. 5% rate applies to franked dividends paid by an Australian company to a company which holds directly at least 10% of the capital of the paying company (although Australia does not impose DWT on franked dividends). 5% rate also applies to dividends paid by a Romanian company out of profits that have been subject to the profits tax, to a company which holds directly at least 10% of the capital of the paying company.
28	Dividends - maximum rate of 15%. 5% rate applies to dividends paid out of profits that have borne the normal rate of tax to a company which holds directly at least 10% of the capital of the paying company, where the recipient has invested a minimum of AUD 700,000 or the RUB equivalent and, for Russian sourced dividends, the dividends are exempt from Australian tax.
29	Dividends - maximum rate of 15% for Australian sourced dividends. An exemption applies to dividends paid by a Singaporean company or a Malaysian company out of profits derived from sources in Singapore.
30	Dividends - maximum rate of 15%. 5% rate applies to dividends paid to a company which holds directly at least 10% of the voting power (in the case of Australia) or capital (in the case of Switzerland) of the paying company. An exemption applies to dividends paid to a company that has held, directly or indirectly, at least 80% of the voting power (in the case of Australia) or capital (in the case of Switzerland) of the paying company for the 12 months ending on the date the dividend is declared, and meets certain public listing conditions.
31	Interest - maximum rate of 10%. An exemption applies to interest derived by an unrelated financial institution dealing wholly independently with the payer, or a government, local authority or central bank of the other country. In the case of Australia, an exemption also applies to interest derived by an Australian resident from carrying on complying superannuation activities. In the case of Switzerland, an exemption also applies to a pension scheme whose investment income is exempt from Swiss tax.
32	Dividends - maximum rate of 15%. 10% rate applies to franked dividends paid by an Australian company (although Australia does not impose DWT on franked dividends). 10% rate also applies to Taiwanese-sourced dividends paid to a company which holds directly at least 25% of the capital of the paying company.
33	Dividends - maximum rate of 20%. 15% rate applies to dividends paid by a company engaging in an industrial undertaking to a company which holds directly at least 25% of the capital of the paying company.
34	Interest - maximum rate of 25%. 10% rate applies to interest paid to a financial institution (including an insurance company).

Footnotes	
35	Dividends - maximum rate of 15%. 5% rate applies to dividends paid by an Australian company to a company which holds directly at least 10% of the voting power of the paying company. 5% rate also applies to dividends paid by a Turkish company out of profits which have been subjected to the full rate of corporate tax in Turkey to a company which holds directly at least 25% of the capital of the paying company.
36	Interest - maximum rate of 10%. An exemption applies to interest derived from the investment of official reserve assets by a government or central bank of the other country.
37	Dividends - maximum rate is generally 15%. 5% rate applies to dividends paid to a company which holds directly at least 10% of the voting power of the paying company. An exemption applies to dividends paid to a company that has owned at least 80% of the voting power of the paying company for the 12 months ending on the date the dividend is declared and meets certain limitations on benefits and public listing conditions. 15% rate applies to all other cases. There are special rules for Regulated Investment Companies ("RICs") and REITs - in some cases, there is no maximum rate on dividends paid by a RIC or REIT.
38	Interest - maximum rate is generally 10%. An exemption applies to interest derived by an unrelated financial institution dealing wholly independently with the payer, or a government, local authority or central bank of the other country. There are special rules for certain interest that is determined by reference to the profits of the issuer and for interest paid with respect to ownership interests in a person used for the securitisation of real estate mortgages and other assets.
39	Dividends - maximum rate of 15% for Australian sourced dividends or 10% for Vietnamese sourced dividends.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Copy of a detailed organisational chart showing the structure of the group of which the Australian company (Target) is a member, including all direct and indirect subsidiaries and parent companies and statements of ownership percentages.
2	Tax Due Diligence	General	Copy of company constitution for the Target and confirmation of shareholding.
3	Tax Due Diligence	Income tax	Confirmation that the Target is not a member of a consolidated group or multiple entry consolidated ("MEC") group for Australian income tax purposes.
4	Tax Due Diligence	Goods and services tax	Confirmation that the Target is not a member of a goods and services tax ("GST") group.
5	Tax Due Diligence	Income tax	Copies of final and signed income tax returns for the Target (including all schedules, supporting documentation and elections) for each of the last four completed tax years (or the completed years since incorporation if less than four years).
6	Tax Due Diligence	Income tax	Copies of audited financial statements (balance sheet and P&L) for the Target for each of the last four financial years for which they have been finalised (or the completed years since incorporation if less than four years) and most recent management accounts.
7	Tax Due Diligence	Income tax	Copy of the tax provision calculations for the Target for the latest statutory accounts and details of any reconciliation performed between the tax returns lodged with the Australian Taxation Office ("ATO") and the financial accounts of the companies.
8	Tax Due Diligence	Income tax	Details of any dividends paid by the Target during the last four completed tax years.
9	Tax Due Diligence	Income tax	Evidence of the current franking account balance of the Target, including movements in the balance during the last four completed tax years.
10	Tax Due Diligence	Income tax	Details of all tax losses (revenue and capital) of the Target and any movements in relation to those losses during the last four financial years (or the completed years since incorporation if less than four years). In particular, provide any analysis in relation to the satisfaction of the continuity of ownership test and/or same business test during the last four years.
11	Tax Due Diligence	Withholding tax	Evidence of royalty and interest withholding tax compliance in relation to any payments to non- residents of Australia.
12	Tax Due Diligence	Income tax	Copy of the current tax fixed asset register for the Target.
13	Tax Due Diligence	Stamp duty	List of all real property owned or leased by the Target (indicating for each property whether owned or leased) and locations thereof.
14	Tax Due Diligence	Land tax	Copies of all land tax filings (if any) lodged by the Target for the past 12 months.



Nº.	Category	Sub-Category	Description of Request
15	Tax Due Diligence	General	Details (including advice) regarding any key transactions, acquisitions, divestments or corporate reorganisations which have occurred in the last four completed tax years or are contemplated (including in anticipation of completion) and involve assets being transferred by or to the Target and copies of any associated elections.
16	Tax Due Diligence	General	Copies of tax opinions, tax advice and tax position papers on structure, key transactions and significant issues.
17	Tax Due Diligence	Income tax	Copies of any workpapers and advice in relation to the thin capitalisation position of the Target and details of any debt deductions that have been denied.
18	Tax Due Diligence	Income tax	Details of any intragroup dealings (including loan agreements, management agreements and group services agreements) or dealings with non-resident counterparties and any advice in relation to the application of transfer pricing or value shifting rules which involves the Target.
19	Tax Due Diligence	Income tax	Copies of any transfer pricing policies and documentation substantiating the terms and conditions of any related party international dealings.
20	Tax Due Diligence	General	Details of any loans advanced by or to the Target involving any shareholder (or their associates) of the Target or the parent of the Target.
21	Tax Due Diligence	General	Details of any private binding ruling or advance opinion requests, decisions of the ATO in relation to any such ruling or advance opinion requests and objection or appeals against any ruling or assessment that have been instituted or are being contemplated by the Target.
22	Tax Due Diligence	International tax	Details of any overseas operations or investments of the Target (including any foreign permanent establishments, assets or personnel based overseas, details of how cash from these operations or investments is repatriated back to Australia and the Australian tax treatment of income derived offshore).
23	Tax Due Diligence	General	Copies of any material correspondence with the ATO or other government agency responsible for Tax (audit notifications, information requests, objections, amended assessments etc) during the last four financial years.
24	Tax Due Diligence	General	Copies of each Business Activity Statement (including supporting calculations) relating to the Target during the last 12 months and evidence of payment of all net GST amounts and pay as you go ("PAYG") withholding amounts.
25	Tax Due Diligence	Employment taxes	Copies of the Fringe Benefits Tax ("FBT") returns lodged by the Target for the past four completed FBT years (or the completed years since incorporation if less than four years).
26	Tax Due Diligence	Employment taxes	Copies of payroll tax returns (if any) lodged by the Target for the past 12 months.
27	Tax Due Diligence	Employment taxes	Confirmation that the Target is a not a member of a group for payroll tax purposes.

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Nº.	Category	Sub-Category	Description of Request
28	Tax Due Diligence	Employment taxes	Details of any employee share schemes (e.g. share plans, option plans, bonus plans) or other incentive arrangements available to employees (or their associates) of the Target.
29	Tax Due Diligence	Employment taxes	Evidence of procedures for determining whether individuals engaged by the Target are engaged as employees or as independent contractors and compliance with employment tax obligations in respect of the latter.
30	Tax Due Diligence	Stamp duty	Evidence that all continuing agreements (including mortgages, leases, share or asset acquisition agreements) of a material nature (involving payments or receipts in excess of AUD500,000) to which the Target is a party have been duly stamped.

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1. INTRODUCTION

a. Forms of Legal Entity

Business activities in Austria can be carried out by companies either in the form of a partnership (general partnership "OG", or limited partnership "KG") or a corporation (limited liability company – "GmbH" or joint stock company – "AG"). Besides, investments through Austrian private foundations ("Privatstiftung"), which qualifies as a legal entity, are common in Austria. In addition, it is possible to do business in the form of a branch of a foreign legal entity.

The main legal differences between Austrian partnerships and corporations are that the liability of shareholders of corporations is generally restricted to the subscribed share capital, while no limitation of liability is given for general partners of a partnership (for limited partners, liability is also limited to an amount agreed in the partnership agreement). Furthermore, corporations may be established by a single shareholder while partnerships must consist of at least two different partners. From a tax perspective, partnerships are considered as tax transparent entities and income is attributed directly to the partners. Austrian corporations on the other hand are recognised as tax subjects and income is assessed at the company level.

b. Taxes, Tax Rates

Domestic and foreign legal entities are subject to a flat federal Austrian Corporate Income Tax of 25%, regardless of whether the profit is distributed to shareholders or retained. As part of a tax reform in 2022, the Corporate Income Tax rate will be reduced to 23% in stages. Accordingly, the Corporate Income Tax rate will be 24% in the calendar year 2023 and 23% from the calendar year 2024 on. Dividend distributions are subject to WHT of 25% (24% in 2023 and 23% from 2024 on) for legal entity recipients or 27.5% for individual person recipients, however a reduction of WHT up to nil is possible if certain conditions are met, e.g. EU domiciled legal entity shareholder with substance and beneficial ownership, at least 10% shareholding and holding period of at least one year). Neither trade tax nor additional income based local taxes are levied in Austria.

Income taxes on income of individual persons are levied based on progressive tax rates (i.e. between 0% for income up to EUR11,000 and 55% for income exceeding EUR1 million).

c. Common divergences between income shown on tax returns and local financial statements

The basis for the computation of the income tax base is the income as declared in the annual separate financial statements of the entity according to Austrian GAAP. In a second step, tax adoptions of the GAAP income need to be undertaken. Most commonly, the following items are adopted:

- Amortisation of Goodwill (fixed tax depreciation period of 15 years);
- Depreciation of assets, e.g. special tax rules for e.g. buildings exist and only a linear and (for certain assets acquired/constructed after 30 June 2020) a degressive depreciation is accepted);
- Provisions, e.g. special tax rules exist for provisions for certain personnel expenses; furthermore not all provisions which are accepted for GAAP purposes are accepted for tax purposes;

- Tax exemptions on dividends and capital gains if certain conditions are fulfilled, (e.g. national dividends and international dividends from EU corporations or non-EU corporations domiciled in countries with whom Austria concluded a comprehensive administrative assistance agreement); conversely no tax exemption exists in cases where the distributing entity qualifies as low taxed (i.e. the distributing entity's effective tax rate does not exceed 12.5%) or is a passive entity; for more details on the tax exemption of capital gains resulting from the alienation of qualifying international shareholdings see below point 7.a.;
- Write-downs of subsidiaries (spreading over seven years or no deductibility in case of international participation or within a tax group).

2. RECENT DEVELOPMENTS

a. Austrian Digital Tax Act 2020 ("Digitalsteuergesetz 2020")

As no common rules regarding the taxation of digital services could be agreed within the OECD/EU, Austria implemented, as an interim solution, a digital services tax on online advertising services "Digitalsteuergesetz 2020"s. Since 1 January 2020 online advertising services provided by online advertisers in Austria for a remuneration are subject to a 5% tax. This tax applies to online advertisers with a worldwide turnover of at least EUR750 million and a turnover in Austria of at least EUR25 million from the provision of online advertising services. However, in October 2021 Austria (together with other Countries that implemented unilateral measures such as the digital tax) agreed to withdraw the digital tax and refrain from imposing new similar unilateral measures with the OECD's Pillar Two Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy coming into effect.

b. EU Reporting Act – DAC 6 ("EU-Meldepflichtgesetz")

Based on the amendment (2018/822/EU) of the EU Directive on Administrative Cooperation (2011/16/EU), which Austria transposed into national law as the "EU-Meldepflichtgesetz", certain cross-border arrangements which pose a risk of tax avoidance, circumvent reporting under the Common Reporting Standard ("CRS") or preventing the identification of the beneficial owner must be disclosed by intermediaries, (e.g. tax advisers, or taxpayers to the Austrian Tax Authority). Reports covering arrangements where the first step was implemented between 25 June 2018 and 30 June 2020 needed to be filed by 31 August 2020. For arrangements where the first step was implemented after 1 July 2020 or which were designed, marketed, made available for implementation or administered after 1 July 2020, reporting must be filed generally within 30 days.

c. Interest limitation rule according to EU-ATAD

With effect from 1 January 2021 an interest limitation rule according to EU-ATAD was introduced. Based on this rule excess interest expenses (defined as deductible interest expenses less taxable interest income within the same taxable year) are tax deductible only up to 30% of the taxpayer's tax EBITDA of that year. In any case, excess interest expenses up to EUR3 million per tax year may be deducted. Excess interest expenses may be deducted in full if the taxpayer is fully consolidated and the taxpayer's equity ratio is not more than two percentage points lower than the equity ratio of the group according to the consolidated financial statements. Any non tax deductible excess interest expenses of a year may be carried forward to future years. Also, any portion of the 30% tax EBITDA which was not utilised may be carried forward up to five years. For Austrian tax groups special rules exist, e.g., the interest allowance of EUR3 million is only available once in the whole group.

d. Economic Stimulus Act 2020 ("Konjunkturstärkungsgesetz 2020")

In response to the Covid-19 pandemic and its impact on the Austrian economy, many tax, financial and other measures have been taken by the Austrian parliament. In July 2020 the parliament passed the Economic Stimulus Act 2020 "Konjunkturstärkungsgesetz 2020" which provides a few amendments to the Austrian (Corporate) Income Tax Act:



- Introduction of a degressive depreciation method for certain assets acquired/constructed after 30 June 2020 with up to 30% depreciation (based on acquisition/construction costs) in the first year.
- Introduction of accelerated depreciation for buildings acquired or constructed after 30 June 2020 whereby up to triple the normal depreciation rate may be applied in the first year and up to double the normal rate in the second year (thereafter the normal rate applies). For buildings acquired in the second half of a year, the full annual depreciation is deductible instead of only half of the amount.
- Introduction of a Tax Loss Carryback ("TLCB") rule for losses of the tax year 2020 (or optionally 2021 in case the tax year deviates from the calendar year). Based on the new TLCB losses of the tax year 2020 (or 2021) of up to EUR5 million may be used to offset profits of 2019 and 2018. Where there is an Austrian Tax Group only the head of the tax group may utilise the TLCB. The 2020 loss to be carried back in the tax group is limited to EUR5 million per group member whose income is attributable to the tax group.

e. COVID-19 Related State Support Measures

Numerous measures have been and continue to be introduced to support businesses affected by the COVID-19 pandemic. Such measures include, for example, grants for fixed costs, a grant to cover losses, compensation for lost sales, investment premiums, etc. Due to constantly changing regulations, these measures are not discussed in detail here however, the application and compliance with relevant measures should be considered where applicable during tax due diligence processes.

f. Eco Social Tax Reform Act 2022 ("Ökosoziales Steuerreformgesetz 2022")

At the beginning of 2022, an eco-social tax reform was adopted in Austria. In addition to the reduction of the corporate income tax from 25% to 24% for the calendar year 2023 and to 23% for the calendar year 2024 (see also point 1b), an investment tax allowance will be introduced for assets acquired or manufactured after 31 December 2022. This tax allowance can be deducted as an additional business expense. The investment tax allowance amounts to 10% of the acquisition or manufacturing costs of the assets. For assets that are to be allocated to the area of ecologisation, any increased tax allowance of 15% is available. Which investments fall into the area of ecologisation is to be specified by the Ministry of Finance in more detail in an ordinance. The investment tax allowance is capped with EUR1 million of acquisition or manufacturing costs per fiscal year.

In addition to numerous tax relief measures, the Eco Social Tax Reform Act 2022 introduced a national carbon tax (National Emission Allowance Trading Act - NEHG 2022) as an essential ecologisation measure as of 1 July 2022. The goal of the new legislative measure is to reduce greenhouse gas emissions as well as establish cost transparency in the pricing of greenhouse gas emissions. This measure will require trading participants , e.g. mineral oil companies, gas suppliers, coal suppliers, to purchase national emission certificates in order to obtain the right to place certain substances, e.g. mineral oil, motor and heating fuels, coal, on the national market.

3. SHARE ACQUISITION

a. General Comments

In a share deal situation, the shares of a company are acquired, and the ownership is transferred. Basically, all inherent rights and obligations in the corporation remain unchanged as only the shares of the legal entity are acquired (however, material contracts should be reviewed for change-of-control clauses). Consequently, no step up of asset book values is possible and no goodwill can be capitalised and subsequently amortised. Interest expenses resulting from the acquisition of shares are generally deductible, provided that the interest expenses are within the boundaries of the newly introduced interest limitation rule (see above point 2c.). However, interest cannot be deducted if the seller of the shares is an affiliated company or the acquisition of the shares was financed by an affiliated company and the respective company is subject to low taxation. In general, no stamp duties are triggered as a consequence of a share deal.

b. Tax Attributes

Tax loss carry forwards are maintained at the level of the target, if the provision regarding the purchase of corporate shells (loss trafficking rules, so called "Mantelkauf") is not applicable. Hence, the tax loss carry forwards are forfeited if the following three criteria are met cumulatively:

- Substantial change in the economic structure.
- Substantial change in the organisational structure.
- Substantial change in the ownership of the company against consideration.

Generally, a substantial change is considered to occur in case of a change of approximately 75%, (e.g. acquisition of more than 75% of shares, change of more than 75% of management, reduction of previous economic unit and establishment of new economic unit which outweighs the previous unit by 75%). However, as not all criteria must be affected equally, a change of less than 75% could be enough for the application of the loss trafficking provision and therefore a case by case evaluation is required.

c. Tax Grouping

There is a tax grouping regime in Austria. For the establishment of a tax group an Austrian corporation or a permanent establishment of an EU corporation registered in Austria holding a (direct or indirect) participation of more than 50% of the capital and the majority of the voting rights in a domestic or foreign corporation is required.

Providing that the requirements are fulfilled, the group leader may opt for group taxation simply by filing an application form with the tax authorities (subject to certain time constraints) and signing a tax equalisation agreement with the Austrian tax group members. The tax authorities approve the tax group by official notice. The tax group has to remain in existence for at least three years. If the tax group is terminated earlier, all benefits from the group taxation will be lost and each member of the group will be taxed as a separate entity with retroactive effect.

A tax group has the benefit that all profits and losses of domestic group members are allocated for tax purposes to the group leader. The group may also include first tier comparable foreign corporations which are resident in the EU or in a country that has concluded a comprehensive administrative assistance agreement with Austria. Only losses of foreign group members may be deducted from the taxable income of the group in proportion to the amount of the direct shareholding of the group in the foreign entity. However, please note the following limitations with respect to foreign losses:



- The deductibility of foreign losses derived through non-resident group members is limited to the amount as calculated under Austrian tax rules, capped with the loss as calculated under foreign rules. The foreign losses are recaptured and taxed in Austria in subsequent years if and to the extent they can be offset against profits of the foreign entity under its domestic tax regime or if the foreign entity drops out of the group, (e.g. due to sale of the participation or if the foreign company is deemed to be liquidated). Profits of foreign group members are not to be included in the tax group.
- The deduction of losses from foreign group members with the tax group's profit is capped at 75% of the profit of all domestic group members (including the group leader) in the respective fiscal year. The remaining loss surplus may be carried forward by the group leader without any time limit.

d. Tax Free Reorganisations

Under general income tax principles, a reorganisation of companies normally constitutes a taxable event and triggers the realisation of hidden reserves of the assets transferred in the course of the reorganisation. However, the Reorganisation Tax Act ("RTA"), which is based on the EU Merger Directive (90/434/EEC), provides for a special tax regime applicable to the following types of reorganisations:

- mergers;
- conversions;
- contributions of assets;
- formation of partnerships;
- divisions of partnerships; and
- demerger of corporations.

The RTA basically provides for the following tax treatment, subject to certain conditions:

- no liquidation taxation due to the reorganisation (neither on the level of the company/partnership nor on the level of the shareholder/partner);
- tax-neutral transfer of assets;
- transfer of losses carried forward to the receiving entity;
- beneficial rules as to the tax base for real estate transfer tax purposes;
- exemption from capital tax; and
- exemption from value added tax.

The RTA allows reorganisations with retroactive effect (basically within a nine-month period), as well as multiple reorganisations, at the same effective date. Special attention should be paid to loss trafficking rules, exit taxation, RETT and possible VAT correction.

Binding rulings are available in reorganisation issues (costs amounting to between EUR1,500 and EUR20,000 depending on the turnover of the requesting taxpayer).

e. Purchase Agreement

It is common in Austria that shares in the target company are acquired by an Austrian (or foreign) SPV. In case of an Austrian SPV a tax group may be established and a pooling of interest expenses (SPV level) and operating income (target level) can be achieved.

In Austrian law no special rules regarding warranty for share deals exist, i.e. the general rules apply. However, in a share deal the tax qualification of the target remains unchanged and therefore the target continues to be liable for all taxes. Therefore, it is of importance that not only the representations and warranties but also the remedies in case of violations of the representations and warranties are regulated in detail in the share purchase agreement. The catalogue of typical warranties is in line with international standards.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

The sale of shares is tax-exempt under Austrian VAT. Consequently, input VAT for expenses related to the sale of the shares (e.g. consulting costs) cannot be deducted.

Real estate transfer tax ("RETT") is triggered if 95% or more of the shares in a company which owns real estate in Austria are acquired by a single shareholder or by companies which are members of a tax group pursuant to Sec 9 CITA. In such cases the RETT amounts to 0.5% of the tax real estate value (generally, the RETT rate amounts to 3.5% of the consideration). Strategies to manage RETT exist and should be considered during structuring of the transaction. No registration duty for real estate at the land registry court (generally 1.1% of the real estate value) is triggered in the course of a share deal (even if RETT is triggered). Capital duty was abolished in Austria with effect from 1 January 2016.

g. "Purchase accounting" applicable to share acquisitions

In the case of a share purchase, the acquisition costs are capitalised on the participation. This includes direct and indirect acquisition costs (e.g. transactions fees). Write-downs are possible where the value of the shareholding sustainably decreases below the book value; in such a case the expenses need to be spread over a seven year period for tax purposes (no tax effective write-down is possible for international participations in case no opt into taxation was elected in the year of acquisition and in case of tax grouping). In cases where the fair value rises again, the value of the participation needs to be appreciated up to the historical acquisition costs (i.e. a revaluation above historical acquisition costs is not possible without performing a reorganisation).

h. Share Purchase Advantages

Advantages of share acquisitions are that the available tax loss carry forward of the target remains available, except in special cases (see above for loss trafficking rules). Moreover, real estate transfer tax costs may be managed if the transaction is structured properly (see also above). Furthermore, international participations (shareholdings in comparable foreign corporations with at least 10% shareholding and holding period of at least 1 year) can be sold tax free (not applicable for low taxed passive shareholdings);

The Austrian tax law does not provide for a possibility to finalise the tax exposure of a target company prior to acquisition (i.e. no tax clearance certificate). Therefore, an extensive tax due diligence is highly recommended. Regarding, inter alia, reorganisations (or acquisitions structured as a reorganisation) a possibility exists to obtain a binding ruling regarding the Austrian tax implications. See above for more details on binding rulings.

i. Share Purchase Disadvantages

The main disadvantage of share purchases is that no step up of the underlying asset book values is possible and previous tax liabilities/risks remain within the company after purchase.

4. ASSET ACQUISITION

a. General Comments

In case of an asset deal all or specific assets of a company are acquired and the ownership of the assets is transferred through singular succession. The main characteristics of an asset deal are summarised as follows:

- Even if singular succession is given, extensive statutory liabilities apply to the purchaser, e.g. Sec. 1409 Austrian general civil act ("ABGB"), Sec. 38 and 39 Austrian Commercial Code ("UGB"), Sec. 6 Labour contract law ("AVRAG"), Sec. 14 Federal Fiscal Code ("BAO"), Sec. 67 (4) Austrian General Social Security Act ("ASVG") and further contractual liabilities.
- The book value of the acquired assets is stepped-up subsequently to purchase price resulting in a higher depreciation. However, it is to be noted that a higher depreciation may result in a "cash-trap" as the net profit is reduced, which subsequently lowers the possible dividend payments.
- Goodwill can be capitalised and depreciated over 15 years for tax purposes.
- Interest for financing the acquisition of assets can be deducted (subject to restrictions, see above).

b. Purchase Price Allocation

In case of an asset deal the total purchase price needs to be allocated to all the intangible and tangible assets based on an expert opinion. Goodwill needs to be capitalised (and subsequently depreciated) if the purchase price exceeds the sum of the fair value of all identifiable assets acquired.

c. Tax Attributes

Tax attributes, such as tax loss carry forwards are not transferred in an asset deal and remain at the level of the seller.

d. Tax Free Reorganisations

Under general income tax principles, a reorganisation of companies normally constitutes a taxable event and triggers the realisation of hidden reserves of the assets transferred in the course of the reorganisation. However, the Reorganisation Tax Act ("RTA"), which is based on the EU Merger Directive (90/434/EEC), provides for a special tax regime applicable to the following types of reorganisations:

- mergers;
- conversions;
- contributions of assets;
- formation of partnerships;
- divisions of partnerships; and
- demerger of corporations.



The RTA basically provides for the following tax treatment, subject to certain conditions:

- no liquidation taxation due to the reorganisation (neither on the level of the company/partnership nor on the level of the shareholder/partner);
- tax neutral transfer of assets;
- transfer of losses carried forward to the receiving entity;
- beneficial rules as to the tax base for real estate transfer tax purposes;
- exemption from capital tax; and
- exemption from value added tax.

The RTA allows reorganisations with retroactive effect (basically within a nine month period), as well as multiple reorganisations, at the same effective date. Special attention should be paid to loss trafficking rules, exit taxation, RETT and possible VAT correction.

Binding rulings are available in reorganisation issues (costs amounting to between EUR1,500 and EUR20,000 depending on the turnover of the requesting taxpayer).

e. Purchase Agreement

In Austria, special rules regarding warranty for asset deals exist in case a business unit is transferred, (i.e. the purchaser is liable for certain business related liabilities of the seller). Therefore, it is of importance that not only the representations and warranties but also the remedies in case of violations of the representations and warranties are regulated in detail in the asset purchase agreement. The catalogue of typical warranties is in line with international standards.

f. Depreciation and Amortisation

Depreciable tangible and intangible assets must be depreciated over their useful life. The Austrian tax rules for depreciation differentiate from the Austrian GAAP rules, for example under Austrian tax law only the linear and for certain assets the degressive depreciation method is accepted. Write downs or write offs are possible in case of sustainable impairments. In case the fair value recovers at a later point in time, an appreciation in value needs to be considered.

Goodwill and other intangible assets may only be capitalised if they result from a purchase. Self-created goodwill and self-created intangible assets may not be capitalised and any expenses associated with the creation thereof are generally immediately tax deductible.

For derivate goodwill the Austrian tax law prescribes a fixed amortisation period of 15 years.

g. Transfer Taxes, VAT

The sale of assets is generally subject to Austrian VAT. Possible VAT exemptions depend on the type of the acquired assets. In particular, the sale of real estate is tax exempt; however, opting into VAT liability is possible. Furthermore, input VAT on the purchase of the assets as well as transaction costs may be deducted, if the purchaser generates VAT taxable supplies.

The acquisition of real estate in an asset deal triggers real estate transfer tax of 3.5% of the consideration and registration duty of 1.1% of the consideration. Stamp duties may be triggered for the assignment of receivables to the new owner (0.8% of consideration) as well as the extension or amendment of certain agreements, (e.g. lease agreements; 1.0% of multiple of rent) may trigger stamp duties.

h. Asset Purchase Advantages

The main advantage of an asset deal compared to a share deal is the possibility to step up the asset values and thereby increase the baseline value for subsequent depreciation. Furthermore, income tax liabilities are generally not transferred to the purchaser, however certain exceptions exist (see below point 4.i.).

i. Asset Purchase Disadvantages

Basically, historical tax liabilities are not transferred to the purchaser in case of an asset deal. However, Austrian law provides for different provisions stipulating that purchasers of a business or business unit may be liable for historical taxes if certain conditions are met, e.g. Sec. 1409 Austrian general civil act ("ABGB"), Sec. 38 and 39 Austrian Commercial Code ("UGB"), Sec. 6 Labour contract law ("AVRAG"), Sec. 14 Federal Fiscal Code ("FFC"). In practice the provisions of Sec. 1409 ABGB and Sec. 14 FFC which are the most relevant tax liability provisions for asset deals, restrict the liability for historical taxes insofar as only tax liabilities which, at the time of purchase were known to the purchaser or which should have been known to the purchaser are included. Examples of liabilities which could be transferred are payroll tax liabilities, VAT liabilities, withholding tax liabilities and social security contribution liabilities.

Austria levies property tax on real estate based on a special assessed value which is generally not updated in case of a sale.

5. ACQUISITION VEHICLES

a. General Comments

Austrian commercial and tax law do not provide a specific legal form or a concept for an acquisition vehicle or holding company. The optimal acquisition vehicle is chosen by the economic and legal requirements, e.g. liability, of the investor.

b. Domestic Acquisition Vehicle

In general, the main acquisition vehicle is the Austrian GmbH as it is a company with limited liability (see point 1.a. above). For real estate investments partnerships are also an option. Furthermore, to perform a debt push-down or to establish a tax group usually the GmbH is the preferred legal form.

c. Foreign Acquisition Vehicle

This section is left intentionally blank.

d. Partnerships and joint ventures

Partnerships and joint ventures are possible in Austria, but no specific legal form is provided. The legal form of the joint venture depends on the interests of the investor, however, typically, limited liability companies (especially GmbH) are the main joint venture vehicle.

e. Strategic vs Private Equity Buyers

The preferred acquisition vehicle mainly depends on the investment strategy pursued by the investor as well as the industry.



6. ACQUISITION FINANCING

a. General Comments

In Austria, there is no provision in the Austrian tax law regarding the use of either equity or debt. However, the jurisprudence established the principle of "financing freedom" which allows the choice between equity or debt financing.

In general, the provisions of the 5th Anti-Money Laundering directive apply to Austrian bank institutes. After performing the necessary KYC checks and other bank internal requirements the transfer of funds to Austria can be completed. There is no estimation regarding the time frame as this depends on the respective bank institute.

b. Equity

Austria consists of only one jurisdiction regarding tax legislation and in general Austria does not provide any major benefits for holding equity, (i.e. there is no interest on equity funding).

c. Debt

i Limitations on use of debt

Specific rules on thin capitalisation do not exist in Austria. The Austrian Administrative Court has established various principles for related party debt to determine under which conditions debt financing is not to be recognised for tax purposes. For instance, if the equity is inadequate, e.g. no securities, low or no interest, no stipulated or actual repayment of the loan, no written form, etc, a loan may be (partly) regarded as hidden equity. However, there are no defined debt-equity ratios to comply with. Hidden equity may also be assumed if the loan agreement is not in line with the arm's length principle. Interest paid on loans that are regarded as hidden equity will be treated as a deemed dividend and may not be deducted from the taxable income. Furthermore, deemed dividends are subject to withholding tax just as normal dividends are.

ii Limitations on interest deductions

Interest payments for debt are entirely not tax deductible if the debt was used to acquire a participation that was previously owned by a group member or by a shareholder with controlling influence. This rule also applies for capital increases or equity contributions in case the increase or contribution is connected with the acquisition of the participation.

Furthermore, interest is not tax deductible in case of low-taxed related party recipients (beneficial owner of the interest). This is applicable if: (i) the recipient is a corporation or a comparable foreign corporation; (ii) the recipient is a direct or indirect member of the same group or controlled directly or indirectly by the same shareholder; and (iii) the interest payments are not subject to tax at the level of the receiving entity owing to a personal or objective tax exemption, or if the nominal or effective tax rate is less than 10%.

Interest on debt which is used to finance capital repayments or deemed dividends are not tax deductible. However, in case an open distribution of profits is debt financed the interest is tax deductible.



With effect from 1 January 2021 an interest limitation rule according to EU ATAD was introduced. Based on this rule excess interest expenses (defined as deductible interest expenses less taxable interest income within the same taxable year) are tax deductible only up to 30% of the taxpayer's tax EBITDA of that year. In any case, excess interest expenses up to EUR3 million per tax year may be deducted. Excess interest expenses may be deducted in full if the taxpayer is fully consolidated and the taxpayer's equity ratio is not more than two percentage points lower than the equity ratio of the group according to the consolidated financial statements. Any not tax deductible excess interest expenses of a year may be carried forward to future years. Also, any portion of the 30% tax EBITDA which was not utilised may be carried forward up to five years. For Austrian tax groups special rules exist, e.g. the interest allowance of EUR3 million is only available once in the whole group.

iii Related Party Debt

Based on Austrian case law a re-characterisation of a related party loan to equity is possible under very special conditions (see point 6.c.i. above). Interest payments for such a re-characterised loan, as well as non-arm's length interest payments are not tax deductible and are deemed dividends and therefore subject to withholding tax.

iv Debt Pushdown

The Austrian corporate law provides for various restrictions, e.g. forbidden repayment of contributions as the main restriction, regarding debt pushdown securing the interest of debtors. Therefore, it is crucial not to violate these obligatory corporate law principles by pushing down debt to a subsidiary.

In order to push down debt (economically), an Austrian tax group can be established, which allows the interest expenses from the debt financing of the group leader (holding company) to be offset against the positive income of the group member companies. Furthermore, a limited debt pushdown can be achieved by debt financed open dividend distributions made by the target.

d. Hybrid Instruments

In general, companies in Austria are financed by way of a capital contributions (without the issuance of new shares), capital increase (with issuance of new shares) or a shareholder loan. As an alternative, participation rights can be issued. In principle, a participation right is a contractual relationship, usually granting the right to receive (interest) payments. However, they do not provide shareholder rights. From a tax perspective the definition of the contract is relevant for the qualification as debt or equity as payments of the issuer are only tax deductible if the participation right is considered a debt instrument for tax purposes. Whether the participation rights qualify as debt or equity must be assessed on a case by case basis. For the qualification of participation rights as equity it is essential that a participation in the ongoing profit and liquidation profit is agreed.

Starting with 1 January 2020 the national transposition of the EU ATAD II Directive (2017/952/EU) entered into force covering cross-border hybrid arrangements. According to these new rules, tax discrepancies, such as double deduction or deduction without inclusion, caused by hybrid arrangements must be neutralised in case further criteria are fulfilled.

e. Other Instruments

This section is left intentionally blank.



f. Earn-outs

Earn-outs are a tool to motivate the sellers or the directors of a target company as well as a purchase price adjustment mechanism. Earn-out payments generally must be capitalised on the shares and therefore are not immediately deductible. The earn-out payments to the beneficiary, (i.e. the seller of the shares), are treated as subsequent capital gain for the beneficiary and for the purchaser as subsequent costs of acquisition as they are part of the purchase price and therefore increase the book value of the acquired shares.

7. DIVESTITURES

a. Tax Free

Capital gains and losses resulting of the alienation of shares in a foreign corporation are tax exempt and write offs as well as write-ups are tax neutral, if at least 10% of the equity in the international participation is held directly or indirectly for an uninterrupted period of at least one year by an Austrian corporation (or a comparable foreign corporation subject to unlimited taxation) and the legal form of the foreign participation is comparable to Austrian corporations or is listed in the Annex 2 of the Austrian Income Tax Act. It is to be noted, that it is possible to opt out from this tax neutrality for each international participation separately in the respective tax return in the year of acquisition, thus making capital gains and losses as well as write-offs and write ups resulting of this participation taxable.

b. Taxable

i Share Deal

Capital gains generated by Austrian resident individuals on the sale of shares in a corporation are generally taxed at a flat rate income tax of 27.5%.

Capital gains generated by an Austrian resident corporation on the sale of shares in a corporation are generally subject to ordinary CIT (25% in 2022, 24% in 2023, 23% in 2024 an on; see point 1.b.). However, in case the criteria noted above, to qualify for a "Tax Free" divestment are met, i.e. comparable foreign corporation, at least 10% capital participation for an uninterrupted period of at least one year, no opt-out), the capital gains on the sale of shares are tax exempt.

ii Asset Deal

Capital gains generated by Austrian resident individuals from the alienation of assets are generally taxed at the progressive income tax rate (up to 55%). A more beneficial taxation, i.e. (i) tax allowance of EUR7,300 or (ii) distribution of the profit over three years or (iii) preferential tax rate of 50% of the applicable tax rate) may be applicable under certain circumstances.

Gains generated by an Austrian resident corporation from the sale of assets are mainly subject to ordinary CIT (25% in 2022, 24% in 2023, 23% in 2024 an on; see point 1.b.).

Due to the tax transparency of Austrian partnerships, the sale of shares in an Austrian partnership is classified as an asset deal (sale of the assets of the partnership).



c. Cross Border

Capital gains of a non-resident corporation resulting from the alienation of shares in an Austrian corporation (GmbH or AG) are taxable in Austria at the ordinary CIT rate (25% in 2022, 24% in 2023, 23% in 2024 an on; see point 1.b. This applies if the shareholding amounts to at least 1% of the capital of the corporation, at any time during the five preceding years (for shareholdings less than 1% no Austrian right of taxation is given).

However, double tax treaties may deny Austria the right to tax capital gains if the OECD Model provision for capital gains was negotiated. In case the capital gains were realised at the level of an Austrian permanent establishment of the non-resident seller, the capital gains are part of the income of the permanent establishment and subject to tax under the general rules.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

Companies and other legal entities that are resident in Austria are subject to unlimited tax liability, while non-resident companies and other legal entities are subject to limited tax liability. Unlimited tax liability means the taxation of worldwide income in Austria, while limited tax liability means the taxation of specific Austrian source income.

Companies and other legal entities are resident if they have their legal seat or place of management in Austria. The legal seat is defined as the place which is designated as such in the articles of association or other basic documents. All entities established under Austrian commercial law must have their legal seat in Austria. The place of management is defined as the centre from which the activities of the company are effectively directed. The place of management is at the office of the principal officers or managers of the company. Companies and other legal entities are non-resident if neither their legal seat nor their place of management is located in Austria.

b. CFC Regime

By way of the Annual Tax Act 2018, Austria introduced CFC rules (Hinzurechnungsbesteuerung) with effect from 1 January 2019. The CFC rules for low-taxed passive income are included in section 10a of the CIT-Act, implementing articles 7 and 8 of the EU Anti Tax Avoidance Directive (2016/1164). Based on this new CFC -legislation, low-taxed passive income of direct or indirect controlled foreign corporations will be attributed directly to the Austrian controlling entity and subject to Austrian corporate income taxation.This rule only applies in cases where the foreign entity: (i) generates passive income, such as interest, royalties, dividends and income from the disposal of shares (only if they would not be considered as tax exempt if received directly by an Austrian entity), income from financial leasing, income from insurance/banking, income from invoicing companies); (ii) is effectively low taxed, i.e. 12.5% or less (the effective tax rate of the foreign entity must be computed based on Austrian tax rules), (iii) the passive income constitutes more than a third of the total income of the foreign entity, and the foreign entity is controlled directly or indirectly by the Austrian entity. The CFC rule would not apply in case the Austrian entity can demonstrate that the foreign entity performs a substantive economic activity supported by staff, equipment, assets and premises.

c. Foreign branches and partnerships

An unincorporated branch of a non-resident company, whether in the form of a registered branch or a non-registered permanent establishment, is taxed under the rules relating to non-resident entities and is considered an integral part of its non-resident head office. Registered branches or non-registered permanent establishments situated in Austria of a non-resident company are not treated as taxable entities. On the other hand, the non-resident head office is subject to Austrian taxation on all income properly attributable to its domestic operations. Thus, income from Austrian sources (and possibly even from non-Austrian sources, e.g. dividends) that is attributable to the branch may be subject to tax.

Partnerships are treated as transparent entities from an Austrian tax perspective. This also applies to foreign partnerships. Thus, profits of a partnership are taxed in the hands of the partners rather than at the partnership level.

d. Cash Repatriation

Dividends received by an Austrian domestic company are generally exempt from corporate income tax. However, in case the payment is deductible for tax purposes at the level of the foreign distributing company, the tax exemption for the Austrian company is denied. A switch over from exemption method to credit method takes place for dividends received from low taxed (i.e. effective CIT of 12.5% or less) passive foreign entities, if the shareholding is at least 5%.

Outbound profit distributions resulting from the tax internal profit account (ordinary dividend payments) are generally subject to Austrian withholding tax at a rate of 27.5% for individual person recipients and 25% (reduced to 24% in 2023 and 23% in 2024 an on) for corporate recipients (potential relief through treaty law or EU Parent Subsidiary Directive).

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Generally, the Austrian tax law does not provide for special provisions for real estate companies. However, the following aspects should be considered:

- Real Estate Transfer Tax ("RETT"): RETT at a rate of 3.5% is levied on transfers of immovable property (land and buildings) located in Austria. Furthermore, RETT is triggered if at least 95% of all shares of a corporation owning Austrian immovable property are held by or are taken over by one shareholder (so-called "*unification of shares*") or by members of an Austrian tax group. In addition, shares held by trustees are always attributed to the trustor or settlor of the trust. RETT is also triggered if 95% of shares of a partnership have been transferred to new partners within the last five years. In the case of a unification of shares, the tax base is always the tax value of the real estate and the tax rate amounts to 0.5%.
- Real estate investment funds: Austrian tax law provides a special tax regime for real estate investment funds, which prevails over domestic tax and tax treaty rules. In short, if the regime is applicable, the fund vehicle will be treated as tax transparent with the investors in the fund becoming subject to Austrian limited tax liability on so called "deemed distributions". In particular, the taxation of deemed distributions provides for the taxation of annual pro-rata unrealised capital gains and interest on shareholder loans, which would be deemed rental income from Austrian situs real estate. The fund tax rules are based on a substance-over form approach, which means that companies interposed between the fund and the real estate object may be, in general, disregarded for fund tax purposes. In the case of an Austrian corporation held by the fund, unrealised capital gains are attributed to the fund and are taxable at the level of the unit holders. In the case of a partnership or a foreign corporation, the latter is just treated as transparent.



b. CbC and Other Reporting Regimes

The Austrian tax law provides for reporting regimes in context of transfer pricing (CbC, master file, local file, see Section 10. below).

10. TRANSFER PRICING

Affiliated companies are required to observe the arm's length principle. The same is true for transactions between head offices and permanent establishments. Thus, transfer prices of goods and services, interest rates, royalty payments, rentals, etc. must be fixed at an adequate level as if the transaction had been rendered between unrelated parties.

On 2 August 2016, Austria enacted the Transfer Pricing Documentation Law (*Verrechnungspreisdokumentationsgesetz*, VPDG) following the OECD's base erosion and profit shifting ("BEPS") Action Plan. The VPDG sets standards and regulations regarding transfer pricing documentation and only applies to Austrian entities that are part of a multinational group of companies (MNE group). In detail, the VPDG provides for the following documentation obligations:

- MNE groups whose consolidated group revenue was at least EUR750 million in the preceding fiscal year must prepare and electronically file a country by country report.
- Austrian members of an MNE group with revenue exceeding EUR50 million in both of the two fiscal years preceding the current fiscal year must prepare a master file and a local file.

General documentation of intercompany transactions must be maintained even if the threshold for master/local file (EUR50 million revenue) is not exceeded.

In October 2021 the Austrian Tax Authorities published new transfer pricing guidelines, which are strongly based on the OECD transfer pricing guidelines.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

The Austrian tax law generally applies a substance over form approach. Consequently, any transaction is attributed to the beneficial owner rather than to the legal owner. Thus, generally a look through approach is applied to transactions involving straw men or back-to-back structures. To be considered a beneficial owner the entity generally needs to have the resources and the capacity to control the investment and the related risks (i.e. rented office space, staff).

b. Use of Hybrid Instruments

Regarding the use of hybrid instruments, the Austrian tax law provides for the following provisions:

- Dividend income or other payments obtained by Austrian resident corporations from participations or other forms of investments in a foreign corporation or subsidiary are disqualified from Austrian CIT exemption insofar as these payments are tax-deductible at the level of the foreign corporation. This could be especially the case where investments in a foreign company are characterised from an Austrian perspective as equity and from the foreign tax law perspective as debt.



- Interest paid to a resident or non-resident corporate entity which is directly or indirectly part of the same group or directly or indirectly controlled by the same shareholder is not deductible if the income of the recipient is either not taxed or subject to a tax rate of less than 10%. For purposes of determining the effective tax rate of 10%, any refunds or credits granted to the receiving entity or its shareholders must be taken into account, even if such credits or refunds are granted in the 9 subsequent years.
- Starting from 1 January 2020 the national transposition of the EU ATAD II Directive (2017/952/EU) entered into force covering cross border hybrid arrangements. According to these new rules, tax discrepancies, such as double deduction or deduction without inclusion, caused by hybrid arrangements must be neutralised in case further criteria are fulfilled.

c. Principal/Limited Risk Distribution or Similar Structures

Austria generally follows the OECD approach with regard to arm's length standards of intercompany distribution structures. Thus, transfer prices for distribution services can generally be calculated by means of the standard methods (comparable uncontrolled price method, resale price method and cost plus method). However, in practice, the transactional net margin method ("TNMM") is often chosen as the relevant profit indicators can be backed up by comparables from generally recognised databases.

d. Intellectual Property

Austria does not have any special tax status or patent box regime in place. Instead, Austria promotes research and development activities by allowing an immediate tax deduction for R&D expenses and additionally granting a special R&D tax relief. The tax credit for R&D takes the form of a cash tax credit and amounts to 14% of R&D expenses. The cash tax credit is granted for in-house and contract R&D, however, only expenses of up to EUR1 million per year may be considered as the base for the cash tax credit in case of contract R&D (no limitation for in-house R&D expenses).

e. Special Tax Regimes

Besides the tax grouping regime, Austria does not provide for any special beneficial regimes.

12. OECD BEPS CONSIDERATIONS

Austria has conducted the following measures with regard to the implementation of BEPS actions:

- Action 2 – hybrid mismatch: Dividend income or other payments obtained by Austrian resident corporations from participations or other forms of investments in a foreign corporation or subsidiary are disqualified from Austrian CIT exemption insofar as these payments are tax-deductible at the level of the foreign corporation. This could be especially the case where investments in a foreign company are characterised from an Austrian perspective as equity and from the foreign tax law perspective as debt. Furthermore, tax discrepancies resulting from certain cross-border hybrid arrangements must be neutralised starting from 1 January 2020.
- Action 3 – Controlled Foreign Company Rules ("CFC"): By way of the Annual Tax Act 2018, Austria introduced CFC rules (*Hinzurechnungsbesteuerung*) with effect from 1 January 2019. The CFC rules for low-taxed passive income are included in section 10a of the CITA, implementing articles 7 and 8 of the EU Anti-Tax Avoidance Directive (2016/1164). The CFC rules lead to an inclusion of income in the Austrian tax base of an Austrian corporate shareholder that holds directly or indirectly a controlling participation in a foreign entity if that entity generates low-taxed passive income. Income is considered low taxed if the effective foreign tax burden is not more than 12.5% whereas passive income includes e.g. interest, royalties, dividends or income from other financial activities.
- Action 4 – Interest Deductions: With effect from 1 March 2014 Austria implemented a targeted interest (and royalty) limitation rule (not limited to the acquisition of participations) which is applicable if the following conditions are fulfilled:
  - the recipient is a corporation or a comparable foreign corporation;
  - the recipient is a direct or indirect member of the same group or controlled directly or indirectly by the same shareholder; and
  - the interest (or royalty) payments are not subject to tax at the level of the receiving entity owing to a personal or objective tax exemption, or if the nominal or effective tax rate (tax refunds are taken into account) is less than 10 per cent.

This rule must be applied to the beneficial owner of the interest, therefore any interposed entities are disregarded and the tax regime of the beneficial owner needs to be checked. In case of transparent entities under Austrian tax law (e.g. partnerships, investment funds, etc) the rule applies to the corporate entity (partner, investor) behind the transparent entity. With delay, Austria transposed the EU ATAD interest limitation rule with effective date 1 January 2021. See point 2.c. above for more details.

- Action 5 – Harmful tax practices; Action 6 - Treaty abuse: Under the Austrian corporate tax law a substance over form approach is applied. Thus, entities are ignored for Austrian tax purposes (look through approach) where they do not meet certain substance requirements (i.e. office space rented or owned in own name, employment of people, management carried out at the seat of the company).
- Action 7 – Permanent Establishments ("PE"): In accordance with the MLI and the artificial avoidance of permanent establishment status, Austria applies Option A according to Art 13 (1) MLI. Austria signed the MLI on 7 June 2017 and ratified it on 22 September 2017. Preparatory or auxiliary activities are regarded as non-PE establishing activities, irrespective of the provisions of a covered tax treaty and the definition of the term permanent establishment in those treaties. This implies that the listing of PE excluding activities in the respective tax treaties have to be reviewed in the light of the actual characteristic as a preparatory or auxiliary character of the activity of the company's business model. Despite the listing of the PE-excluding activities, a "core business activity" will constitute a PE.



- Action 8 – 10 and 13 Transfer Pricing: On 1 August 2016 the Austrian Transfer Pricing Documentation Law ("TPDL") was officially published in Austria. Based on the TPDL, transfer pricing documentation must be prepared for fiscal years starting on or after 1 January 2016. Transfer pricing documentation requirements for prior fiscal years as well as for local constituent entities not covered by the TPDL are based on the Austrian Federal Fiscal Code ("FCC"), taking into account the OECD Transfer Pricing Guidelines. See point 10. above for more details.
- Binding rulings are available in transfer pricing issues (costs amounting between EUR1,500 and EUR20,000 depending on the turnover of the requesting taxpayer).
- Action 14 – Dispute Resolution: The EU Arbitration Convention – to which Austria is a member - establishes a procedure to resolve disputes where double taxation occurs between enterprises of different Member States. The Convention provides for the elimination of double taxation by an agreement between the contracting states including, if necessary, by reference to the opinion of an independent advisory body.
- Action 15 – Multilateral instrument: Austria has signed the Multilateral Instrument (MLI – "Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) on 7 June 2017 in a signature ceremony with 66 other states and jurisdictions. Austria ratified the MLI as the first country on 22 September 2017. The first double tax treaties of Austria (with France, Israel, Lithuania, Poland, Serbia, Slovakia and Slovenia) that have been comprehensively changed by the MLI already entered into force on 1 January 2019. New double tax treaties are continually amended by the MLI. From an Austrian constitution perspective, the MLI constitutes an intergovernmental contract, comparable to double tax treaties, which has to be transformed into domestic law. The MLI provisions regarding the alterations of the double tax treaties entered into force as of 1 July 2018.

13. ACCOUNTING CONSIDERATIONS

a. Combinations

In general, the provisions of the Austrian GAAP as well as the provisions of the IFRS have to be accounted for. IFRS principles are applicable, if the securities of a parent company is listed on a regulated market in an EU member state. In this case the company has to provide a consolidated financial statement according to the provisions of the IFRS. Other companies may prepare their consolidated financial statements either according to the accounting requirements under Austrian GAAP or IFRS. The Austrian GAAP stipulates size dependent exemptions regarding the preparation of a consolidated financial statement either by way of Austrian GAAP or IFRS. Two of the following size dependent criteria have to be fulfilled at the balance sheet date in order to utilise the exemption of Section 246 Austrian GAAP:

i gross method (aggregated figures):

- Balance sheet total: less than EUR24 million.
- Revenues: less than EUR48 million.
- Average employees: less than 250 in the respective year.



ii net method (consolidated figures):

- Balance sheet total: less than EUR20 million.
- Revenues: less than EUR40 million.
- Average employees: less than 250 in the respective year.

b. Divestitures

The statement above under "Combinations" applies for Divestitures as well.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

From a corporate law perspective, the capital reserve needs to be released (booked) to the balance sheet profit in order to be distributable to the shareholder. The corporate law does not distinguish whether the distributed profit results from the annual net profit or from released capital reserves.

The tax law distinguishes whether the distributed profit results from the (i) tax internal profit account or (ii) the tax equity account. Profit distributions resulting from the tax internal profit account (ordinary dividend payments) are generally subject to Austrian WHT at a rate of 27.5% for individual person recipients and 25% (reduced to 24% in 2023 and 23% in 2024 an on) for corporate recipients (potential relief through treaty law or EU Parent Subsidiary Directive). On the other hand, distributions from the tax equity account (repayment of share premium or capital contributions) are not subject to Austrian WHT. The latter however lead to a reduction of the tax book value of the shares in in the Austrian company held by the shareholder. Typically, (under certain conditions), the tax law (Sec 4 para 12 ITA) provides the right to choose whether to treat the profit distribution as a dividend payment (generally subject to Austrian withholding tax) or as a capital repayment (not subject to Austrian withholding tax). In order to be able to treat the profit distribution as a capital repayment from a tax perspective, the company needs to have a positive tax equity account (which is created by the equity injection). Furthermore, in case the tax internal profit account is negative (due to incurred losses) the profit distribution needs to be treated as a capital repayment. Only in case the company had both a positive tax equity account and a positive tax internal profit account, the law would provide the right to choose between a dividend payment or capital repayment.

b. Substance Requirements for Recipients

The Austrian tax law generally applies a substance over form approach. Consequently, any transaction is attributed to the beneficial owner rather than to the legal owner. Thus, generally a look through approach is applied to transactions involving straw men or back-to-back structures. To be considered a beneficial owner the entity generally needs to have the resources and the capacity to control the investment and the related risks (i.e. rented office space, staff, business).

c. Application of Regional Rules

Austria has transposed European Directives in tax related matters into Austrian domestic law, i.e. EU Parent Subsidiary Directive, EU Interest and Royalty Directive and EU Merger Directive, EU Anti-Tax Avoidance Directive.



d. Tax Rulings and Clearances

Austria has a rulings practice which is commonly used. Rulings must generally be granted. A ruling request may be addressed to the competent tax office (*Finanzamt*) or the Ministry of Finance (*Bundesministerium für Finanzen*). Rulings obtained from the Ministry of Finance are never binding. Rulings of the competent tax office are binding on the tax administration on the principle of good faith as long as there are no contradictory legal provisions. Rulings, however, are mostly not binding on the taxpayer and on the courts.

Legally binding advance rulings are available relating to company reorganisation, group taxation, international tax law (transfer pricing) and value added tax. The advance ruling has to be issued within two months of application and is binding for the tax authorities. The taxpayer may appeal against such an advance ruling. The administration fee for the ruling depends on the sales revenues of the applicant and ranges from EUR1,500 – EUR20,000).

15. MAJOR NON-TAX CONSIDERATIONS

This section left intentionally blank.



16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends	Interest*	Royalties	Footnote
Argentina	25 / 27.5	0	20	[1] [2]
Australia	15	0	10	
Belgium	15	0	0 / 10	[3]
Brazil	15	0	10 / 15 / 25	[4]
Canada	5 / 15	0	0 / 10	[5] [6]
Chile	15	0	5 / 10	[7]
China	7 / 10	0	6 / 10	[8] [9]
Colombia	25 / 27.5	0	20	[1] [2]
Croatia	0 / 15	0	0	[10]
Cyprus	10	0	0	
Czech Republic	0 / 10	0	0 / 5	[11] [12]
Denmark	0 / 15	0	0	[13]
Finland	0 / 10	0	5	[14]
France	0 / 15	0	0	[15]
Germany	5 / 15	0	0	[16]
Greece	5 / 15	0	7	[17]
Hungary	10	0	0	
India	10	0	10	
Indonesia	10 / 15	0	10	[18]
Ireland	10	0	0 / 10	[19]
Italy	15	0	0 / 10	[19]
Japan	0 / 10	0	0	[20]
Luxembourg	5 / 15	0	0 / 10	[17] [19]
Malaysia	5 / 10	0	10 / 15	[21] [22]
Malta	15	0	0 / 10	[23]
Mauritius	25 / 27.5	0	20	[1] [2]
Mexico	5 / 10	0	10	[24]
Netherlands	5 / 15	0	0 / 10	[25] [26]

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Jurisdiction	Dividends	Interest*	Royalties	Footnote
Norway	0 / 15	0	0	[27]
Philippines	10 / 25	0	15	[28]
Poland	5 / 15	0	5	[16]
Portugal	15	0	5 / 10	[29]
Puerto Rico	25 / 27.5	0	20	[1] [2]
Romania	0 / 5	0	3	[30]
Russia	5 / 15	0	0	[31]
Serbia	5 / 15	0	5 / 10	[17] [32]
Singapore	0 / 10	0	5	[33]
Slovakia	10	0	5	
Slovenia	5 / 15	0	5	[17]
South Africa	5 / 15	0	0	[17]
South Korea	5 / 15	0	2 / 10	[17] [34]
Spain	10 / 15	0	5	[35]
Sweden	5 / 10	0	0 / 10	[21] [19]
Switzerland	0 / 15	0	0	[36]
Turkey	5 / 15	0	10	[17]
UK	0 / 10 / 15	0	0	[37]
USA	5 / 15	0	0 / 10	[38] [39]
Venezuela	5 / 15	0	5	[40]

* Austria currently does not levy withholding taxes on interest payments to non-resident companies.



Footnotes	
1	"No double tax treaty with the respective country is in place; therefore, the respective taxes have to be withheld according to domestic tax law.
2	Dividends - 25% (in 2022, 24% in 2023 and 23% in 2024 and on) rate applies for payments to corporations and 27.5% rate for payments to other recipients.
3	Royalties - In case the recipient of the royalties holds more than 50% of the issued share capital in the company, the withholding tax for royalties amounts to 10%, otherwise 0%.
4	Royalties - The withholding tax amounts to 10% for license fees regarding literature, art and science; 25% in case of trademark license fees and 15% for all other cases.
5	Dividends - Maximum rate of 15%. Reduced rate of 5% applies to dividends paid to a corporation that owns directly or indirectly at least 10% of the voting shares in the company.
6	Royalties - The 0% rate applies to royalties on certain cultural works (e.g. literary, dramatic, musical or artistic work), as well as to payments for the use of, or the right to use, computer software, patents and information concerning industrial, commercial and scientific experience; otherwise the rate is 10%.
7	Royalties - The 5% rate applies to royalties for the use of, or the right to use, any industrial, commercial or scientific equipment; otherwise the rate is 10%.
8	Dividends - Maximum rate of 10%. Reduced rate of 7% applies to dividends paid to a corporation that owns directly at least 25% of the voting shares of the distributing company.
9	Royalties - The 6% rate applies to royalties for the use of, or the right to use, any industrial, commercial or scientific equipment; otherwise the rate is 10%.
10	Dividends - Maximum rate of 15%. Reduced rate of 0% applies to dividends paid to a corporation (not partnerships) that owns directly or indirectly at least 10% of the issued share capital in the company.
11	Dividends - Maximum rate of 10%. Reduced rate of 0% applies to dividends paid to a corporation that owns directly at least 10% of the issued share capital in the company.
12	Royalties - The 5% rate applies to royalties for the use of, or the right to use, patents, brands, plans, secret formulas, computer software, any industrial, commercial or scientific equipment and copyright; otherwise 0%.
13	Dividends - Maximum rate of 15%. Reduced rate of 0% applies to dividends paid to a corporation (not partnership) that owns directly at least 10% of the issued share capital in the company.
14	Dividends - Maximum rate of 10%. Reduced rate of 0% applies to dividends paid to a corporation that owns directly at least 10% of the voting shares in the company.
15	Dividends - Maximum rate of 15%. Reduced rate of 0% applies to dividends paid to a corporation subject to CIT that owns directly or indirectly at least 10% of the issued share capital in the company.
16	Dividends - Maximum rate of 15%. Reduced rate of 5% applies to dividends paid to a corporation (not partnership) that owns directly at least 10% of the issued share capital in the company.
17	Dividends - Maximum rate of 15%. Reduced rate of 5% applies to dividends paid to a corporation (not partnership) that owns directly at least 25% of the issued share capital in the company.



Footnotes	
18	Dividends - Maximum rate of 15%. Reduced rate of 10% applies to dividends paid to a corporation (not partnership) that owns directly at least 25% of the issued share capital in the company.
19	Royalties - The 10% rate applies to royalties paid to a shareholder that owns more than 50% of the issued share capital in the company; otherwise 0%.
20	Dividends - Maximum rate of 10%. Reduced rate of 0% applies to dividends paid to a corporation that owns directly or indirectly at least 10% of the voting shares in the company for a period of six months, or the recipient of the dividends qualifies as a pension fund.
21	Dividends - Maximum rate of 10%. Reduced rate of 5% applies to dividends paid to a corporation (not partnership) that owns directly at least 25% of the issued share capital in the company.
22	Royalties - The 15% rate applies to royalties for the use of, or the right to use films; otherwise 10%.
23	Royalties - The 0% rate applies to royalties for the use of, or the right to use licences regarding literature, art and scientific. The 10% rate applies for other licences.
24	Dividends - Maximum rate of 10%. Reduced rate of 5% applies to dividends paid to a corporation that owns directly at least 10% of the voting shares in the company.
25	Dividends - Maximum rate of 15%. Reduced rate of 5% applies to dividends paid to a corporation that owns directly or indirectly at least 25% of the issued share capital in the company.
26	Royalties - The 10% rate applies to royalties paid to a shareholder that owns directly or indirectly more than 50% of the issued share capital in the company.
27	Dividends - Maximum rate of 15%. Reduced rate of 0% applies to dividends paid to a corporation (not partnership) or to the government.
28	Dividends - Maximum rate of 25%. Reduced rate of 10% applies to dividends paid to a corporation that owns directly at least 10% of the voting shares in the company.
29	Royalties - In case the recipient of the royalties holds more than 50% of the issued share capital in the company, the withholding tax for royalties amounts to 10%, otherwise 5%.
30	Dividends - Maximum rate of 5%. Reduced rate of 0% applies to dividends paid to a corporation (not partnership) that owns directly at least 25% of the issued share capital in the company.
31	Dividends - A protocol was signed on 5 June 2018 which amended the requirements for the reduced withholding tax rate to reflect the OECD standards. Therefore, the reduced rate of 5% applies to dividends paid to a corporation (not partnership) that owns directly at least 10% of the issued share capital in the company. Otherwise the withholding tax amounts to 15%.
32	Royalties - The 5% rate applies to royalties for the use of, or the right to use licences regarding literature, art and scientific as well as films. The 10% rate applies for other licences.
33	Dividends - Maximum rate of 10%. Reduced rate of 0% applies to dividends paid to a corporation (not partnership) that owns directly at least 10% of the issued share capital in the company or to the government.
34	Royalties - The 2% rate applies to royalties for the use of, or the right to use, any industrial, commercial or scientific equipment; otherwise the rate is 10%.



Footnotes	
35	Dividends - Maximum rate of 15%. Reduced rate of 10% applies to dividends paid to a corporation (not partnership) that owns directly at least 50% of the issued share capital in the company for a period of twelve months.
36	Dividends - Maximum rate of 15%. Reduced rate of 0% applies to dividends paid to a corporation (not partnership) that owns directly at least 20% of the issued share capital in the company or to the government.
37	Dividends - Standard rate of 10%. Reduced rate of 0% applies to dividends paid to a corporation (not partnership) that owns directly or indirectly at least 10% of the voting shares in the company (except if the company is a relevant investment vehicle), or the recipient of the dividends qualifies as a pension fund. The increased rate of 15% applies to dividends paid by a relevant investment vehicle.
38	Dividends - Maximum rate of 15%. Reduced rate of 5% applies to dividends paid to a corporation (not partnership) that owns directly at least 10% of the voting shares in the company.
39	Royalties - The 10% rate applies to royalties for the use of, or the right to use films; otherwise 0%.
40	Dividends - Maximum rate of 15%. Reduced rate of 5% applies to dividends paid to a corporation (not partnership) that owns directly at least 15% of the issued share capital in the company.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº	Category	Description of Request
1	Tax Due Diligence	Financial Statements for the for the Due Diligence period (commonly last three full fiscal years).
2		Tax returns and tax assessments for the Due Diligence period (commonly last three full fiscal years).
3		Tax adjustments for the Due Diligence period (commonly last three full fiscal years).
4		FinanzOnline-Account statement for the Due Diligence period (commonly last three full fiscal years).
5		Tax audit reports for the Due Diligence period (commonly last three full fiscal years).
6		Correspondence with tax authorities (e.g. rulings, etc) for the Due Diligence period (commonly last three full fiscal years).
7		Documents regarding pending and closed appeals for the Due Diligence period (commonly last three full fiscal years).
8		Transfer Pricing documentation (eg, master file, local file) for the Due Diligence period (commonly last three full fiscal years).
9		Amount of tax loss carry forwards as of [date] and the development of the tax loss carry forwards.
10		Existing or expected significant tax issues.
11		Aggressive or unusual tax strategies.
12		Information regarding Value Added Tax.
13		Information regarding real estate transfer tax for the Due Diligence period (commonly last three full fiscal years).
14		Information regarding stamp duty for the Due Diligence period (commonly last three full fiscal years).

AUSTRIA

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BELGIUM

1. INTRODUCTION

a. Forms of Legal Entity

Since the adoption of the corporate law reform in 2019, the flexibility of the Belgian corporate law increased and the number of available legal forms was limited.

In an M&A context, the most commonly used legal forms with legal personality and limited liability are:

- the NV/SA ("NV" or "naamloze vennootschap" in Dutch, "SA" or "société anonyme" in French), a limited liability company having a minimum share capital of EUR61,500; and
- the BV/SRL ("BV" or "besloten vennootschap" in Dutch, SRL or "société à responsabilité limitée" in French), a limited liability company without minimum share capital.

Both the NV/SA and the BV/SRL are subject to ordinary Belgian corporate income tax ("CIT").

Traditionally, multinationals and foreign investors opted generally for a NV/SA, as certain corporate rules governing the predecessor of the BV/SRL were more stringent for historical reasons. It was one of the aims of the corporate law reform to make the rules regarding the BV/SRL more attractive so that it would become the logical choice for group entities (just as for the BV in the Netherlands and the GmbH in Germany).

The BV/SRL form is sometimes also preferred for foreign tax reasons (e.g. the BV/SRL may be eligible for a check the box election under US tax laws, while the NV/SA is not).

The partnership ("maatschap" in Dutch, "société simple" in French) is a legal entity without legal personality, that is transparent from a corporate income tax perspective.

b. Taxes, Tax Rates

i Corporate income tax rate

As of financial year 2020, the ordinary Belgian CIT rate amounts to 25%. It was 29.58% for financial years 2018 and 2019, and 33.99% prior to that.

Subject to strict conditions, certain small companies may benefit from a reduced CIT rate of 20% on the first tranche of EUR100,000 taxable income. To qualify as a small company, an entity may not exceed more than one of the following thresholds during two consecutive financial years (to be determined on a consolidated basis): (i) a total balance sheet of EUR4.5 million, (ii) annual turnover of EUR9 million (excluding VAT) and (iii) annual average number of 50 employees.

ii Personal income tax rates

Professional/employment income is subject to personal income tax at progressive rates of up to 50%, to be increased with municipal surcharges (ranging between 0% and 9% of the tax, depending on the municipality in which the individual is a tax resident).

Investment income (such as dividends, interest and royalties) is in principle subject to a flat rate of 30%.

Capital gains realised upon a sale of shares are usually not taxed. Only in unusual circumstances they are taxed at a rate of 33% (to be increased with municipal surcharges) (see below '7. Divestitures').

iii VAT rates

The ordinary Belgian VAT rate is 21%. Reduced rates of 12% and 6% exist for certain activities.

c. Common divergences between income shown on tax returns and local financial statements

The most common book to tax differences include:

- Expenses disallowed for tax purposes;
- Tax exempt dividends and capital gains on shares;
- Limitation on depreciation of assets for tax purposes;
- Application of interest deduction limitation rules;
- Application of tax incentives such as the innovation income deduction and investment deduction; and
- Utilisation of carried forward tax losses.

2. RECENT DEVELOPMENTS

a. Multilateral Instrument ("MLI")

Belgium ratified the Multilateral Instrument ("MLI") in June 2019. The main impact for covered tax treaties concluded by Belgium is the introduction of the principle purpose test, the extension of the definition of permanent establishment to tackle the artificial avoidance thereof and the implementation of the mandatory binding arbitration clause in case of a mutual agreement procedure. The application of the MLI should be considered on a treaty by treaty basis.

b. EU Anti-Tax Avoidance Directive ("ATAD")

The Belgian implementation of the EU Anti-Tax Avoidance Directive ("ATAD") introduced, among others, new interest limitation rules based on the fiscal EBTIDA, controlled foreign company rules, anti-hybrid mismatch rules and extension of Belgian exit taxation rules.

c. "Danish cases" of the CJEU

In the aftermath of the so called "Danish cases" decided by the Court of Justice of the European Union ("CJEU"), the Belgian tax authorities increasingly challenge the withholding tax exemption applied on outbound dividend and interest payments made by Belgian entities.

d. DAC 6

The EU directive 2018/822 ("DAC 6") regarding mandatory disclosure rules was implemented in Belgium in December 2019. Pursuant to these rules, intermediaries or, where appropriate, taxpayers, need to disclose cross border arrangements implemented as from 25 June 2018 which contain one or more of a prescribed list of hallmarks. The disclosed information is automatically exchanged between the EU Member States.

e. Tax measures in response to Covid-19

The Belgian government has introduced tax measures to alleviate the economic impact of the Covid-19 pandemic, notably:

- Temporary loss carry back regime

Belgian tax law does not provide for a general tax loss carry back regime. To strengthen solvency and liquidity, Belgian entities were under certain conditions entitled to offset tax losses incurred during assessment year 2020 or 2021 against taxable profits realised during assessment years 2019 or 2020 via the creation of a one off "carry back" reserve. The tax exempt "carry back" reserve becomes taxable in the financial year following the financial year in which it was created.

- Reconstitution reserve

Subject to strict conditions, Belgian entities are entitled to establish a tax exempt reserve during financial years 2021 to 2023 equal to the amount of accounting losses they have incurred during financial year 2020 (capped at EUR20 million). The reconstitution reserve will become partially or fully taxable in a given year to the extent the company distributes dividends, makes share buy backs or capital reductions or would record materially lower salary costs compared to the last financial year prior to the Covid-19 pandemic period (exceptions apply).

- Other measures

Several other temporary measures have been introduced, such as an increased investment deduction rate for SMEs, Tax Shelter Covid-19 and regional, provincial and local financial support measures.

Consideration of the Covid-19 measures will also be relevant in tax due diligence processes going forward.

3. SHARE ACQUISITION

a. General Comments

To acquire a business it can be envisaged to either buy the shares of a target company (share deal) or to select and buy particular assets (asset deal).

The main advantages of a share deal are that Belgian tax law provides for a capital gains tax exemption on shares and that the acquired target in principle retains the ability to utilise existing tax attributes. Generally, indeed, a direct or indirect change of control does not impact the tax attributes of a Belgian entity, provided the change of control can be justified by legitimate financial or economic needs, which is generally accepted to be the case if the level of activity and employment remains the same after the acquisition.



b. Tax Attributes

In Belgium, tax attributes (e.g. carried forward tax losses, carried forward investment deductions, carried forward innovation income deductions and carried forward dividend received deductions) can in principle be carried forward without time limit.

However, the deduction of certain tax attributes is limited for any financial year to 70% of the taxable result exceeding EUR1 million, the remaining 30% being a minimum taxable basis effectively taxed.

Tax attributes cannot be used to offset (a) that part of the taxable result that derives from abnormal or gratuitous advantages received from a related enterprise, nor (b) any increase of the taxable basis that results from a tax audit, unless the tax inspector agrees not to inflict any tax penalty. Tax adjustments will in such cases result in an effective cash tax cost

c. Tax Grouping

For financial years starting on or after 1 January 2019, Belgian tax law provides for a certain form of tax consolidation under the so-called "group contribution regime". Qualifying Belgian companies (and Belgian permanent establishments of foreign companies established in an EEA country) may offset profits against current year tax losses subject to a (direct) minimum participation requirement of 90% between the concerned group companies (or via a common parent company). The consolidation rules can only be applied if the 90% participation exists for an uninterrupted period of at least five years (specific provisions apply in case of group restructurings). A group contribution agreement has to be concluded between the concerned group companies.

Further, Belgian VATable persons that are closely linked from a financial, economic and organisational perspective could opt for a VAT grouping. A VAT group is considered as one taxpayer as a result of which transactions between members of the group are considered as internal transactions not subject to VAT. The members of the VAT group are, however, jointly and severally liable for the VAT liabilities (including interest, penalties and surcharges) of the group.

d. Tax Free Reorganisations

Belgian tax law provides for a tax neutral regime applicable to qualifying corporate restructurings (such as mergers and (partial) demergers). Both domestic and cross border EU (de)mergers are eligible to benefit from the tax neutral treatment provided that the restructuring does not have tax avoidance or tax evasion as its main objective or one of its main objectives. Additionally, in the case of a cross border EU merger, the transaction will only be tax neutral to the extent that the acquired assets are maintained in a Belgian establishment of the receiving or absorbing company.

If a tax neutral (de)merger takes place, the carried forward tax losses and unutilised dividend received deductions of the companies concerned are reduced based on the proportionate net fiscal value of the receiving/transferring company prior to the merger compared to the sum of the net fiscal value of the receiving and transferring company both prior to the merger.



e. Purchase Agreement

On the Belgian M&A market, it is common to cover tax risks by including representations and warranties on tax matters, possibly combined with specific indemnities.

The agreement often stipulates that a tax claim can be filed until a certain period (e.g. three months) after the moment the right of the tax authorities to assess or claim any taxes in respect of the relevant matter is barred by all applicable statutes of limitation. Although the ordinary statute of limitations in Belgium is three years, the applicable period can be much longer in certain instances (e.g. a seven year period in case of fraud, specific longer periods for withholding taxes and when information is received in the framework of cross border exchange of information).

It should also be indicated that indemnifications paid by the sellers to the purchaser are considered to be a reduction of the purchase price.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

In Belgium, no transfer tax, stamp duty or registration duty are in principle due on a share acquisition.

Share acquisitions may under certain conditions be subject to Belgian stock exchange tax if concluded or executed through a professional intermediary, whether or not established in Belgium. The ordinary stock exchange tax rate amounts to 0.35% per party per transaction, however this is capped at EUR1,600.

g. Share Purchase Advantages

- The seller may benefit from a capital gains tax exemption on shares.
- The buyer may benefit from the tax attributes of the target company (subject to change of control rules and the minimum taxable base).
- Existing contracts concluded by the target company remain valid (in principle no counterparty consents or renegotiations except if required by contract).
- Since 2019, the buyer may apply the Belgian tax consolidation regime as of the fifth financial year following the share acquisition (subject to strict conditions).

h. Share Purchase Disadvantages

- The buyer is not entitled to depreciate the acquired shares in the target company and there is no step up in value of the assets at the level of the target entity (and thus no increased tax deductible depreciation).
- The historical tax liabilities remain with the Belgian target company.



4. ASSET ACQUISITION

a. General Comments

From a corporate perspective, an asset deal could be structured either as a transfer 'at singuli' (i.e. a transfer asset by asset) or as a transfer of a business or a universality of goods.

In each case, sellers will in principle be taxable on the (latent) gains realised on the transferred assets at the ordinary CIT rate of 25%. It is possible to offset the realised capital gains against available tax attributes, but subject to an important minimum taxable basis rule: 30% of the taxable profit of a company above EUR1 million is effectively taxed.

Buyers obtain a step up in value on the acquired assets, which can lead to higher tax deductible depreciation and/or amortisation.

Where only a part of the activities of a company are sold, sellers sometimes carve out the assets to be transferred prior to the transaction (by means of a contribution or a demerger of a business unit), in order to prepare a third party transaction that can be structured as a share deal. Subject to several stringent conditions, the ruling committee accepts the neutrality of such carve out and it is highly recommended to have the tax treatment confirmed in a tax ruling.

Asset transfers are in principle subject to VAT. Where the transfer qualifies as a transfer of a going concern, no VAT applies under certain conditions. To qualify as a transfer of a going concern, the transferred assets should constitute a 'business' or a 'branch of activity' allowing the buyer to carry on an autonomous economic activity.

b. Purchase Price Allocation

Belgian tax law does not provide for specific rules on purchase price allocation.

Seller and buyer typically agree on the purchase price allocation in the context of the asset purchase agreement negotiations. Although not required, it is recommended to have a third party valuation to support the purchase price allocation in case of a challenge by the Belgian tax authorities.

c. Tax Attributes

In the case of an asset acquisition, the tax attributes of the seller are not transferred to the buyer.

d. Tax Free Reorganisations

A transfer of a business unit to a Belgian or EU resident company in exchange for shares may benefit from CIT neutrality. In order to benefit from this tax neutral regime the transferred assets and liabilities need to qualify as a branch of activity, meaning that the business unit should be capable to function autonomously from a technical and operational perspective.

The transfer could also be structured as a partial demerger, in which case it is not required that the transferred assets constitute a branch.

In any case, the restructuring must not have tax evasion or avoidance as its principal or one of its principal purposes.



In case of a tax neutral contribution of a branch of activity, the receiving company will not realise a step-up in basis and will not acquire any tax attributes of the transferring company. The tax attributes of the transferring company will not be limited as a result of the transfer, while the carried forward tax losses and carried forward dividend received deduction that the receiving entity had prior to the contribution will be limited proportionally.

In the case of a tax neutral demerger, the carried forward tax losses and unutilised dividend received deductions of the companies concerned are reduced based on the proportionate net fiscal value of the receiving/transferring company prior to the demerger compared to the sum of the net fiscal value of the receiving and transferring company both prior to the demerger.

In any case, also the potential impact of VAT and registration duties has to be carefully considered.

e. Purchase Agreement

Asset purchase agreements generally include clauses regarding the application or not of the transfer of a going concern regime for VAT purposes and covering the consequences if the tax authorities would disagree with the applied regime (e.g. who bears interest and penalties).

Where the transaction concerns a purchase of assets that constitute a business unit allowing the preservation of a client base, the transfer is in principle only opposable vis-à-vis the tax authorities as of the end of the month following the month in which a certified copy of the asset purchase agreement is notified to the tax authorities. Furthermore, Belgian tax law provides that a buyer is jointly liable towards each of the relevant authorities for tax, non-tax and social security liabilities of the seller up to the amount of the purchase price paid prior to the date the transfer becomes opposable. The deferred enforceability and joint liability do not apply if the asset purchase agreement is notified to the concerned authorities together with a clearance certificate, confirming that at the level of the selling entity there are no outstanding tax debts, no announced or pending tax audits and no request of information has been sent on the date that the certificate is issued. The asset purchase agreement will include clauses regarding these rules and covering the potential consequences thereof.

In case of an asset acquisition 'at singuli' (i.e. asset per asset), the asset purchase agreement should clearly indicate that the (latent) tax liabilities remain allocated to the seller.

f. Depreciation and Amortisation

A buyer can depreciate the acquired assets on their acquisition value. Consequently, if the purchase price of the assets is higher than the book value at the level of the seller, the buyer realises a step up in value which may result in increased tax deductible depreciation and/or amortisation.

The applied depreciation rates should be based on the anticipated useful economic lifetime of the concerned assets. For investments made as from 2020, a Belgian company can only use the straight line method (i.e. linear method).

Belgian tax and accounting law allow amortisation of goodwill arising in the context of an asset deal.

Although Belgian tax law provides that amortisation of goodwill may not be spread over less than five years, Belgian tax authorities usually take the view that the depreciation period should be spread over a period of 10 years if the goodwill in essence relates to a customer base.



g. Transfer Taxes, VAT

In cases where the transferred assets comprise immovable property located in Belgium, transfer taxes are due (at a rate of 12% if the immovable property is located in Flanders and 12.5% if the immovable property is located in the Walloon Region or the Brussels-Capital Region). An exemption may apply if the transfer is part of a tax neutral reorganisation.

An asset deal is subject to Belgian VAT at the ordinary rate of 21%. If the transferred assets form however a 'universality of goods' or a 'branch of activities', the transfer may fall outside the scope of VAT.

h. Asset Purchase Advantages

- The buyer chooses which assets and liabilities will be acquired, in particular if the transaction is structured as an 'at singuli' transfer ("cherry-picking" of selected assets).
- The transferred assets can be depreciated or amortised based on the purchase price (i.e. realisation of a step up).
- Profit or losses of the acquiring entity can be offset against profit or losses generated by the acquired business.

i. Asset Purchase Disadvantages

- The seller will be taxable on (latent) gains realised upon the asset deal, which will generally be reflected in the purchase price.
- The tax attributes of the seller are not transferred to the buyer.
- Tax clearance certificates to be requested and transfer agreement to be notified to the tax authorities to avoid joint liability and to render the transfer opposable vis-à-vis the Belgian tax authorities.
- Possible need to renegotiate existing supply, employment and technology contracts.



5. ACQUISITION VEHICLES

a. General Comments

Both domestic and foreign acquisition vehicles are used in transactions involving a Belgian target. The choice of the acquisition vehicle depends of the facts and circumstances.

b. Domestic Acquisition Vehicle

Belgium has favourable rules in place for Belgian acquisition vehicles, notably the participation exemption regime (i.e. the dividend received deduction) and the capital gains tax exemption on shares.

A Belgian acquisition vehicle with a direct participation of at least 90% in a Belgian target could benefit from the Belgian group contribution regime, a form of tax consolidation. The group contribution regime is however only available if the 90% participation exists during an uninterrupted period of five years. Prior to the five year period, no tax consolidation is available (without the possibility to look back to previous years once the waiting period has been satisfied).

Alternatives to realise a debt pushdown are sensitive from a Belgian tax perspective. For example, the tax authorities generally refuse the deductibility of interest payments on a loan linked to financing equity or dividend distributions.

The Belgian tax implications of domestic acquisition vehicles should be carefully considered (e.g. beneficial ownership, substance, tax abuse), which may become even more important in the light of the Commission's proposal for ATAD3 (i.e. the so called "unshell" directive).

c. Foreign Acquisition Vehicle

Transaction structures involving Belgian targets also regularly include foreign transaction vehicles.

Next to the dividend and interest withholding tax ("WHT") exemptions based on the European Parent Subsidiary Directive and Interest Royalty Directive, the extensive treaty network of Belgium providing for reduced WHT rates or WHT exemptions for dividends and interests as well as domestic exemptions should be considered when determining the appropriate acquisition vehicle for a Belgian investment.

The Belgian tax implications of the use of foreign holdings and the applications of the exemptions or reductions must be carefully considered (e.g., beneficial ownership, substance, tax abuse), which may become even more important in the light of the Commission's proposal for ATAD3 (i.e. the "unshell" directive).

A foreign buyer could also opt to structure the acquisition as an asset acquisition by a Belgian branch, which is in our experience not a commonly used option on the Belgian market. The branch will be subject to Belgian corporate income tax at a rate of 25%. In such case, as no dividends are distributed from the branch to the head office, no Belgian WHT is due. Moreover, tax law of the head office's country may provide for certain consolidation rules.



d. Partnerships and joint ventures

In Belgium, joint ventures could be established by using a legal entity (subject to Belgian corporate income tax) or by using a partnership (treated as tax transparent for Belgian tax purposes).

In the Belgian M&A context, legal entities are typically used.

e. Strategic vs Private Equity Buyers

This section is left intentionally blank.

6. ACQUISITION FINANCING

a. General Comments

Both equity and debt funding are common in Belgium and often a mix is applied. As noted below, there are several limitations on interest deductions.

In the past, equity funding was stimulated in Belgium by the so called "notional interest deduction". This regime became however less important and is since 1 January 2018 only applied on the increase in equity and no longer on the entire amount of the equity.

b. Foreign Acquirer

This section is left intentionally blank.

c. Debt

Belgian tax law does not impose a general debt to equity ratio.

In addition to the interest limitation rules set out below, the withholding tax ("WHT") treatment of interest on debt funding should also be considered. Indeed, interest payments made by a Belgian company are in principle subject to Belgian WHT at the ordinary rate of 30%. Belgian tax law, the Interest Royalty Directive as transposed into Belgian tax law and tax treaties may provide for interest WHT exemptions or reduced WHT rates. The availability thereof is however subject to anti-abuse provisions and beneficial ownership.

i Limitations on Interest Deductions

In Belgium, interest expenses incurred to finance acquisitions are in principle tax deductible provided that the general deductibility rules are satisfied. In addition, the interest rate should meet at arm's length conditions.

In addition, Belgian tax law provides for the following interest limitation rules:

- 5:1 debt to equity ratio

Until financial year 2018, Belgium had a 5:1 debt to equity ratio that applied to all intragroup debt. In accordance with this old rule, interest relating to intragroup debt exceeding the threshold was not tax deductible. The 5:1 debt equity ratio has in general been abolished, but remains applicable for direct or indirect payments to no or low tax jurisdictions as well as for intercompany loans concluded prior to 17 June 2016 that have not been substantially changed thereafter.

- 30% EBITDA rule

Following the implementation of ATAD, the 30% EBITDA rule is applicable as of financial years starting on or after 1 January 2019. The net interest expense (i.e. the interest expenses minus interest income, to be determined on a Belgian consolidated level) relating to (i) external and (ii) foreign intercompany debt is non-deductible to the extent it exceeds the higher of EUR3 million or 30% of the (fiscal) EBITDA.

- 1:1 debt-to equity ratio

This additional thin capitalisation rule applies in case of financing by a domestic or foreign individual shareholder or director, or by corporate directors located outside the EEA. Interest relating to debt in excess of this ratio is recharacterised as a non-deductible dividend.

ii Related Party Debt

Related party debt should be at arm's length conditions to avoid transfer pricing adjustments or the non-deductibility of interest charges.

For interest paid on loans without fixed duration, the deductibility is generally limited to an annually determined reference rate, which is currently 4.07%.

iii Debt Pushdown

A Belgian acquisition vehicle with a direct participation of at least 90% in a Belgian target could benefit from the Belgian group contribution regime, a form of tax consolidation. The group contribution regime is however only available if the 90% participation exists during an uninterrupted period of five years. Prior to the five year period, no tax consolidation is available (without the possibility to look back to previous years once the waiting period has been satisfied).

Alternatives to realise a debt pushdown are sensitive from a Belgian tax perspective. For example, the tax authorities generally refuse the deductibility of interest payments on a loan linked to the financing of equity or dividend distributions and such refusals have been upheld by recent case law.

d. Hybrid Instruments

The use of hybrid financial instruments is targeted by the Belgian hybrid mismatch rules implementing ATAD.

e. Other Instruments

This section is left intentionally blank.



f. Earn-outs

Earn-outs are generally structured as a purchase price adjustment in the Belgian M&A market, as a consequence of which the adjustment may qualify as an additional tax exempt compensation for the sale of the shares.

The conditions and the mechanics of the adjustment should be carefully analysed to verify whether the price adjustment reflects a reassessment of the initial purchase price and should not be considered as variable professional income for sellers that remain involved in the management of the target company.

7. DIVESTITURES

a. Tax Free

The divestiture of shares by a corporate or individual seller may be tax exempt.

A corporate seller subject to Belgian CIT may benefit from the capital gains tax exemption on shares provided that the following conditions are fulfilled: (i) one year holding period; (ii) a minimum participation of 10% or with an acquisition value of at least EUR2.5 million; and (iii) the subject to tax condition at the level of the target entity.

Capital gains on shares realised by individual sellers may be tax exempt if they are realised within the framework of normal management of the seller's private wealth, and provided that it does not concern a divestment of a substantial shareholding sold to a corporate buyer established outside the EEA.

b. Taxable

i Divestiture of shares

Capital gains realised by a corporate shareholder that cannot benefit from the capital gains tax exemption will be taxed at the ordinary CIT rate of 25%.

For individual sellers, if capital gains are considered to be realised outside the framework of normal management of the seller's private wealth, the capital gains will be taxed at a rate of 33%, to be increased with municipal surcharges.

If the capital gains are realised in the course of a professional activity of the individual seller, they will be taxed at progressive rates up to 50%, to be increased with municipal surcharges.

ii Divestiture of assets

Gains realised on the transferred assets will be subject to the ordinary corporate income tax rate of 25% at the level of the transferring company. The transferring company may offset available tax attributes against the capital gains (subject to the minimum taxable base). A rollover regime may be available provided that the entire sales price is reinvested, in which case the taxation of the capital gains is spread over the depreciation period of the reinvested assets (i.e. spread taxation).

c. Cross Border

This section is left intentionally blank.



8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Belgium applies a worldwide tax system.

As a matter of principle, the total worldwide profit realised by a Belgian resident company constitutes taxable profit.

Profits generated by permanent establishments a company has in a jurisdiction with whom Belgium has concluded a double taxation convention are generally exempt from tax in Belgium.

b. CFC Regime

Following the mandatory implementation of ATAD, Belgium has controlled foreign company ("CFC") rules in place that have applied since 1 January 2019. A Belgian company will be taxed on the "non-distributed profits" of a foreign company that is considered a CFC where such profits arise from "artificial arrangements" that have been put in place for the main purpose of obtaining a tax advantage.

An artificial arrangement is deemed to exist when certain assets or risks can be identified that are owned by the CFC, whereas the majority of decision making functions are exercised by the controlling Belgian entity. Belgian tax law provides for measures preventing double taxation.

i Definition of a CFC

A foreign company will be considered a CFC if the following conditions are cumulatively satisfied:

- A Belgian company holds a direct or indirect participation of more than 50% of the capital or voting rights, or is entitled to receive at least 50% of the profit of the foreign entity; and
- The foreign entity is either not subject to tax in its state of residence or is subject to income tax that is less than half of the income tax of the foreign entity computed based on Belgian tax rules.

A foreign entity established in a jurisdiction which is included in the EU list of non-cooperative jurisdictions at the end of the taxable period also qualifies as a CFC without the above conditions having to be fulfilled.

ii Taxation of undistributed profits

If the CFC rules apply, the undistributed profits of the CFC that arise from artificial arrangements set up with the essential aim of obtaining a tax advantage are attributed to the Belgian parent company.

c. Foreign Branches and Partnerships

The profit of a foreign establishment of a Belgian resident company will in principle be exempt from Belgian corporate income tax based on the tax treaties concluded by Belgium which are generally in line with the OECD Model Convention.

Foreign partnerships without separate legal personality may be treated as tax transparent entities for Belgian tax purposes as a result of which tax is not levied at the level of the partnership but at the level of the concerned partners.



d. Cash Repatriation

Dividends distributed by a Belgian company to a foreign entity are in principle subject to Belgian WHT at the ordinary rate of 30%. A WHT exemption or reduced WHT rate may be available based on Belgian tax law, the implementation of the EU Parent Subsidiary Directive and/or tax treaties concluded by Belgium. The application of a WHT exemption or reduced rate must be carefully considered in the light of anti-abuse rules as well as beneficial ownership and substance requirements.

Where cash repatriation is performed by means of upstream loans, the impact of the financial assistance rules has to be reviewed.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Unlike other countries, Belgian tax law does not equate the sale of shares of a real estate company (i.e. company whose main assets consist in real estate) with the sale of the real estate. Hence, capital gains realised upon the sale of shares in a real estate company are in principle exempt from Belgian corporate income tax (subject to certain conditions) and are not subject to transfer tax.

Capital gains that a company realises on the direct sale of real estate are in principle subject to Belgian corporate income tax at the ordinary rate of 25% (deferred taxation may be available subject to certain conditions, such as the reinvestment of the entire sales price in depreciable (in)tangible fixed assets located in the European Economic Area within a period of five years). In addition, the direct acquisition of the real estate in full ownership is subject to transfer taxes at a rate of 12% or 12.5% (depending on the location of the real estate).

b. CbC and Other Reporting Regimes

i CbC reporting

Belgium introduced a CbC reporting obligation for Belgian resident companies belonging to a multinational enterprise ("MNE") exceeding certain thresholds (see below, Section 10. Transfer Pricing).

ii Reporting obligation for payments to tax havens

Belgian resident companies that made (in)direct payments exceeding EUR100,000 in a given financial year to so called tax havens need to report these payments in an attachment to the annual corporate income tax return. In the absence of reporting, the deductibility of the relevant payments may in principle be refused.



10. TRANSFER PRICING

i Belgian transfer pricing rules

All intercompany arrangements have to be at arm's length conditions to avoid transfer pricing adjustments. Although there are no specific rules regarding transfer pricing documentation (except CbC Reporting, Master File and Local File as set out below), it is highly recommended to document the at arm's length character of intercompany arrangements as a preparation for tax audits.

The Belgian transfer pricing rules can be summarised as follows:

- Any part of the taxable result which derives from an abnormal or benevolent advantage received from a related enterprise constitutes a minimum taxable basis of the Belgian entity (i.e. it cannot be offset against any available tax attributes);
- Any abnormal or benevolent advantage granted is added to the taxable base of the Belgian entity, unless it is taken into account to determine the taxable income of the receiving entity established in Belgium; and
- Non-arm's length intercompany transactions may also be challenged on the basis of the general tax deductibility rules.

ii Belgian transfer pricing documentation

Belgium applies the three tiered approach to transfer pricing documentation proposed by the OECD according to which multinational enterprises need to submit a CbC report/notification, a master file and a local file in case certain thresholds are exceeded.

- CbC reporting

A Belgian entity belonging to a multinational enterprise ("MNE") may be required to file a CbC report and/or CbC notification form in case it belongs to a MNE having a consolidated revenue that exceeds EUR750 million in the financial year preceding the last closed financial year.

- Master file and local file

A Belgian resident company belonging to a MNE may also be required to submit a master file and local file if it exceeds one of the following thresholds on a standalone basis in the financial year preceding the last closed financial year:

- Combined operating and financial income of EUR50 million (excluding non-recurrent income); or
- A balance sheet total of EUR1 billion; or
- An annual average of 100 full-time equivalent employees.

The local file should be attached to the Belgian resident company's annual corporate income tax return. The master file should be submitted within 12 months after the reporting period of the MNE.



11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

Belgian tax law has implemented the rules on hybrid entities as prescribed in the ATAD as of 1 January 2019.

A hybrid entity is defined as an entity or arrangement that is regarded as a taxable entity under the laws of one jurisdiction and a transparent entity under the laws of another jurisdiction. Hybrid entities are not commonly used in Belgium.

b. Use of Hybrid Instruments

As of 1 January 2019, hybrid mismatch rules were introduced in Belgium following the implementation of ATAD. Belgian tax law defines a hybrid mismatch as an arrangement giving rise to (i) a double deduction of expenses for both a Belgian company (or Belgian PE) and a foreign enterprise (or establishment thereof) or (ii) a deduction of expenses without a corresponding inclusion of income at the level of the beneficiary.

These rules intend to target hybrid mismatches (i) within the same entity, (ii) between associated entities and (iii) arrangements between unrelated parties which may qualify as a 'structured arrangement'. A 'structured arrangement' is defined as a hybrid mismatch whereby this outcome is priced into the terms of the arrangement or when the non-related parties act in the framework that has been designed to produce such a result. However, there is no "structured arrangement" if the Belgian entity could not reasonably have been expected to be aware of the hybrid mismatch and derived no benefit from the arrangement.

The hybrid mismatch rules provide for (i) the denial of the deduction of costs relating to payments made in the context of a hybrid mismatch, (ii) the inclusion of the profits received in the context of a hybrid mismatch in the Belgian corporate income tax base and (iii) a limitation of the use of a foreign tax credit in the case of a hybrid transfer.

c. Principal/Limited Risk Distribution or Similar Structures

Belgium typically follows the OECD methodology with respect to transfer pricing. It is important to establish solid and coherent transfer pricing documentation substantiating the transfer prices used.

d. Intellectual Property

i Innovation income deduction

In 2016, Belgium introduced the innovation income deduction regime (replacing the 'patent income deduction') which is in line with the OECD modified nexus approach. According to this regime, a Belgian resident company can deduct 85% of its net qualifying IP income on qualifying IP rights. The innovation income deduction can, among others, be applied on the income derived from the following IP of which the company has the full ownership, co-ownership, usufruct or license: patents, breeders' rights, orphan drugs, data and market exclusivity, copyrighted software (subject to certain conditions).

ii Depreciation of IP

For Belgian tax purposes, intangible fixed assets must be amortised over a period of at least five years (except research and development expenses, for which the minimum amortisation period is three years).



e. Special Tax Regimes

In addition to the innovation income deduction, Belgian resident company's may benefit from the following (R&D) tax incentives:

i R&D investment deduction / tax credit

Belgian resident companies can choose between an increased investment deduction (i.e. a deduction from a company's tax base on top of the normal tax depreciation) and a tax credit for environmentally friendly R&D investments and qualifying patents.

ii Partial wage withholding tax exemption for qualifying R&D personnel

A Belgian resident company does not need to remit 80% of the payroll tax withheld from the salary of qualifying R&D personnel (subject to strict conditions and formalities).

12. OECD BEPS CONSIDERATIONS

Where the BEPS action plan is implemented, the Belgian tax authorities generally seek to adopt and follow OECD guidelines with local adaptation (either directly or via an EU directive that harmonises the implementation throughout the European Union).

13. ACCOUNTING CONSIDERATIONS

This section is left intentionally blank.



14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Dividend distributions by a BV/SRL are subject to a net asset test (i.e. no distribution may occur if it would result in the net assets of the company becoming negative) and a liquidity test (i.e. no distribution may occur if the company would no longer be able to pay its debts). Dividend distributions by a NV/SRL are only limited by an asset test.

As a rule, dividend distributions by a Belgian resident company are subject to Belgian withholding tax at a rate of 30% (WHT exemptions or reduced WHT rates may apply based on domestic tax law, EU Parent Subsidiary Directive as transposed into Belgian tax law and/or tax treaties, subject to the application of anti-abuse provisions and considerations of beneficial ownership and substance).

As of 1 January 2018, a reimbursement of capital by a Belgian resident company is deemed to be proportionally paid out of the existing fiscally paid-up capital and the reserves. To the extent the capital reimbursement is attributed to reserves, it is considered to be a dividend distribution for tax purposes on which in principle 30% Belgian WHT will be due, unless a WHT exemption or a reduced WHT rate is available.

Following the attribution rules, a capital reimbursement may in certain circumstances for tax purposes be imputed to a tax free reserve, which may trigger a corporate income tax liability.

b. Application of Regional Rules

The tax rules relevant in M&A transactions are generally federal rules that apply throughout the country. Certain regional rules may however be relevant (e.g. real estate transfer taxes at a rate of 12% if the immovable property is located in Flanders and 12.5% if the immovable property is located in the Walloon Region or the Brussels-Capital Region).

c. Tax Rulings and Clearances

There is an extensive ruling practice in Belgium.

Tax rulings are often requested to obtain certainty regarding the tax treatment of a particular transaction (e.g. tax neutrality of a pre-transaction carve-out, application of anti-abuse provisions).

A request for a tax ruling is submitted to an autonomous service of the Belgian Federal Public Service Finance prior to the implementation of the transaction (i.e. the situation must not yet have generated any tax consequences). The process consists of an informal phase (which might be on a no-names basis), followed by a formal ruling application.

It takes generally four to six months to finalise the ruling process. A ruling is valid for five years but can be renewed.

A tax ruling is in principle binding vis-à-vis the Belgian tax authorities. The authorities may however review whether the ruling has been delivered based on an accurate and complete description of the facts and whether the ruling is correctly implemented.



15. MAJOR NON-TAX CONSIDERATIONS

This section is left intentionally blank.



16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Albania	5 / 15	5	5	[1]
Argentina	10 / 15	0 / 12	3 / 5 / 10 / 15	[1], [2], [3]
Armenia	5 / 15	0 / 10	8	[4], [5]
Australia	15	10	10	
Austria	15	15	10	[6]
Azerbaijan	5 / 10 / 15	0 / 10	5 / 10	[7], [20], [9]
Bangladesh	15	0 / 15	10	[10]
Belarus	5 / 15	0 / 10	5	[1], [11]
Bosnia and Herzegovina	10 / 15	15	10	[1]
Brazil	10 / 15	0 / 10 / 15	10 / 15 / 20	[4], [13], [14]
Bulgaria	10	0 / 10	5	[15]
Canada	5 / 15	0 / 10	0 / 10	[4], [16], [17]
Chile	0 / 15	5 / 15	5 / 10	[4], [18], [19]
China	5 / 10	0 / 10	7	[1], [20]
Croatia	5 / 15	0 / 10	-	[4], [15]
Cyprus	10 / 15	0 / 10	-	[1], [20]
Czech Republic	5 / 15	0 / 10	5 / 10	[1], [15], [21]
Denmark	0 / 15	10	-	[1]
Ecuador	15	0 / 10	10	[15]
Egypt	15 / 20	15	15 / 25	[1], [22]
Estonia	5 / 15	0 / 10	5 / 10	[1], [20], [19]
Finland	5 / 15	10	5	[1], [23]
France	10 / 15	15	-	[4], [12]
Georgia	5 / 15	0 / 10	5 / 10	[1], [15], [24]
Germany	15	0 / 15	0	[1], [8]
Greece	5 / 15	5 / 10	5	[1], [25]
Hungary	10	0 / 15	-	[26]
Iceland	5 / 15	0 / 10	-	[4], [18]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
India	15	10 / 15	20	[27]
Indonesia	10 / 15	0 / 10	10	[1], [20]
Ireland	0	15	-	
Israel	15	15	10	
Italy	15	0 / 15	5	[20]
Japan	0 / 10	0 / 10	-	[4], [28]
Kazakhstan	5 / 15	0 / 10	10	[4], [20]
Korea, Republic of	15	0 / 10	10	[20]
Latvia	5 / 15	0 / 10	5 / 10	[1], [19], [20]
Lithuania	5 / 15	0 / 10	5 / 10	[1], [19], [20]
Luxembourg	10 / 15	0 / 15	-	[1], [29]
Macedonia	0 / 5 / 15	0 / 10	10	[1], [4], [28]
Malaysia	15	10	10	[30]
Malta	15	0 / 10	0 / 10	[23], [31]
Mauritius	5 / 10	0 / 10	-	[4], [2]
Mexico	0 / 10	0/ 5 / 10	10	[4], [32]
Moldova	15	0 / 15	-	[26]
Mongolia	5 / 15	0 / 10	5	[4], [2]
Montenegro	10 / 15	15	10	[1]
Netherlands	5 / 15	0 / 10	-	[4], [33]
New Zealand	15	10	10	
Nigeria	12,5 / 15	12,5	12,5	[4]
Norway	0 / 5 / 15	0 / 10	-	[34], [28]
Pakistan	15	0 / 15	0 / 15 / 20	[35], [36]
Philippines	10 / 15	0 / 10	15	[4], [20]
Poland	0 / 10	0 / 5	5	[4], [20]
Portugal	15	15	10	
Romania	5 / 15	0 / 10	5	[1], [20]
Russia	10	0 / 10	-	[20]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Serbia	10 / 15	15	10	[1]
Singapore	15	10	5	
Slovakia	5 / 15	0 / 10	5	[1], [20]
Slovenia	5 / 15	0 / 10	5	[1], [20]
South Africa	5 / 15	0 / 10	-	[1], [15]
Spain	0 / 15	0 / 10	5	[1], [37]
Sri Lanka	15	0 / 10	10	[20]
Sweden	5 / 15	0 / 10	-	[1], [5]
Switzerland	0 / 15	0 / 10	-	[4], [28]
Taiwan	10	0 / 10	10	[45]
Thailand	15 / 20	0 / 10 / 25	5 / 15	[1], [38], [39]
Tunisia	5 / 15	0 / 5 / 10	11	[4], [40]
Turkey	15 / 20	15	10	[4]
Ukraine	5 / 15	0 / 2 / 10	0 / 10	[41], [42], [43]
United Kingdom	0 / 10 / 15	0 / 10	-	[44], [28]
United States	5 / 15	0 / 15	-	[4], [26]
Venezuela	5 / 15	0 / 10	5	[1], [26]
Vietnam	5 / 10 / 15	0 / 10	5 / 10 / 15	[45], [20], [46]

In addition to the jurisdictions included in the below table, Belgium also concluded tax treaties with Algeria, Bahrain, Gabon, Ghana, Hong Kong, Kosovo, Kuwait, Kyrgyzstan, Morocco, Rwanda, San Marino, Senegal, Seychelles, Turkmenistan, United Arab Emirates and Uzbekistan that are in force.

Footnotes	
[1]	Dividends – Unless indicated otherwise, the lowest rate in this column applies when the receiving company holds a participation of at least 25% of the capital (or voting rights) of the distributing company (depending on the applicable tax treaty, additional conditions may apply, such as a minimum holding period).
[2]	Interest – Subject to strict conditions, the 0% rate applies among others, to interest (i) on trade receivables, (ii) on loans granted by financial institutions, or (iii) paid to the other contracting state, a political subdivision or a local authority thereof.
[3]	Royalties – The 3% rate applies to royalty payments for the right to use news reporting. The 5% rate applies to royalty payments for the use or the right to use copyright relating to literary, artistic or scientific work (except for royalties relating to films, movies or television). The 10% rate applies to royalty payments for, among others, computer software, patents and trademarks.



Footnotes	
[4]	Dividends – Unless otherwise indicated, the lowest rate in this column applies if the receiving company holds a participation of at least 10% of the capital (or voting rights) of the distributing company (depending on the applicable tax treaty, additional conditions may apply, such as a minimum holding period). Macedonia: the 5% rate (and not the 0% rate) applies if the receiving company holds a participation of at least 10%.
[5]	Interest – The 0% rate applies to, among others, interest on loans granted by financial institutions (subject to conditions).
[6]	Royalties – The 10% rate applies if the company receiving the royalties holds a participation in the distributing company of more than 50%.
[7]	Dividends – The 5% rate applies if the receiving company holds an (in)direct participation of at least 30% of the capital of the distributing company and has invested at least an amount equivalent to USD500,000 in the distributing company. The 5% rate also applies if the receiving company has invested at least an amount equivalent to USD10 million in the distributing company. The 10% rate applies if the receiving company holds an (in)direct participation of at least 10% of the capital of the distributing company and has invested at least an amount equivalent to USD75,000 in the distributing company. The 15% rate applies in all other cases.
[8]	Interest – The 0% rate applies if interest is paid to an enterprise (except if the receiving entity has a participation of at least 25% in the entity paying the interest).
[9]	Royalties – The 5% rate applies to royalty payments for copyright relating to literary or artistic work including. The 10% rate applies in all other cases.
[10]	Interest – The lowest rate in this column applies to interest on trade receivables (subject to conditions).
[11]	Interest – The 0% rate applies to, among others, interest beneficially owned by a resident of the other contracting state (subject to conditions).
[12]	On 9 November 2021, Belgium and France signed a new tax treaty which is expected to enter into force on 1 January 2023 at the earliest. The new tax treaty foresees the following: ⁘ Dividends – The 0% rate applies if the receiving company holds a direct participation of at least 10% for an uninterrupted period of 365 days in the distributing company. In all other cases, a rate of 12.8% will apply. ⁘ Interest – Interest payments will no longer be taxed in the source country.
[13]	Interest – The 0% rate applies to interest on loans granted by the government. The 10% rate applies to interest on loans granted by financial institutions (subject to conditions).
[14]	Royalties – The 10% rate applies to royalty payments for copyright. The 20% rate applies to royalty payments for trademarks.
[15]	Interest – The 0% rate applies to, among others, interest (i) on loans granted by the government or local authorities, (ii) on trade receivables, and (iii) loans granted by financial institutions not represented by bearer securities.
[16]	Interest – The 0% rate applies, among others, to (i) interest paid to the state and local authorities and (ii) interest related to sales on credit (not paid between affiliated companies).
[17]	Royalties – The 0% rate applies to royalty payments for the right to use copyright (excluding cinematographic films), compute software, patents and know-how.
[18]	Interest – The 5% rate applies to interest on loans from financial institutions, publicly traded securities and sale of equipment on credit. The 15% rate applies in all other cases.



Footnotes	
[19]	Royalties – The 5% rate applies to royalty payments for the use or the right to use industrial, commercial or scientific equipment. The 10% rate applies in all other cases.
[20]	Interest – The 0% rate applies to, among others, interest paid to the government, a political subdivision or a local authority.
[21]	Royalties – The 5% rate applies to royalty payments for the use or the right to use industrial, commercial or scientific equipment. The 10% rate applies to, among others, copyright, software, patents, trademarks and know-how.
[22]	Royalties – The 25% rate applies to royalty payments for trademarks. The 15% rate applies in all other cases.
[23]	Royalties – The reduced rate applies to royalty payments for, among others, patents and trademarks.
[24]	Royalties – The 5% rate applies to royalty payments made to a company. The 10% rate applies in all other cases.
[25]	Interest – The 5% rate applies to interest on loans (not represented by bearer securities) granted by financial institutions. The 10% rate applies in all other cases.
[26]	Interest – The 0% rate applies to interest on, among others, trade receivables and deposits (not represented by bearer securities) with financial institutions.
[27]	Interest – The 10% rate applies to interest on loans granted by financial institutions. The 15% rate applies in all other cases.
[28]	Interest – The 0% rate applies to, among others, interest paid to an enterprise or to the government, a political subdivision or a local authority.
[29]	Interest – The 0% rate applies to interest paid to a company established in the other contracting state, except if the latter company holds a(n) (in)direct participation of at least 25% in the distributing company (in which case the 15% rate applies).
[30]	Interest – The 10% rate applies to interest paid on a loan granted to an enterprise carrying out an industrial activity.
[31]	Interest – The 0% rate applies to interest paid on trade receivables and interest paid to the state of Malta, its central bank or other public institution.
[32]	Interest – The 0% rate applies to, among others, interest paid to a pension fund or to the state of Mexico, a political division thereof or a local authority. The 5% rate applies to interest on loans granted by financial institutions. The 10% rate applies to all other cases.
[33]	Interest – Subject to conditions, the 0% rate applies to, among others, interest (i) paid to an enterprise, (ii) on trade receivables, or (iii) on loans granted by financial institutions.
[34]	Dividends – The 0% rate applies in case the receiving company holds a participation of at least 10% of the capital of the distributing company for an uninterrupted period of 12 months. The 5% rate applies if the beneficial owner is a pension fund (subject to conditions). The 15% rate applies in all other cases.
[35]	Interest – The 0% rate applies to interest paid to the central bank of Pakistan, to interest on loans paid to the government or to a financial institution owned or controlled by the government of the other contracting state.
[36]	Royalties – The 0% rate applies to royalty payments for the use or the right to use copyright (excluding cinematographic films). The 15% rate applies to royalty payments for technical know-how. The 20% rate applies to royalty payments for, among others, trademarks and for the use or the right to use industrial, commercial or scientific equipment.
[37]	Interest – The 0% rate applies, among others, to interest paid on trade receivables and current accounts between financial institutions.



Footnotes	
[38]	Interest – The 0% rate applies to interest paid to the government, a political subdivision, a local authority or the central bank. The 10% rate applies to interest paid to financial institutions. The 25% rate applies in all other cases.
[39]	Royalties – The 5% rate applies to royalty payments for the use or the right to use copyright. The 15% rate applies to royalty payments for, among others, patents, trademarks and know-how.
[40]	Interest – The 0% rate applies to interest on loans granted by the government, a political subdivision, local authority or central bank. The 5% rate applies to interest on loans granted by financial institutions to a company (subject to conditions). The 10% interest rate applies in all other cases.
[41]	Dividends – The 0% rate applies if the receiving company holds a direct participation of at least 20% of the capital of the distributing company. In all other cases, the 15% rate applies.
[42]	Interest – The 0% rate applies, among others, to interest paid to the government, a political subdivision or a public body. The 2% rate applies, among others, to interest paid on loans granted by a financial institution (subject to conditions). The 10% rate applies in all other cases.
[43]	Royalties – The 0% rate applies, among others, to royalty payments for the use or the right to use copyright of scientific work, patents, trademark and know-how. The 10% rate applies to royalty payments for the use or the right to use copyright of literary or artistic work.
[44]	Dividends – The 0% rate applies if the receiving company holds a direct participation of at least 10% of the capital of the distributing company (except if the distributed income is derived from immovable property by an investment vehicle in which case the 15% rate applies (subject to conditions)). The 10% rate applies in all other cases.
[45]	Dividends – The 5% rate applies if the receiving company holds an (in)direct participation of at least 50% of the capital of the distributing company. The 10% rate applies if the receiving company holds an (in)direct participation of at least 25% (but less than 50%) of the capital of the distributing company. The 15% rate applies in all other cases.
[46]	Royalties – The 5% rate applies, among others, to royalty payments for patents. The 10% rate applies, among others, to royalty payments for trademarks. The 15% rate applies in all other cases.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

According to the ordinary statute of limitations for income taxes, the Belgian tax authorities can carry out a tax audit and levy additional taxes for a financial year up to three years as from the first day of the year following the year under review. In the case of fraud, this period is extended to seven years.

In certain specific circumstances, other assessment periods may apply:

- If some under-valuation of assets or over-valuation of liabilities were to be discovered during a tax audit, these "hidden reserves" can be taxed as a profit of the financial year during which they were discovered (unless it can be demonstrated that this under-valuation or over-valuation has already been taken into account in order to determine the company's taxable income);
- The Belgian tax authorities are entitled to delay the adjustment of the amount of tax losses carried forward of a loss-making company until these losses are used (i.e., offset against the taxable basis); and
- A longer (five year) statute of limitations applies to WHT matters.

Also in VAT matters, the ordinary statute of limitations is three years and seven years in the case of fraud.

Belgian tax due diligences are often limited to the financial years for which the ordinary statute of limitations of three years is still open.

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Please explain how the tax affairs of the Belgian Target Entity are handled (e.g., in-house or with the assistance of an external account/advisor). This question concerns all tax matters (corporate income tax, VAT, withholding taxes, wage taxes, regional and local taxes, customs and excise duties).
2	Tax Due Diligence	General	Please provide all correspondence (including requests and notifications, responses, notices, tax recovery) with the tax authorities regarding tax audits and procedures/litigation announced, pending or closed involving the Belgian Target Entity.
3	Tax Due Diligence	General	Please provide a copy of all rulings, agreements, decisions obtained from or concluded with the tax authorities, if any, and a copy of all correspondence with the tax authorities in this respect, if any.
4	Tax Due Diligence	General	For the intercompany transactions involving the Belgian Target Entity please provide: - A brief description of the nature of the transactions (e.g. management services, cost recharges, financing); - Amounts per year for FY19-21 for each type of transaction - A description of the TP methodology applied; - The underlying documentation (e.g. master file/local file, underlying intercompany agreements and benchmarking studies).

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Nº.	Category	Sub-Category	Description of Request
5	Tax Due Diligence	General	Please provide detailed information regarding any restructurings (such as a (cross-border) transfer of assets (including a business or a universality), mergers and/or demergers) carried out by the Belgian Target Entity since its day of incorporation.
6	Tax Due Diligence	General	Has any MDR (DAC6) reporting been made by the Belgian Target Entity and/or its advisers during the Reviewed Period? Please describe monitoring procedures in place.
7	Tax Due Diligence	General	Please specify if the Belgian Target Entity has benefited from any tax measures taken by the government (including payment deferrals) to alleviate the economic consequences of the COVID-19 pandemic and provide the relevant documentation.
8	Tax Due Diligence	General	Please confirm that the Belgian Target Entity does not have, and has never had, a permanent establishment or any other taxable presence in a country other than Belgium.
9	Tax Due Diligence	Corporate income tax	Please provide the annual accounts (internal and external) of the last three financial years (FY19, FY20 and FY21) of the Belgian Target Entity, together with their annexes, amortization schedules and valuation rules.
10	Tax Due Diligence	Corporate income tax	Please provide the corporate income tax returns for FY19-FY20 (including all annexes) of the Belgian Target Entity, and the draft tax provision and/or draft corporate income tax return (including annexes) for FY21.
11	Tax Due Diligence	Corporate income tax	Please provide the FY19-20 corporate income tax assessment notes received by the Belgian Target Entity.
12	Tax Due Diligence	Corporate income tax	Please confirm whether the Belgian Target Entity made any (in)direct tax payments to tax havens during FY19-FY21.
13	Tax Due Diligence	Corporate income tax	Please provide information regarding any assets held in the framework of financial leases (and relating contractual documentation).
14	Tax Due Diligence	Corporate income tax	Did the Belgian Target Entity incur any expenses to the benefit of its shareholders or any other third party?
15	Tax Due Diligence	Corporate income tax	Please provide detailed information in relation to any reimbursement of costs. Please specify whether any “expenses proper to the employer” are paid by the Belgian Target Entity to its employees (and how much if fixed allowance)? Please provide a detailed calculation of the amounts paid out by the Belgian Target Entity in FY19-21 as well as any policy or ruling that would exist in this respect.
16	Tax Due Diligence	Corporate income tax	Please confirm that the Belgian Target Entity is in compliance with applicable rules regarding its obligation to establish and file tax slips (281.50) and statements (325.50) for the fees and commissions paid to employees, directors or (external/internal) service providers during FY19-FY21.

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Nº.	Category	Sub-Category	Description of Request
17	Tax Due Diligence	Corporate income tax	Please provide us with an overview of the fees and commissions paid to foreign service providers by the Belgian Target Entity (including intercompany services) during FY19-21 and a copy of the corresponding filed tax slips 281.50 and summary statements 325.50.
18	Tax Due Diligence	WHT	Please provide a description of the movable income (interest / dividend / royalties) paid or attributed by the Belgian Target Entity during FY17-21, and provide us with the relating withholding tax returns (273 and 273A) and the documentation justifying a potential exemption or reduction of withholding tax.
19	Tax Due Diligence	WHT	Please provide the FY19-22 tax assessments regarding real estate withholding tax of the Belgian Target Entity.
20	Tax Due Diligence	WHT	Please provide information regarding potential constructions/ renovations / substantial improvements of real estate held by the Belgian Target Entity as of its incorporation and proof that such constructions/renovations/improvements have duly and timely been reported to the tax authorities.
21	Tax Due Diligence	VAT	Please specify whether the Belgian Target Entity is part of a VAT group. If so, provide all relevant information regarding the VAT group.
22	Tax Due Diligence	VAT	Please provide monthly or quarterly VAT declarations and VAT listings (including intra-community listings) of the Belgian Target Entity for FY19-22.
23	Tax Due Diligence	VAT	What is the VAT status (i.e. VAT credit or debit position) of the Belgian Target Entity (or, as the case may be, the VAT group) as per 31 December 2021 and at the time of this due diligence?
24	Tax Due Diligence	VAT	Please confirm that the Belgian Target Entity does not hold any foreign VAT registrations or provide information regarding such registrations.
25	Tax Due Diligence	VAT	Please provide information on the VAT regime of the Belgian Target Entity (including their deduction system). If a partial VAT recovery right is applicable, please provide us with the (pro rata) calculation made by the Belgian Target Entity for FY19-22.
26	Tax Due Diligence	VAT	Please confirm that all invoice requirements for Belgian VAT purposes are satisfied and provide a sample of invoices (including invoices with respect to intracommunity delivery of services, imports and exports).
27	Tax Due Diligence	VAT	Which VAT rates (0%, 6%, 21%, VAT exempt) are applicable on the supply of goods and services by the Belgian Target Entity? How is ensured that the Belgian Target Entity applies the correct VAT rates? Please provide a sample of invoices of each type of transaction.
28	Tax Due Diligence	VAT	Did the Belgian Target Entity recover VAT on costs incurred for the benefit of shareholders or other parties?

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Nº.	Category	Sub-Category	Description of Request
29	Tax Due Diligence	VAT	Please confirm that the VAT deduction limitations (e.g. VAT on company cars, mobile phones, restaurant costs, etc.) are correctly applied.
30	Tax Due Diligence	VAT	Please provide a detailed overview of VAT deducted by the Belgian Target Entity at the occasion of the construction, acquisition, transformation, development or renovation of real estate.
31	Tax Due Diligence	VAT	Please provide a reconciliation of the VAT declarations and the turnover of the Belgian Target Entity for FY19-21.
32	Tax Due Diligence	Wage taxes	Please provide a sample of the professional withholding tax declarations (form 274).
33	Tax Due Diligence	Wage taxes	Please provide detailed information regarding any (partial) exemption of professional withholding tax (e.g. for R&D, overtime, night work, etc.) that has been applied by the Belgian Target Entity during FY19-21.
34	Tax Due Diligence	Social security	Please provide us with a certificate issued by the National Social Security office (often via the payroll agency) stating that the social security contributions have been paid up to and including the previous quarter.
35	Tax Due Diligence	Social security	Has the Belgian Target Entity been subject to any visit of the social security authorities? If so, please provide a copy of all documentation related thereto.
36	Tax Due Diligence	Social security	Please confirm that the Belgian Target Entity filed the necessary DIMONA and, where applicable, LIMOSA declarations in due time.
37	Tax Due Diligence	Social security	Please provide us with a copy of the work regulations and a sample of the employment contract(s) and a copy of pay slips for the last 12 months for one of the employees.
38	Tax Due Diligence	Social security	Please provide us with an overview of self-employed personnel and copy of consultancy contracts, management contracts and contracts for similar services.
39	Tax Due Diligence	Social security	Please provide us with a description of the actual working relationship with the self-employed personnel/consultants/freelancers.
40	Tax Due Diligence	Social security	Please provide an overview of all salary components and benefits that are not subject to the ordinary social security contributions for the Belgian Target Entity, together with an explanation of the applicable social security treatment.
41	Tax Due Diligence	Social security	Does the Belgian Target Entity apply any reductions on social security contributions? If so, please provide an overview of the applied reductions and the underlying documentation justifying the application.
42	Tax Due Diligence	Social security	Please provide us with a copy of any individual (contract) or collective incentive or remuneration plan (stock option plans, bonus schemes, CBA 90 plan, share options, bonus agreement/policy, etc.).

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Nº.	Category	Sub-Category	Description of Request
43	Tax Due Diligence	Social security	Did the Belgian Target Entity make any payments to employees leaving the entity that were not subject to social security contributions?
44	Tax Due Diligence	Social security	Are there any employees or self-employed workers who are posted to Belgium and who are not subject to Belgian social security? If so, please provide us with a copy of the relevant A1 form (or similar) and contractual documentation relating to such posting.
44	Tax Due Diligence	Other	Please confirm that the Belgian Target Entities have monitoring procedures in place to check whether a (sub-)contractor engaged to perform works on immovable property (e.g. building, rebuilding, finishing, setting up, restoring, maintaining, cleaning and demolishing of immovable property) or similar works (e.g. central heating, sanitary systems, electrical installations and wall coverings) has no outstanding (tax) debts.
45	Tax Due Diligence	Other	Please provide the FY19-21 tax returns and tax assessments of all local and regional taxes for the Belgian Target Entity as well as all correspondence with the tax authorities in this respect.
46	Tax Due Diligence	Other	Please provide information regarding any other relevant matter in relation to taxes of the Belgian Target Entity which has not been addressed in the previous questions.

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FOR MORE INFORMATION CONTACT:



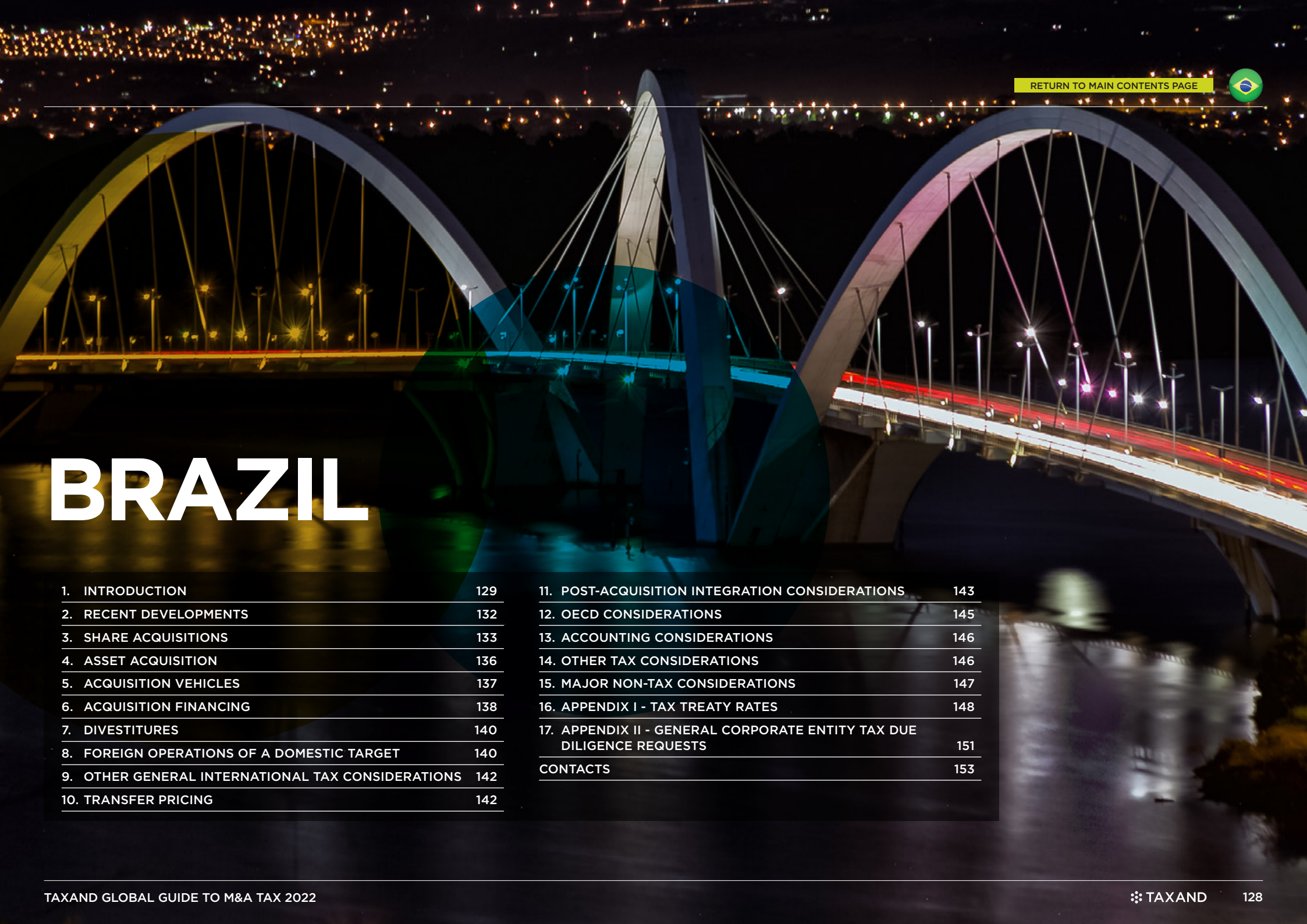
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BRAZIL

1. INTRODUCTION

a. Forms of Legal Entity

There are several types of legal entities in Brazil, the most common ones being the Limited Liability Company ("Limitada" or "Ltda.") and the Corporation ("Sociedade Anônima" or "S/A"). Limitadas used to require at least two shareholders. More recently, the Brazilian Civil Code was amended to allow the incorporation of Limitadas with one or more quotaholders.

Apart from the entities mentioned above, there are also the "Limited Liability Individual" entities, which are established by one individual or legal entity.

Lastly, there is also a "Silent Partnership" entity ("SCP"), which has no legal relevancy on its own and is formed by the ostensible partner, who is responsible for performing the activities of the SCP, and the silent partner, who is not visible to third parties.

Brazilian legal entities incorporated under any of these forms are normally subject to the same domestic tax treatment. However, there may be differences regarding the application of tax rates and/or tax calculation bases, depending on the tax regime adopted by each of these entities.

Limited liability entities are more commonly used, as they are usually straightforward to incorporate, requiring less formalities if compared to Corporations.

Non-resident entities investing in Brazil must register with the Brazilian Central Bank and obtain a Brazilian taxpayers code - Federal Taxpayers' Registry for Corporate Entities ("Cadastro Nacional de Pessoa Jurídica" – CNPJ/MF). In addition, foreign shareholders must have a Brazilian legal representative.

As indicated previously, Limitadas do not require a minimum capital, except in a few specific cases.

b. Taxes, Tax Rates

Brazilian taxes can be imposed at the Federal, State and Municipal levels. The Federal District encompasses State taxes. The most common taxes are the following:

i Federal Taxes/Contributions:

Corporate Income Taxes – CIT:

- Corporate Income Tax ("Imposto de Renda de Pessoa Jurídica, IRPJ": levied at a nominal 15% rate, plus a surcharge of 10% on annual taxable income exceeding BRL 240,000; and
- Social Contribution on Net Income ("Contribuição sobre o Lucro Líquido, CSLL"): levied at a nominal 9% rate.
- The combined nominal CIT rate in Brazil is 34%.
- Taxpayers may opt between two different regimes for CIT calculation (depending on certain requirements and specificities): i) the Actual Profits Method, "Lucro Real"; and ii) the Presumed Profits Method, "Lucro Presumido".

- Under the Actual Profit Method, the IRPJ/CSLL computation can be performed on an annual or quarterly basis, at the election of the taxpayer. The calculation basis considers the book results before income taxes and certain adjustments (add-backs and deductions) according to the relevant legislation (e.g. unnecessary expenses, such as punitive fines, which may be considered as a non-deductible expenses for CIT purposes). This regime allows the use of tax losses (carried forward indefinitely) up to 30% of the taxable profit generated in a given year. Non-operational tax losses must only be offset with non-operational taxable gains (the 30% limitation also applies).
- The Presumed Profit Method is calculated on a quarterly basis and corresponds to different percentages applied over the company's gross revenues. These percentages are established according to the type of activity developed by the company (e.g. 8% for IRPJ and 12% for CSLL in the sale of goods, and 32% for both IRPJ and CSLL on the rendering of services. Companies under the Presumed Profits Method cannot have annual gross revenues, earned in the previous taxable year, above BRL78 million (approximately USD15 million).
- The Employees' Profit Participation Program ("PIS") and the Contribution for Social Security Financing ("Cofins") are levied on monthly gross revenues, as follows:
  - Under the non-cumulative method: combined tax rate of 9.25%, with the possibility to register PIS and Cofins credits on the acquisition of inputs (goods and services), subject to certain requirements stated in the legislation. These credits can be offset against PIS/Cofins due on subsequent transactions, or against other Federal taxes (in specific situations stated in the legislation).
  - Under the cumulative method: combined tax rate of 3.65%, without the possibility to register and use credits on the acquisition of inputs.
  - PIS and Cofins are also levied on financial revenue (only under the non-cumulative method) at the combined rate of 4.65%, with a few exceptions (hedge revenues are subject to a 0% PIS and Cofins rate).
  - Lastly, these taxes are also levied on the importation of goods and services, at the combined rate of 9.25% (imported services) and 11.75% (imported goods).
- Contribution for Intervention in the Economic Domain ("CIDE"): levied on payments, credits, use or remittances made by a Brazilian source for royalties, license and technical services provided by non-residents. The CIDE is applied at a 10% rate on the amount credited / paid. This tax is normally deductible for Brazilian CIT purposes.
- Tax on Financial Transactions ("IOF"): levied on foreign exchange transactions, on loans, credit operations and securities transactions. Tax rates vary according to the transaction considered. Foreign exchange transactions are subject to a standard 0.38% rate, but there are other specific rates stated in the Brazilian legislation.
- Withholding Income Tax ("IRRF"): levied on payment, credit, use and remittance of various funds, such as interest, services fees and royalties. The general tax rate is 15% (increased to 25% if recipient is located in a tax haven jurisdiction, for Brazilian tax purposes). The IRRF is due by the non-resident beneficiary and withheld by the Brazilian paying source. Double Tax Treaties ("DTTs") signed between Brazil and other countries may limit the IRRF rate on certain remittances. The application of DTTs would need to be analysed in view of specific facts and circumstances. The IRRF may be creditable for the non-resident beneficiary, subject to further analysis of the domestic legislation.
- Federal Excise Tax ("IPI"): levied on the manufacturer of goods at the time of sale, or on the importer of goods upon customs clearance. It is a non-cumulative tax based on "ad valorem" rates according to the classification of the product under the Harmonised Tariff Schedule. IPI rates are established according to the degree of necessity of the product (e.g. cigarettes and alcoholic beverages are subject to higher rates). IPI credits calculated on the acquisition of inputs can be used to offset IPI due on subsequent transactions.

- Importation Tax ("II"): levied on the importer of goods upon customs clearance. It is a cumulative tax based on "ad valorem" rates according to the classification of the product under the Harmonised Tariff Schedule. II rates can be reduced in certain operations performed between countries that are part of Mercosur.
- Social Security Contribution ("INSS"): levied on the employer at a standard 20% rate applied on the total of employees' remuneration indicated on the payroll.
- Severance Indemnity Fund ("FGTS"): paid by the employer on an individual employee's account, at the rate of 8% of employee's remuneration indicated on the payroll.

ii State Taxes:

- Value added tax on sales and services ("ICMS"): levied on the circulation of goods and on the rendering of interstate and inter-municipal transportation services, communication services and on the supply of energy.
  - Internal transactions: general rates range between 17% and 19% (the rate can be increased to 25% in certain cases (e.g. communication services), depending on the nature of goods being transacted, origin and destination of the transaction, amongst other aspects.
  - Interstate transactions: rates range between 4% and 12%.
  - This tax is also levied on imports of goods.
  - Still, it is important to note that several states grant ("ICMS") incentives for legal entities operating in their respective territories. In certain situations, the grant of the incentives is conditioned to the observation of certain commitments by the taxpayers, such as the ones consigned in the Complementary Law 160/2017 with stipulated period. The evaluation of the applicable tax consequences depends on a case by case analysis.
- Tax on Transmission of Property "Causa Mortis" and Donation ("ITCMD"): levied on donations and inheritances. Tax rates vary from State to State, ranging from 4% to 6%.
- Vehicle property tax; levied on vehicle property. Tax rates may differ from state do state and the type of vehicle (IPVA).

iii Municipal Taxes:

- Service Tax ("ISS"): levied on gross revenues deriving from services listed by the Federal Government and by the Municipalities. Tax rates vary from 2% to 5%, depending on the Municipality and type of service considered. The definition of the municipality entitled to charge the ISS depends on the adequate understanding of the transaction (nature of the services) and domicile of the parties. ISS is also levied on non-resident service providers, withheld by the Brazilian paying source at the same rates (from 2% to 5%). Exports of services are ISS exempt in case their results are verified abroad (some controversy lies in the concept of 'result of the service').
- Immovable Property / Real Estate Transfer Tax ("ITBI"): levied on the transfer of real estate properties. Tax rates may differ from city to city, however, they usually vary between 2% and 6%.
- Tax on Urban Property ("IPTU"): levied on real estate property. Tax rates may differ from city to city, however, they usually range between 0.7% up to 2%.

iv Tax ancillary obligations:

- Brazil has an extensive list of tax ancillary obligations, including numerous tax returns and electronic frameworks. The Public Digital Bookkeeping System ("SPED") unifies the Brazilian taxpayer's commercial and tax records.
- Given the complexity of the Brazilian tax ancillary obligations, further guidance and detailed analysis on a case by case is recommended, in order to meet the compliance procedures established in the tax legislation.
- The Brazilian tax authorities have, in general terms, a 5 year statute of limitation period to audit and assess taxpayers in the Country.

2. RECENT DEVELOPMENTS

a. Brazilian Tax Reform

One of the most recent and relevant tax developments in Brazil is the formal bill presented by the Federal Government proposing a Tax Reform which would result in the overall simplification of the Brazilian tax system, especially for taxes related to the business activity of companies located in Brazil. For example, one of the primary proposals of the reform is to replace various types of taxes levied on goods and services by a single tax commonly known as value added tax ("VAT"). It is also worth mentioning that this new Tax Reform may bring changes to the taxation of dividends for income taxes purposes, which are currently tax exempt.

In summary, the following proposals are being analysed by the Brazilian Congress, as well as some tax changes, as noted below:

- Proposal for Amendment of the Federal Constitution ("PEC") n. 45/2019: proposed by the Brazilian House of Representatives, simplifies the Brazilian tax system introducing a single non-cumulative tax, with uniform tax rate, applied on sales of goods and services called "IBS", along with a selective tax ("IS"), applicable on specific products such as cigarettes.
- PEC n. 110/2019: proposed by the Brazilian Senate, unifies a series of other law projects, introducing the Federal and State IBS tax, the IS and a specific reform related to the corporate income tax.
- PEC n. 128/2019: proposed by the Brazilian House of Representatives and similar to PEC n. 110, including a specific reform related to the Brazilian excise tax ("IPI") and introducing a new tax on financial transactions called "IMF".

Bill of Law n. 3,887/2020: Presented by the Minister of Finance to the Brazilian Congress with the aim of unifying social contributions ("PIS" and COFINS"), creating a new value added tax named "Contribution on Goods and Services", (or "Contribuição sobre Bens e Serviços", "CBS"), at a 12% rate (5.8% for financial institutions, health insurance plans and insurance companies), with a broad credit system related to business activities. The Government's proposal was an attempt to simplify, streamline and give more transparency to the taxation of goods and services for both companies and taxpayers.

Bill of Law n. 2,337/2021: Proposed by the Brazilian House of Representatives, focused on changes to the income tax regulation (e.g. reintroduction of dividend taxation, extinction of the deductibility of interest on net equity, reduction of the nominal corporate income tax rate not harmonised with the dividend taxation, etc.).

It is not possible to exclude the possibility that some of the tax reform proposals may advance in the Brazilian Congress even in 2022, in order to mitigate the economic consequences of the Pandemic and other external factors, as well as to respond to the claims for tax simplification and for Brazil, to have a more tax competitive and internationalised system. Still, it should be noted that in the case changes are approved, they can only take effect in line with the observance of the principle of tax anteriority (i.e. taking effect only in the fiscal year following the date of enactment).

b. Reduction of Tax on Financial Operations ("IOF") rates

As part of the requirements for Brazil to join the OECD, the Government has issued Decree n. 10,997/2022, which modifies Decree n. 6,306/2007 that regulates the IOF. This provision gradually reduces the IOF rate on foreign exchange transactions within the next few years. The objective is to attract foreign capital and facilitate the expansion of the Brazilian market for international trade.

3. SHARE ACQUISITIONS

a. General Comments

A share acquisition implies in the acquisition of participation in a company, with the corresponding assets and liabilities.

The purchase of shares can result in capital gains taxation in Brazil, which is realised by the seller if there is a positive difference between the sales price and the sellers acquisition cost (or basis). If the seller is a Brazilian legal entity, then the capital gains arising from a share sale are subject to the Brazilian corporate income tax at a combined nominal rate of 34%. However, if the gain is realised by a non-resident seller or by a resident individual seller, it is subject to income tax at progressive rates of 15% up to 22.5%. In the case of non-resident sellers, the tax must be withheld by the Brazilian acquiror or by a local representative of a non-resident acquiror, at the same progressive rates.

In addition, it is important to mention that Law n° 11,312/06 provides that a capital gain realised by a non-resident on the sale of quotas of a private equity fund is subject to WHT at the rate of 0%, if certain requirements are met.

With respect to Purchase Price Allocations ("PPA"), for tax purposes, the PPA is important even in the case of a share acquisition in Brazil, because it determines the breakdown of the purchase price on the financial books, which directly impacts the CIT basis.

It is generally accepted for tax purposes that the PPA is determined in accordance with the purchase agreement and accounting regulations that are in line with the IFRS rules. The PPA provides the purchase price allocation and the remaining portion not allocated is considered as "goodwill", subject to tax amortisation, which in most cases result in additional deductions for CIT purposes. As a condition for the tax deduction of the goodwill, a PPA report must be prepared by an independent expert and filed with the Brazilian Federal Revenue Service or the Registry of Deeds and Documents within 13 months. Realisation of the investment (via a merger, for example) is also a requirement to allow tax amortisation, as mentioned above. The deductibility of goodwill and the fair value appointed in the PPA is not allowed in acquisitions of shares performed between related parties.

With respect to the depreciation and amortisation applicable to share acquisitions, currently, the legislation related to goodwill tax amortisation requires that the goodwill amount is provided in a PPA report and determined in accordance with the accounting criteria (Law nº 12,973/2014), which is in line with IFRS rules.

The current tax legislation determines that the price paid in local transactions (involving non-related parties) must be allocated first to the fair value of assets and liabilities, including intangibles and the remaining portion may be allocated to deductible goodwill for tax purposes (based on future profitability).

Tax amortisation of the resulting goodwill is allowed, subject to the maximum limit of 1/60 per month. As a condition for the tax deduction of the goodwill, a PPA report must be prepared by an independent expert and filed with the Brazilian Federal Revenue Service or the Registry of Deeds and Documents within 13 months.

Further, if an intangible is identified in the acquisition process, and recorded on the buyer's financial books according to the PPA, it would be subject to tax amortisation observing its economic useful life and if the asset is considered intrinsically related to the production or commercialisation of goods and services.

The deductibility of goodwill and fair value appointed in the PPA are not allowed in acquisitions of shares entered into between related parties.

b. Tax Attributes

In general terms, tax losses and other tax attributes of a target company may be carried over.

Depending on how the transaction is structured, the buyer may be able to obtain a better tax result by acquiring the relevant shares, instead of acquiring the assets directly. This is because acquiring shares can result in the generation of goodwill (equal to acquisition price that is in excess of net worth and fair value of target's assets) which can lead to a tax deduction for corporate income tax purposes after a merger of the invested entity takes place, along with other requirements. The legislation establishes a set of rules to allow the tax amortisation of goodwill.

c. Tax Grouping

In Brazil, establishments or business units are generally treated as independent taxable entities for purposes of imposing indirect taxes. For corporate taxes and other financial purposes, each Brazilian legal entity (formed by its relevant establishments and business units) is considered on a stand-alone basis. Consolidated tax returns are not allowed in Brazil.

In addition, if the Brazilian entity has subsidiaries abroad, the Brazilian Controlled Foreign Corporation ("CFC") rules introduced by Law nº 12,973/2014 are applicable. This legislation provides for the consolidation (until 2022) of positive and negative adjustments derived from foreign subsidiaries, if certain conditions are met.

d. Tax Free Reorganisations

In general, tax free reorganisations are possible in Brazil when based on book values. However, the characterisation of reorganisations for Brazilian tax purposes is determined on a case by case basis, considering all the relevant facts and circumstances, including economic substance and business purpose.

e. Purchase Agreement

There is no specific format for a share purchase agreement, other than the ordinary commercial conditions typically included in a share/asset sales agreement, in connection with the applicable specific clauses (representations, warranties and indemnities, amongst others).

The purchase agreement cannot determine tax matters or result in any changes to the application of tax law. Any language that contradicts the applicable tax legislation will not be binding.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

Apart from the capital gains taxation mentioned above, there is no Brazilian transfer tax such as stamp duty, registration fee or similar levy on the transfer of shares. However, transfers of shares based on inheritances and donations are subject to the ITCMD, at rates that vary according to the State where the transfer occurs.

g. "Purchase accounting" applicable to share acquisitions

Brazil follows the international accounting standards ("IFRS") and, therefore, the "purchase accounting" methodology is applicable on the acquisition of shares, in order to review the fair value of assets and liabilities of the acquired business/entity.

h. Share Purchase Advantages

Certain tax exemptions are applicable with respect to the capital gains arising from a share sale in Brazil.

For individual taxpayers (residents in Brazil), net gains are exempt from income tax if the transactions performed on the Brazilian stock exchange do not exceed BRL 20,000 per month, or if over the counter transactions (outside the Brazilian stock exchange) do not exceed BRL35,000 per month.

A full exemption is also applied, for individual taxpayers, on the capital gains arising from sales of specific shares issued by small and medium companies on the Brazilian stock exchange, in accordance with Law nº 13,043/2014. It is important to bear in mind that this exemption is only applicable until 2023.

i. Share Purchase Disadvantages

In Brazil, if an employee is granted a "stock option / incentive plan" by the Company, Brazilian tax authorities may potentially consider these shares to be an element of the employee's overall compensation (salary). In that case, individual income tax and social tax would apply at progressive rates up to 27.5% and 14%, respectively.

If the intrinsic benefit of the share plan is considered to be salary and it is processed through the Brazilian company's payroll, a considerable burden of approximately 37% would apply for the local employer company.

This characterisation as salary is particularly likely if the employee receives the shares as a "bonus", such that they do not pay for such shares and do not bear the risk of fluctuations similar to those verified in the stock market. Additionally, the share "bonus" would be treated as a fringe benefit granted by the company, subject to social security contributions and the Employee Severance Indemnity Fund ("FGTS") paid by the employer.

It is important to note that stock plans are a complex subject in Brazil, which has been under the scrutiny of Brazilian tax authorities. Many decisions have been issued by the Brazilian tax authorities at an administrative level dealing with the taxation of stock plans. Therefore, a specific analysis, in view of actual facts and circumstances, is recommended in order to properly characterise the stock plans for Brazilian tax purposes.

4. ASSET ACQUISITION

a. General Comments

As mentioned previously, the sale of assets may generate a taxable capital gain for the seller in Brazil equal to the excess in Brazilian currency of the sales price in relation to the acquisition cost (or basis) of the assets held by the seller. The gain is subject to corporate income taxes with the corresponding combined nominal rate of 34%, for a seller that is a Brazilian legal entity.

If the capital gain is realised by a foreign investor (i.e. the seller is a non-resident), or by a Brazilian resident individual seller, it is subject to income tax at progressive rates of 15% up to 22.5% and would be collected as a withholding tax.

It is also important to note that where an investor acquires assets in Brazil which constitute a trade or business and continues to operate such business following the acquisition, then the acquiror could be liable for potential tax contingencies related to the business / assets being acquired.

b. Tax Attributes

If the acquired assets constitute a going concern or establishment, the buyer may benefit from the use of tax credits and certain other tax attributes, especially those associated with indirect taxes, such as the Excise Tax ("IPI") and the State Value Added Tax ("ICMS").

c. Tax Free Reorganisations

Similar to share acquisitions, tax free reorganisations are possible (resulting in the transaction being based on book values). However, such transactions must be analysed on a case by case basis considering all relevant facts and circumstances, in order to determine if they qualify for such beneficial tax treatment.

d. Purchase Agreement

There is no specific format for a share purchase agreement, other than the ordinary commercial conditions typically included in a share/asset sales agreement.

The purchase agreement cannot determine tax matters or result in any changes to the application of the tax law. Any language that contradicts the applicable tax legislation will not be binding.

e. Transfer Taxes, VAT

Asset deals can be taxed for VAT purposes in Brazil and the recovery of relevant VAT can occur, depending on the applicable legislation, as well as on the relevant facts and circumstances.

VAT taxes can be applied at Federal or State level. At Federal level, PIS and Cofins would be charged, depending on the nature of asset that is being sold (for example, these contributions are not levied on the sale of fixed assets and intangibles).

The IPI is applicable on the transfer/sale of products manufactured or imported by the seller. The IPI paid is creditable by the purchaser.

At State level, the ICMS is also applicable on the transfer/sale of products and the tax paid would become a credit to the purchaser.

If the transaction includes the sale of real estate, at the municipal level, ITBI ("Imposto sobre Transmissão de Bens Imóveis") would be triggered and the buyer would be responsible for paying the tax to the Municipality.

f. Asset Purchase Advantages

Advantages of an asset acquisition include:

- The acquiror usually obtains a step up in the book value of the assets.
- If the acquired assets constitute a going concern or establishment, the acquiror may benefit from the use of tax credits and certain other tax attributes, especially those associated with indirect taxes, such as IPI and ICMS.

g. Asset Purchase Disadvantages

Disadvantages of an asset acquisition include:

- Asset acquisitions tend to result in more burdensome taxation when compared to a share deal (especially regarding Brazilian indirect taxes, IPI, ICMS, PIS, Cofins and ITBI).
- Asset acquisitions may prevent the buyer from acquiring the target's tax losses and other tax attributes.
- Depending on the assets or businesses being acquired, new registrations for tax, labour and other regulatory purposes may be required.
- If the assets being transferred constitute a going concern or establishment, potential tax, legal and labour contingencies related to such asset are normally transmitted to the acquiror.

5. ACQUISITION VEHICLES

a. General Comments

An investment can be held in Brazil by a non-resident directly or through a vehicle company. The use of acquisition vehicles is a common practice in Brazil, but the Brazilian Federal Revenue Service has been increasing scrutiny of operations involving acquisition vehicles deemed to be used with the sole purpose of generating tax benefits, requiring the evidence of "business purpose" and "substantial economic activity".

b. Domestic Acquisition Vehicle

The use of a Brazilian entity to acquire a local target company in principle allows goodwill acquired in the transaction to be amortised and deducted for tax purposes, after the merger of the investment target takes place. However, the amortisation of goodwill is frequently questioned by the Brazilian tax authorities, which look for the motivation of the transaction and whether it has been performed using a domestic vehicle with the sole purpose of generating tax benefits.

c. Foreign Acquisition Vehicle

A foreign vehicle could in theory be used to defer taxation of the ultimate investor in case capital gain is potentially assessed. However, the Brazilian tax authorities can question this type of transaction, in order to investigate the actual purchaser and seller of the investment. If they understand that the transaction lacks economic substance, capital gains taxation may apply in Brazil.

d. Strategic vs Private Equity Buyers

The use of partnerships and joint ventures as acquisition vehicles is generally allowed in Brazil.

Acquisition vehicles are a complex subject in Brazil that demands a detailed analysis and evaluation of actual facts and circumstances, from different angles and with adequate support.

6. ACQUISITION FINANCING

a. General Comments

Financing for acquisitions in Brazil can be carried out via a capital contribution and/or through debt. The foreign capital invested in the country must be registered with the Brazilian Central Bank, ("BACEN"), according to Law nº 4,131/1962.

The remittance of funds to Brazil is commonly performed via bank wire transfers.

b. Equity

Brazilian tax rules do not provide for a specific tax treatment in relation to private equity financed transactions. However, Brazilian legal entities in general can opt for a deductible instrument, so called, Interest on Net Equity ("INE") to remunerate shareholders for the capital invested in companies. INE is calculated by reference to the net equity accounts, considering the official Brazilian long-term interest rate. The Bill of Law n° 2,337/2021 intends to revoke the INE deduction for CIT purposes (still under analysis of the Brazilian Congress).

The upper limit on interest on net equity is determined as the higher of: (i) 50% of the net income for the year, before deduction of the interest on net equity and deduction of the provision for corporate income tax, but after the deduction of the social contribution on net income, and (ii) 50% of retained earnings plus profit reserves.

Although INE payments are considered as a deductible expense for CIT calculation purposes, the Brazilian tax law imposes the withholding income tax ("WHT") at a standard 15% rate (increased to 25% in case of so called "tax haven" jurisdictions for Brazilian tax purposes), for both residents and non-residents.

c. Debt

In general terms, the Brazilian legislation does not impose limitations on the use of debt and the deduction of interest expenses arising from debt facilities with non-related parties is allowed, as long as the transaction is carried out at normal market conditions and such expenses are considered ordinary and necessary for the business activities of the borrower. However, the Brazilian legislation establishes requirements for the deductibility of interest expenses arising from debt operations with related parties, or lenders located in low tax jurisdictions or under privileged tax regimes.

Further, there are thin capitalisation rules in Brazil which must be considered. For interest deductibility purposes, the debt cannot be higher than: (i) two times the amount of the participation held by the foreign lender in the net equity of the Brazilian entity; (ii) two times the net equity of the Brazilian entity (when the non-resident lender does not have participation in the latter); and (iii) 30% of the net equity of the borrower if the lender is located in a low tax jurisdiction or under a privileged tax regime (whether it is a related party or not). These rules also apply to any kind of debt operation where a foreign related party acts as guarantor, co-signatory or intervening party of the debt contract.

Finally, Brazilian Transfer Pricing rules apply on loan transactions, setting forth certain limits regarding the deductibility of interest expenses arising from debt operations with related parties, consortiums and exclusive distributors. There are specific and stricter TP rules for operations carried out with tax havens and privileged tax regimes.

i Debt Pushdowns

Where the acquiror intends to push down the debt used to finance an acquisition, a Brazilian vehicle or holding company is generally used to act as borrower. Following the purchase, this legal entity is typically merged into the acquired operational legal entity. Economic substance and business purpose must be met in such operations.

Other structures may involve (i) back to back loans on the same terms and conditions, or (ii) obtaining a new loan at the level of the acquired company, so that it can pay off the original loan. These structures may be feasible if the entire capital stock of the legal entity is acquired. Other structures may also be feasible, but should be subject to a case by case analysis.

Lastly, it is important to note that Brazil has not implemented BEPS Action 4, which deals with interest and debt.

d. Hybrid Instruments

Hybrid instruments are instruments that can be classified as either debt or equity, as well as instruments that have different natures in different jurisdictions.

In Brazil, the INE is an example of "hybrid instrument" which, as stated above, consists of a deduction available to legal entities for remunerating shareholders for the capital invested, according to the Brazilian long-term interest rate ("TJLP") and considering the limits imposed by the Brazilian legislation in force.

e. Other Instruments

Shareholders can also be remunerated by means of dividend distributions, which are currently exempt from WHT. However, as mentioned above, the proposed bill of Tax Reform under the analysis of the Brazilian Congress resumes the taxation of dividends (CIT and WHT).

f. Earn-outs

Earn-outs are quite common in M&A transactions in Brazil. However, because they are treated as instalments conditional upon a future event, the amount of the earn-out can impact the capital gains calculation and the potential goodwill generated on the transaction, which ultimately impacts the amount of corporate income tax to be assessed.

7. DIVESTITURES

As discussed above, the sale of assets or shares may potentially generate a capital gain taxable to the seller, equal to the excess in Brazilian currency of the sales price in relation to the acquisition cost (or basis) of the disposed shares or assets in the hands of the seller.

When the capital gain is realised by a Brazilian legal entity, it is subject to CIT at a combined nominal rate of 34%. When the capital gain is realised by a Brazilian tax resident individual or non-resident investor, the capital gain is subject to progressive rates ranging from 15% to 22.5%, or 25% if they are resident or domiciled in a so called "tax haven" jurisdiction.

It is important to emphasise that the method for determination of the acquisition cost basis of a non-resident investor or tax resident individual is not completely clear, being subject to different interpretations.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

Brazil follows a worldwide tax system and therefore, income earned abroad is taxed for CIT purposes. Income, profits and gains earned by foreign subsidiaries are taxed in Brazil on an accruals basis and are included on the income tax return.

b. CFC Regime

The Brazilian CFC rules are set forth in Law nº 12,973/2014 and are considered quite complex. Such rules provide that Brazilian entities that earn income abroad (except income deriving from the exportation of goods and services), are subject to CIT under the "Actual Profits" regime (i.e. profits of directly or indirectly controlled foreign companies and branches of a Brazilian entity are taxed in Brazil). Such taxation is applied at the combined income tax rate of 34% on profits earned abroad every 31 December of the calendar year in which they were recorded.

There is a different tax treatment applied to controlled entities (foreign profits taxed on an accrual basis) as opposed to affiliated entities (foreign profits taxed on a cash basis).

Foreign profits earned by controlled entities can be consolidated until FY 2022, if certain requirements stated in the legislation are met.

Losses may be offset only against the profits earned by the same subsidiary or branch located abroad.

c. Foreign branches and partnerships

Foreign branches and partnerships receive the same tax treatment as other Brazilian subsidiaries entities abroad (affiliates and controlled).

d. Cash Repatriation

There are various ways of cash repatriation, summarised as follows:

- Dividends: currently the remittance of dividends is exempt from WHT (the Bill of Law n° 2,337/2021 foresees the reintroduction of dividend taxation, even on remittances to non-resident beneficiaries).
- Capital reduction: a capital reduction may not generate a capital gain if it is smaller than the acquisition cost registered with BACEN (The Brazilian Central Bank) considering the historical amounts invested in Brazilian currency. However, if there is a positive difference between the capital reduction and the acquisition cost, a capital gain would be triggered and it would be subject to CIT at progressive rates from 15% to 22.5%.
- Interest on Net Equity ("INE"): the remittance of INE abroad is subject to WHT at the rate of 15% (increased to 25% in case of so called, "tax haven" jurisdictions) and the expense is considered as a deductible cost in the Brazilian entity (please note that INE may be terminated as per the Bill of Law n° 2,337/2021).
- Interest: the remittance of interest abroad is subject to WHT at the rate of 15%, or 25% if the recipient is resident in a so called "tax haven" jurisdiction.
- Services and royalties: as a general rule, remittances abroad for services and royalties are subject to WHT at the rate of 15% (25% if the receiver is resident in a so called "tax haven" jurisdiction). However, depending on the nature of services and other circumstances, the tax rate may be reduced under a double tax treaty.
- As stated in Article 26 of Law n° 12,249/2010, the amounts paid, credited, delivered, used or remitted under any title, direct or indirectly, to beneficiaries located in a jurisdiction with favoured taxation or under privileged tax regime will not be considered deductible for Brazilian CIT purposes, except if the following features are cumulatively observed: a) the effective beneficiary of the income is identified; b) the foreign beneficiary has proven operational capacity to perform the transaction; and c) the operation is adequately documented.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

The Brazilian legislation created the so called "segregate estate" to separate the assets of a real estate developer from the property that has been used for a specific purpose, in order to protect investors in real property. Once the segregate estate is formed, the assets, rights and obligations which constitute the estate, even though they formally belong to the patrimony of an individual or legal entity, remain legally separate from the latter, receiving a different legal treatment.

The domestic tax legislation also provides for a special tax regime applicable to real estate developers, in which the corporate member (developer) is subject to a payment equivalent to 4% of the monthly revenues received (Law nº 12,844/2013), which corresponds to an unified monthly payment of the following federal taxes and contributions: IRPJ, CSLL, PIS and COFINS.

The unified payment of taxes is final and does not give the right of refund or compensation. Each entity subject to the special regime has its own unified collection.

Additionally, it is important to mention that companies whose main activities involve the purchase and sale of real estate properties are subject to the ITBI. As mentioned before, this is a municipal tax levied on the acquisition of real estate. The rate varies between 2% and 6%, and is calculated based on the market value of the property or its appraised value, whichever is higher.

b. CbC and Other Reporting Regimes

Brazil has adopted the country by Country ("CbC") report from BEPS Action 13, through Normative Instruction nº 1,681/2016.

In summary, the Brazilian legislation sets forth that the CbC report which should be filed with the corporate income tax report, on an annual basis, being mandatory for the parent entity of a multinational group.

10. TRANSFER PRICING

Brazilian Transfer Pricing rules generally follow the arm's length principle in the sense that they are aimed at determining prices for associated enterprises to which independent parties would have agreed had they engaged in similar transactions.

However, whereas the OECD Transfer Pricing Guidelines provide for a functional and comparative analysis, in order to achieve independent prices, Brazilian Transfer Pricing rules rely mostly on fixed markup rates which are explicitly prescribed in the legislation.

The Brazilian Transfer Pricing rules were enacted on 27 December 1996, through Laws 9,430 and 9,959/2000 (generally applicable to all calendar years before 2013), as well as Laws 12,715/2012 and 12,766/2012 (generally applicable to all calendar years starting on or after 1 January 2013) and also Normative Rulings issued by the RFB. The Brazilian Transfer Pricing legislation stipulates the maximum deductible amounts on the import of goods, services or rights and the minimum export prices for goods, services or rights to related parties, consortiums and exclusive distributors. There are specific and stricter TP rules for operations carried out with so called "tax havens" and privileged tax regimes.

On imports, the Transfer Pricing rules provide the maximum amount that is tax deductible for corporate income taxation purposes. The difference between the effective price of the transaction and the transfer price will be considered non-deductible for Brazilian corporate income tax purposes, regardless of the criteria adopted by the Brazilian company.

For Brazilian tax purposes, an expense is considered deductible if it is related to the ordinary business of the company and if it is deemed necessary to maintain the source of income of the entity.

As of 2010, the scope of expenses not related to the ordinary business of the company was extended to include interest on debts whose amounts do not comply with a debt/equity ratio of 2:1, or 1:0.3, when paid to related parties abroad or parties located in so called "tax haven" jurisdictions or privileged tax regimes. Brazilian Thin Cap rules are applied cumulatively with TP rules.

There are four calculation methods for imports and five methods for exports concerning commercial and service transactions. The import methods are: (i) PIC (comparable uncontrolled price method); (ii) PRL (resale price less markup); (iii) CPL (production cost plus markup); and (iv) PCI (quoted price for imports). PCI is used only for commodity transactions.

The export methods are: (i) PVEx (sale price for exports method); (ii) PVA (wholesale sales price in the destination country, less profits method); (iii) PVV (retail sales price in the destination country, less profits method); (iv) CAP (cost of acquisition or production, plus taxes and profits method); and (v) PECEX (quoted price for exports).

Lastly, compliance with these rules is very important, since the tax authorities are very active and tend to question the transfer pricing calculations performed by Brazilian taxpayers if they are not in line with applicable rules, or if the supporting documentation is unreliable.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities and Instruments

There is no Brazilian legislation dealing with hybrid entities or consideration of hybrid instruments in post-acquisition integration.

b. Principal/Limited Risk Distribution or Similar Structures

There is no specific legislation for principal or limited risk distribution. See above the discussion regarding the Brazilian Transfer Pricing rules.

c. Intellectual Property

The Brazilian legislation does not provide for specific rules on the licensing of intellectual property. However, there are specific local rules regarding the rights and obligations related to intellectual and industrial property, as well as the requirement of proper documentation formalising the registry of intangible property with the Brazilian National Institute of Industry Property ("INPI").

The remittance of royalties to a beneficiary abroad is generally subject to WHT at the standard rate of 15% (25% for entities established in so called "tax haven" jurisdictions) and to the CIDE, at the rate of 10%. IOF is also applied on the remittance of the royalty funds abroad.

Since the Brazilian Transfer Pricing rules do not follow the international standards adopted by OECD Guidelines, the remittance of royalties abroad is not subject to such rules, having a specific deductibility methodology for CIT purposes.

In this regard, if the royalties are considered as a necessary and ordinary expense for the Brazilian entity, they may be deducted for CIT purposes, subject to a limit varying from 1% up to 5% on net revenue (directly linked with the patent, technology or technical assistance), according to the royalties' nature and the applicable legislation. Royalties exceeding these thresholds are not considered a deductible expense in the CIT calculation basis.

The Brazilian legislation states that royalties paid by a Brazilian subsidiary to its direct shareholder are not considered deductible for CIT purposes.

d. Special Tax Regimes

Many incentives and special tax regimes are provided for under Brazilian Federal and State tax legislation. It is worth mentioning the following tax incentives:

- The "R&D tax incentive" consists of a volume based R&D tax allowance, in which 60% to 80% of expenses related to research and development of technology are considered deductible for CIT purposes, depending on certain circumstances.
- This deduction affects the CIT calculation basis, at the combined nominal rate of 34%. It is important to bear in mind that in case of insufficient tax liabilities, unused claims cannot be refunded or carried forward.
- The "Manaus Free Trade Zone (ZFM)" provides a set of tax benefits on imports and local sourcing of inputs used in industrial facilities located in this region. The applicable legislation states different tax reductions and exemptions on many taxes (II, IPI, IRPJ, CSLL, ICMS, PIS and COFINS).
- The "REIDI" is a special tax regime for infrastructure projects. Under REIDI regime the acquisition, import and leasing of goods and services applied to such projects are suspended for PIS and COFINS (taxes on gross income) purposes. Also, interest paid in relation to debentures issued to finance infrastructure projects may benefit from a WHT reduction.
- There are specific tax incentives (mainly focused on CIT reductions) granted to companies that develop activities in the North and Northeast regions of Brazil (known as SUDAM and SUDENE).

12. OECD CONSIDERATIONS

Brazil is engaged in the OECD discussions and among the various rules already existing in the Brazilian tax legislation framework, some directives from the BEPS initiative are still to be formally adopted, for example, a formal indication of compliance with BEPS Action 5 in the reasoning for the issuance of Normative Instruction 1,634/2016 (and subsequent amendments), regarding the disclosure of beneficial ownership.

Further, in accordance with BEPS Action 13, in October 2016 Brazil has signed the Multilateral Competent Authority Agreement on the Exchange of country by country reports ("CbC MCAA") and in December 2016, the Brazilian Revenue Service has published Normative Instruction 1,681/2016 to implement the annual country by country ("CbC") reporting in Brazil, as of calendar year 2016.

Brazil has taken some measures to implement BEPS Action 6, such as the adjustments to the Protocol of the Double Tax Treaty signed with Argentina, to include the limitation on benefits ("LOB") and anti-avoidance clauses. Besides that, the tax treaties recently signed with Switzerland and Singapore (not yet in force in Brazil), already contain LOB and anti-avoidance clauses.

The domestic legislation, especially Law n. 12.249/2010 and Normative Instruction n. 1.154/2011 issued by the Brazilian Revenue Service, which sets forth thin capitalisation rules in Brazil, are already in accordance with BEPS Action 4. The comments made with respect to BEPS Action 4 are applicable to BEPS Action 3, due to the fact that the Brazilian Law n. 12.973/2014 addressed the relevant issues regarding controlled foreign corporation rules ("CFC").

As mentioned previously, Brazil does not follow OECD Transfer Pricing Guidelines and apply a specific set of rules stated in Law n. 9.430/1996.

In relation to BEPS Action 14, Brazil has regulated the Mutual Agreement Procedure ("MAP") through Normative Instruction n. 1.846/2018. In addition, Brazil has already used similar clauses in some of its double tax treaties. Regarding BEPS Action 15, Brazil participated in the ad hoc Group for the development of the multilateral instrument, but the expected timing for its implementation is yet unknown.

Finally, it is important to note that Brazil has applied back in May, 2017 to become a member of the Organisation for Economic Co-operation and Development ("OECD"). The process is still ongoing with no specific timeline for conclusion. On 25 January 2022, the OECD approved the beginning of negotiations to the full ascension of Brazil into the organization.

13. ACCOUNTING CONSIDERATIONS

a. Combinations

As discussed above, Law nº 11,638/2007 modified relevant aspects of Law nº 6,404/1976 in order to align the Brazilian GAAP with the international standards set forth by IFRS.

Accordingly, the Brazilian rules are consistent with international accounting standards. The business combination accounting rules set forth in IFRS 3 are in line with the corresponding CPC 15 in Brazil.

b. Divestitures

The same considerations mentioned above apply to divestitures.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

As discussed above, Brazilian entities can distribute dividends based on the existence of profits accrued on net equity and interest on net equity ("INE") can be distributed considering the existence of accumulated profits or profits accrued during the calendar year, observing the related requirements set forth in the Brazilian tax legislation.

b. Substance Requirements for Recipients

There is no formal Brazilian legislation defining a "substance requirement" for recipients. However, as mentioned previously, tax authorities usually analyse certain aspects, such as: (i) whether payments are made to a non-resident company located in a so called "tax haven" jurisdiction ("black listed") or in countries with privileged fiscal regimes; and (ii) the existence of economic substance.

This "economic substance" concept can be understood as the analysis on whether the holding company is deemed to have "substantial economic activity", presenting in its country of residency an operational capacity suitable to its purpose. This can be evidenced, among other factors, by the existence of skilled employees in sufficient number and adequate facilities for management and effective decision making relating to: (i) the development of activities aimed at obtaining income derived from the company's assets, and (ii) the management of the equity stake aimed at obtaining income from the distribution of dividends and capital gains.

c. Application of Regional Rules

According to the above mentioned topic relating to OECD Aspects (item XII), Brazil has already implemented a few rules in relation to BEPS Actions (CFC rules, thin capitalisation rules, and avoidance of base erosion and profit shifting, among others).

It is worth mentioning the Brazilian efforts to implement treaty anti-abuse measures, through modifications in an existing tax treaty network and adoption of current practices regarding the negotiation of new treaties (inclusion of limitation on benefits, ("LOB") and anti-avoidance clauses).

d. Tax Rulings and Clearances

Tax rulings are important in Brazil, since they are binding and broadly followed by taxpayers and tax authorities. However, rulings cannot innovate in tax matters, creating new rules, but are limited to clarify and specify the rules already contained in the Brazilian legislation. As the applicable legislation does not predict an specific timeline for the response by the tax authorities with regards to tax rulings, a case by case analysis is necessary to evaluate the corresponding timing expectations.

15. MAJOR NON-TAX CONSIDERATIONS

Law 4.131/1962 is the basic legislation concerning the regulation of foreign capital exchange. It applies to any capital that entered the country in the form of foreign currency, goods and services.

According to the Brazilian legislation, foreign capital in Brazil must be registered with the Brazilian Central Bank ("BACEN"), at the electronic declaratory register / foreign investment module, (RDE-IED"). Brazilian capital and other assets held abroad must also be declared to the BACEN on an annual basis. Other transactions that must be declared in the BACEN system are: financial operations such as loans, long term import financing, technical assistance and royalty contracts, and portfolio investments.

Law n° 14,286/2021 introduced a new foreign exchange legal landmark in Brazil, with new rules aiming to simplify the foreign exchange market, along with foreign and Brazilian capital flows, exemption from registration with the Central Bank of certain contracts, amongst other measures. This new law will enter into force one year after its publication, which took place on 30 December 2021.

16. APPENDIX I - TAX TREATY RATES

Profits and dividends distributed to resident or non-resident beneficiaries (individuals and/or legal entities) are generally not subject to WHT (please refer to our comment above regarding the Tax Reform bill under analysis of the Brazilian Congress, which includes a proposal to resume taxation of dividends).

As mentioned previously, the WHT rate applicable on remittances abroad for services, royalties and interest rendered by non-resident companies or individuals is generally 15%, levied on the amount paid, credited, used or remitted abroad. If payments are made to a non-resident company located in a so called "tax haven" jurisdiction (black listed) or in countries with privileged fiscal regimes (grey listed), then the amount is subject to WHT at the rate of 25%.

The WHT rate can be reduced with the application of certain double tax treaties signed between Brazil and other countries (to be analysed on a case by case basis). The Brazil Double Tax Treaty network in force includes the following countries:

Argentina	Czech Republic	India	Mexico	Russia	Trinidad and Tobago
Austria	Denmark	Israel	Netherlands	Slovak Republic	Turkey
Belgium	Ecuador	Italy	Norway	South Africa	Ukraine
Canada	Finland	Japan	Peru	Spain	United Arab Emirates
Chile	France	Korea, Republic of	Philippines	Sweden	Venezuela
China, People's Republic	Hungary	Luxembourg	Portugal	Switzerland	

There are other DTTs signed between Brazil and Uruguay, Singapore and Paraguay, which are not yet in force in Brazil.

Jurisdiction	Dividends % [1]	Interest % [2]	Royalties % [3]	Footnote Reference
Argentina	0	15	10 / 15	
Austria	15	15	10 / 15 / 25	[4]
Belgium	10 / 15	10 / 15	10 / 15 / 20	
Canada	15	10 / 15	15 / 25	
Chile	10 / 15	15	15	
People's Republic of China	15	15	15 / 25	
Czech Republic	15	10 / 15	15 / 25	
Denmark	25	15	15 / 25	
Ecuador	15	15	15 / 25	
Finland	10	15	10 / 15 / 25	[4]
France	15	10 / 15	10 / 15 / 25	[4]
Hungary	15	10 / 15	15 / 25	
India	15	15	15 / 25	

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Jurisdiction	Dividends % [1]	Interest % [2]	Royalties % [3]	Footnote Reference
Israel	10 / 15	15	10 / 15	
Italy	15	15	15 / 25	
Japan	12.5	12.5	12.5 / 15 / 25	[4]
Republic of Korea	10 / 15	10 / 15	10 / 15 / 25	
Luxembourg	15 / 25	10 / 15	15 / 25	
Mexico	10 / 15	15	10 / 15	
Netherlands	15	10 / 15	15 / 25	
Norway	15	15	15 / 25	
Peru	10 / 15	15	15	
Philippines	15 / 25	10 / 15	15 / 25	
Portugal	10 / 15	15	15	
Russia	10 / 15	15	15	
Slovak Republic	15	10 / 15	15 / 25	
South Africa	10 / 15	15	10 / 15	
Spain	10 / 15	10 / 15	10 / 15	
Sweden	25	25	25	[4]
Switzerland	10 / 15	10 / 15	10 / 15	
Trinidad and Tobago	10 / 15	15	15	
Turkey	10 / 15	15	10 / 15	
Ukraine	10 / 15	15	15	
United Arab Emirates	5 / 15	10 / 15	15	
Venezuela	10 / 15	15	15	

Footnotes:	
1	Dividends - The remittance of dividends from Brazil to abroad is currently not subject to taxation in Brazil, so the tax rate limitation indicated above is not considered. Please note that a proposal of tax reform under analysis of the Brazilian Congress may re-introduce the taxation of dividends in Brazil. In this case, the tax rate limitation provided by the DTTs shall become relevant for discussion. The Double Tax Treaties (DTTs) signed between Brazil and other countries generally apply a 10% or 15% rate if the beneficial owner of the funds is a company that directly holds a given minimum participation in the company that pays the dividends. For all other cases a 15% or 25% rate would apply.
2	Interest - Most treaties consider the general rate of 15% for interest payments, while a 10% rate is considered for specific loans (e.g. acquisition of capital goods with minimum paying term).
3	Royalties - Most DTTs signed between Brazil and other countries limit to 10% the payment of royalties related to the use / right to use cinematographic films, films or tapes for television or radio broadcasting and any copyright of literary, artistic, or scientific work produced by a resident of a contracting state. Royalties related to the use / right to use trademarks are generally subject to a 25% (or 15%) rate. The general 15% (sometimes 10%) is applied for other types of royalties.
4	Currently, the only DTTs signed with Brazil that do not characterize technical services/assistance under the royalties article are: Brazil/Finland DTT, Brazil/Austria DTT, Brazil/France DTT, Brazil/Japan DTT, and Brazil/Sweden DTT. This last one was reviewed and the new Protocol, when it enters into force, will treat technical services/ assistance under the royalty article. The referred treaties support the understanding that withholding income tax ("WHT") would not apply on service payments made from a Brazilian source, where no permanent establishment of the foreign beneficiary is identified in Brazil (subject to a specific analysis on a case by case basis).

Brazil has recently signed DTTs with Uruguay, Singapore and Paraguay, however these treaties are not yet valid in Brazil. There is no specific timeline for the treaties to come into force. Remittances to other non-treaty jurisdictions generally have a WHT rate limited to 15%.

Remittances made to so called "tax haven" jurisdictions (as per the list provided by the Brazilian tax authorities) have a WHT rate increased to 25%.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

In order to incorporate and acquire a corporation or any other type of legal entity in Brazil, foreign shareholders must appoint an attorney-in-fact resident in Brazil, through the issuance of a power of attorney, duly apostilled in the foreign country and translated by a sworn translator registered by the Brazilian Board of Trade. This is the main relevant documentation that a foreign shareholder should provide in order to acquire or incorporate a Brazilian Limitada or S/A.

The Brazilian tax authorities have a five year statute of limitations period to audit and assess taxpayers in the Country.

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Tax contact person available to discuss income and non-income tax matters.
2	Tax Due Diligence	General	A current organization chart, including all entities by full legal name, jurisdiction, date and place of formation, entity type, class of shares, and ownership percentages. Include a full history of each entity in the structure.
3	Tax Due Diligence	General	A summary of all audits (including status) for any tax, including federal, state, and local. Provide all significant audit correspondence.
4	Tax Due Diligence	Financial Statement	Balance sheet and P&L, for the past 5 years and on a monthly basis, when applicable.
5	Tax Due Diligence	Corporate Income Tax (IRPJ and CSLL)	Tax calculation–Corporate Income Taxes calculation spreadsheet, for the past 5 years and on a monthly basis, when applicable.
6	Tax Due Diligence	Corporate Income Tax (IRPJ and CSLL)	DIPJ / ECF–Income tax return (DIPJ) or Digital Accounting and Fiscal Register (ECF) (.txt file), for the past five years and on a monthly basis, when applicable.
7	Tax Due Diligence	Corporate Income Tax (IRPJ and CSLL)	Transfer pricing–Transfer pricing control, for the past 5 years and on a monthly basis, when applicable.
8	Tax Due Diligence	Corporate Income Tax (IRPJ and CSLL)	Royalties contracts, for the past 5 years and on a monthly basis, when applicable.
9	Tax Due Diligence	Corporate Income Tax (IRPJ and CSLL)	IRPJ and CSLL payments receipts for the past 5 years and on a monthly basis.
10	Tax Due Diligence	Federal VAT (PIS and Cofins)	EFD-Contribuições–EFD- Contribuições, for the past 5 years and on a monthly basis, when applicable.
11	Tax Due Diligence	Federal VAT (PIS and Cofins)	Withholding taxes–Withholding statement of IR, CSL, PIS e COFINS, for the past five years and on a monthly basis, when applicable.
12	Tax Due Diligence	Federal VAT (PIS and Cofins)	Declaration of Federal Tax Credits and Debits (DCTF), for the past five years and on a monthly basis, when applicable.
13	Tax Due Diligence	Federal VAT (PIS and Cofins)	PIS and Cofins payments receipts for the past five years and on a monthly basis.
14	Tax Due Diligence	State VAT (ICMS)	ICMS and IPI–SPED/Sintegra–Electronic files from SINTEGRA or SPED Fiscal (.txt file), for the past five years and on a monthly basis, when applicable.

Nº.	Category	Sub-Category	Description of Request
15	Tax Due Diligence	State VAT (ICMS)	CFOP summary–Input and output transactions summary of the company, for the past five years and on a monthly basis, when applicable.
16	Tax Due Diligence	State VAT (ICMS)	ICMS payments receipts for the past 5 years and on a monthly basis
17	Tax Due Diligence	Municipal VAT (ISS)	Tax book of services' invoice : Tax book to register all services provided, for the past five years and on a monthly basis, when applicable,.
18	Tax Due Diligence	Municipal VAT (ISS)	Payment receipt–ISS payment receipt for each month, for the past five years and on a monthly basis, when applicable.
19	Tax Due Diligence	Tax Litigation	Updated certificates issued by the relevant offices of the Federal, State and Labour courts in the locations where the Company has facilities and offices, in the name of the Company and of its shareholders.
20	Tax Due Diligence	Tax Litigation	Clearance certificates in connection with federal, state and municipal taxes and contributions, in the name of the Company and covering all its establishments.
21	Tax Due Diligence	Tax Litigation	Complete information (date, parties, purpose, count, status, chances of success etc.) concerning pending tax administrative proceedings in which the Company is either plaintiff or defendant, including copies of relevant documents and petitions.
22	Tax Due Diligence	Tax Litigation	Complete information regarding notices, notifications, inspections or investigations made by governmental departments or third parties.
23	Tax Due Diligence	Tax Litigation	Detailed report (date, parties, purpose, count, status, chances of success etc.) on the judicial tax cases in which the Company is either plaintiff or defendant, including copies of relevant documents and petitions.
24	Tax Due Diligence	Tax Litigation	Copy(ies) of the tax settlement(s) requested by the Company, either regarding federal, estate or municipal taxes (e.g. REFIS), if any.
25	Tax Due Diligence	Labor	List of employees and the corresponding remuneration for the past five years.
26	Tax Due Diligence	Labor	Payment receipt–INSS and FGTS payment receipt for each month.

BRAZIL

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Taxand has partnered with Reis, Varrichio e Carrer Sociedade de Advogados ("RVC Advogados") in the production of this Brazilian Chapter of our guide. In this regard, (as is the case for all other chapters within the guide), please note that the content of the Chapter does not represent, either a legal opinion, or specific advice of RVC Advogados on the aspects described in the Chapter. Lastly, the Chapter was prepared based on the legislation in force at the time the Chapter was prepared.



CANADA

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1. INTRODUCTION

a. Forms of Legal Entity

Corporations are the most common form of business organisation in Canada. They have separate legal existence as persons and have the capacity to own property, incur liabilities and carry on business generally. Investors in corporations created under Canadian federal or provincial law ("shareholders") own "shares" of the corporation evidencing their ownership interest in the corporation and do not have an ownership interest in the corporation's property. The liability of shareholders in most corporations is limited, such that shareholders are not exposed to legal liability for the activities of the corporation and risk only the value of their shares in the corporation. Some Canadian provinces also permit the creation of unlimited liability companies ("ULCs") where shareholders are exposed to some degree to liabilities of the corporation. ULCs and limited liability companies are generally treated the same for Canadian tax purposes (ULCs are typically used where U.S. tax planning requires the ability to treat the entity as transparent for U.S. tax purposes).

Partnerships are a different form of entity. Under Canadian law, a partnership requires that two or more persons (the partners) carry on business in common with a view to a profit. Canadian law provides for both general partnerships (where all partners have full liability for the activities of the partnership) and limited partnerships. In a limited partnership, the general partner actively manages the business and has full liability for the activities of the partnership, while the limited partners are not actively involved in the business of the partnership and are not liable for the partnership's activities beyond their investment in the partnership. Partnerships are often attractive from a tax perspective, because (unlike corporations) for Canadian tax purposes they are treated as transparent or "flow-through" entities: instead of the partnership being taxed, the income earned by the partnership is treated as having been earned by the partners themselves and taxed in their hands (whether or not actually distributed to the partners). Thus, partnerships involve only one layer of tax (at the partner level).

Trusts are also used as business entities in some circumstances (typically in the real estate and investment fund industry). In general terms, trusts are themselves taxpayers, but can often achieve effective flow-through status because they can generally deduct from their income amounts distributed out to the holders of interests in the trust ("beneficiaries").

b. Taxes, Tax Rates

Corporations resident in Canada are taxed on their worldwide income and corporations that are non-resident of Canada are taxed on certain Canadian source income. There are two levels of government that tax corporations in Canada. The federal government taxes income at a rate of 15% and the provincial government taxes an additional 8% to 16% depending on the province. Reduced rates exist for some small business income. The taxable portion of capital gains and the deductible portion of capital losses is 50%. This means that the federal effective tax rate for capital gain is 7.5%.

2. RECENT DEVELOPMENTS

a. Multilateral Instrument application will affect more than 80 Canadian treaties

The key standards adopted relate to treaty abuse, including the prevention of such abuse through the application of a principal purpose test and also a dispute resolution process through mandatory binding arbitration.

In addition, Canada has accepted the following optional provisions:

- The treaty based rate of withholding tax on dividends received by corporate shareholders who hold a significant interest in the Canadian dividend payer will only be available if the non-Canadian resident recipient satisfies a 365 day holding period of the shares of that Canadian company.
- A 365 day look back period for non-residents who realise capital gains on the disposition of shares or other interests that derived their value from Canadian immovable property, before such gain could become exempt from Canadian taxation under the relevant treaty.
- The MLI provision for resolving dual-resident entity cases.

b. Canadian tax law strongly discourage foreign acquirers from holding foreign subsidiaries via a Canadian corporation

Legislative amendments in the past few years now strongly discourage a foreign acquiror of a Canadian corporation ("Target") that itself has foreign subsidiaries from keeping those foreign subsidiaries "under" Canada (i.e. owned by a Canadian corporation). These rules effectively force the Canadian Target to sell or distribute its foreign subsidiaries "up" to the foreign acquiror and out from under Canada. Canadian tax authorities generally perceive there as being no good reason to have a foreign controlled Canadian corporation own foreign subsidiaries, largely because in some cases foreign multinationals have caused their Canadian subsidiaries to acquire the shares of foreign group members (so called "foreign affiliate dumping") either in exchange for cash as a means of earnings stripping or in exchange for debt in order to use the resulting interest expense to erode the Canadian tax base. See "Tax Issues on Acquiring a Canadian Business," Tax Notes International, August 2015, p. 786.

c. COVID-19 Relief Measures

In response to the economic consequences arising from health measures adopted to prevent the spread of COVID-19, Canada has adopted a number of tax and financial measures. Some are still in place, but the majority have now ended. These measures were primarily focused on employer wage subsidies (known as Canada Emergency Wage Subsidy or "CEWS"), income support payments to individuals (known as Canada Emergency Response Benefit or "CERB"), extension of tax filing payment deadlines and loan support to small and medium sized business.

3. SHARE ACQUISITION

a. General Comments

Share acquisitions generally result in the seller realising a capital gain in the amount by which their proceeds of disposition exceed the cost basis of their shares for tax purposes. This is generally advantageous as (1) only 50% of capital gains are included in income for tax purposes, (2) capital gains may be offset by capital losses and (3) some Canadian shareholders can claim a lifetime exemption up to a specified dollar amount on capital gains realised on "qualified small business corporation shares."

Non-resident sellers of shares will generally be subject to Canadian tax on a share sale only where: (1) the shares have derived their value (directly or indirectly) primarily from Canadian real property and/or natural resource property at any time in the previous 5 years; and (2) no tax treaty relief is available. Where such shares are traded on a public stock exchange, a non-resident seller who (together with non arm's length persons) has not owned 25% or more of any class of the corporation's shares at any time in the five years preceding the sale will be exempt from Canadian capital gains tax, even if deriving their value primarily from Canadian real property. A withholding and remittance obligation may exist on buyers of shares from non-resident vendors that are (or but for treaty relief would be) subject to Canadian capital gains tax: see "Canada's Section 116 System for Non-resident Vendors of Taxable Canadian Property", Tax Notes International, April 2012.

Parties to a share purchase and sale are advised to ensure that lawyer-client privilege is created over planning and implementation documentation and correspondence to the greatest degree possible, as Canadian tax authorities will generally demand to review all such materials when the transaction is eventually audited. See "Tax Issues on Acquiring a Canadian Business," Tax Notes International, August 2015, p. 778.

b. Tax Attributes

Where the purchase of shares involves an acquisition of control ("AOC") of the target corporation (this will generally occur where the purchaser acquires ownership of enough shares of the target corporation to permit it to elect a majority of the target corporation's board of directors), this will typically have a number of effects on that corporation and its subsidiaries, which are:

- The taxation year will be deemed to have ended immediately prior to the AOC.
- Accrued but unrealised losses on the corporation's property will be deemed to be realised immediately prior to the AOC, and the use of such losses (as well as accumulated loss carry forwards from earlier years) in post-AOC years will be restricted or prohibited. A special one off election can be made to apply such losses against accrued but unrealised gains on property owned immediately prior to the AOC, so as to reduce or eliminate such gains.
- For a Canadian corporation that owns foreign affiliates, the foreign affiliate dumping ("FAD") rules may apply to the corporation thereafter.

See "Tax Issues on Acquiring a Canadian Business," Tax Notes International, August 2015, p. 790.

c. Tax Grouping

Canada has no consolidation or group relief tax system, each taxpayer computes its own income, gain and loss and pays tax separately. This makes it important to ensure that deductible expenses / losses are incurred by an entity that has sufficient taxable income to use them, although to a limited degree, Canadian tax authorities tolerate self-help transactions designed to move income and deductions amongst Canadian members of an affiliated group, to optimise the utilisation of deductions. See "Using Tax Losses Within a Canadian Group of Companies," Tax Notes International, April 2012.

d. Tax Free Reorganisations

It is generally possible for a shareholder to exchange his shares for shares of a Canadian corporation on a tax-deferred or "rollover" basis under either or both of two provisions in Canadian domestic law. See "Tax Issues on Acquiring a Canadian Business," Tax Notes International, August 2015, p.781. No comparable provision allows for seller tax deferral on an exchange of shares for shares of a non-Canadian corporation. However, "exchangeable share" structures applying the domestic share for share exchange rollover rules have frequently been used to achieve similar results. See "Using Exchangeable Shares in Inbound Canadian Transactions", Tax Notes International, December 2007.

Where two or more Canadian corporations merge (the Canadian legal term is "amalgamate") or one Canadian corporation is liquidated up into another Canadian corporation that owns all of its shares, these transactions generally occur on a tax deferred (or "rollover") basis for all participants (including shareholders). In fact, it is common for foreign purchasers of a Canadian corporation to use a newly created Canadian corporation as the direct buyer of the target corporation, and then amalgamate with the target corporation immediately post-closing. Demergers, in contrast, are much more difficult to achieve in Canada on a tax deferred basis, particularly in a cross border context.

e. Purchase Agreement

In negotiating and documenting a share purchase and sale, the buyer typically performs some degree of due diligence on the tax exposures of the target corporation and its subsidiaries. This may involve reviewing tax returns and planning documentation, questioning target management and its advisors and preparing a tax diligence report (which Canadian tax authorities will generally be able to review, unless protected from disclosure under solicitor-client privilege).

The share purchase agreement ("SPA") is obviously a key risk management tool, as the buyer will usually seek various representations and covenants from the seller, as well as indemnities to protect the buyer in the event these representations and covenants are breached. The SPA also represents an opportunity for the parties to agree on pre-acquisition restructuring to optimise the use of the target corporation's tax attributes. SPA used are generally standard in international transactions and contains some Canadian tax specific clauses.

f. Transfer Taxes on share transfers (including mechanisms for disclosure and collection)

Canada has no stamp duties or similar levies. In general terms, where shares of a corporation derive their value primarily (directly or indirectly) from land in Canada and are being disposed of by a non-resident of Canada, a notification and withholding regime (the "116 System") applies to require (1) the seller to notify the CRA within 10 days of the sale and (2) the buyer to withhold and remit 25% of the purchase price to the CRA as a pre-payment of the seller's tax liability (if any). This withholding obligation is a pre-payment towards the seller's capital gains tax liability (if any), rather than a separate tax. See "Canada's Section 116 System for Non-resident Vendors of Taxable Canadian Property", Tax Notes International, April 2012.

g. Share Purchase Advantages

i Capital gains treatment for sellers

As noted above, sellers typically prefer to sell shares rather than assets, as share sales generally yield capital gains only 50% of which are included in income, which can be offset with capital losses and on which non-residents of Canada are generally exempt from Canadian tax.

ii Cost basis step up

Where a Canadian corporation (parent company) acquires all shares of another Canadian corporation (Target) and then merges or liquidates Target up into itself, the parent entity is often permitted to step up the cost basis of any non-depreciable capital property it thereby acquires from Target. This cost basis step up (the "88(1)(d) bump") is frequently used by purchasers of Canadian target companies. There are several technical constraints on this cost basis step-up, but it is a very valuable provision for foreign purchasers of Canadian corporations (where Target owns foreign subsidiaries). See "Canada's 88(1)(d) Tax Cost Bump: A Guide for Foreign Purchasers" Tax Notes International, December, 2013.

h. Share Purchase Disadvantages

A buyer of shares effectively inherits whatever liabilities (including tax exposures) exist in the target corporation and its subsidiaries, requiring extensive protections to be obtained in the share purchase agreement, which may prove challenging to enforce in practice.

Furthermore, where the buyer acquires property (shares), the cost basis is not depreciable. However, for an asset purchase, some or all of the property the buyer acquires, may be depreciable on an annual basis for tax purposes.

4. ASSET ACQUISITION

a. General Comments

Transfers of a business occur much more typically as share purchases of the corporation that owns the business, rather than as transfers of assets owned by the corporation. This is largely because share transfers are generally easier to effect commercially (especially where the buyer is to assume related liabilities) and more desirable from a seller's tax perspective. However, in situations where a purchase of assets is preferable (e.g. the corporation owns significant assets unwanted by the buyer, or has favourable tax attributes (such as losses carried forward) that facilitate an asset sale), this is certainly a viable course of action to take. Sales taxes, which do not apply to share purchases are important to consider on asset acquisitions. Canada's sales tax system is described below under the heading 4.g. "Transfer Taxes, VAT."



b. Purchase Price Allocation

The allocation of the purchase price amongst the various assets of a business being purchased is important to both the buyer and the seller, as they usually have opposing preferences. Buyers generally prefer to allocate more towards assets the cost of which can be effectively deducted from income on a current basis (e.g. inventory, trade receivables) or over a period of years (depreciable property), and less towards non-depreciable capital property. Sellers generally prefer the opposite result, to generate capital gains on certain types of property rather than including the full amount in the income from other types of properties (e.g. profits on inventory, recapture of previously claimed depreciation, etc.). The purchase price allocation will generally be a matter of negotiation between the parties, and Canadian tax authorities will typically respect any reasonable allocation negotiated between arm's length parties. See "Tax Issues on Acquiring a Canadian Business," Tax Notes International, August 2015, p. 780.

c. Tax Attributes

The principal tax reason a buyer typically prefers buying assets is the opportunity to increase up to fair market value the cost basis of assets that yield deductions from income for tax purposes, such as depreciable property. "Capital cost allowance" ("CCA") is the Canadian income tax version of depreciation, applicable to most forms of capital property (including most intangibles and physical property, but not land or securities such as shares).

d. Tax Free Reorganisations

It is possible to transfer assets to a Canadian corporation in exchange for consideration that includes shares of the buyer corporation on a wholly or partially tax deferred basis, where both parties elect to do so under s. 85(1) of the Income Tax Act (Canada). Essentially, this provision allows the parties to elect the seller's sale proceeds and the buyer's cost basis to be any amount between the seller's cost basis in the property and its fair market value (but not less than any cash or other non-share consideration received on the exchange).

From a sales tax perspective, the federal GST and harmonised provincial HST described below under the heading 4.g. "Transfer taxes, VAT" have some exceptions potentially applicable to certain asset sales, most notably the exception under s. 167 of the Excise Tax Act (Canada) for the sale of all or substantially all of the assets of a business. As not all provinces have sales taxes harmonised with the federal GST, it is important to determine where transferred assets are located and which province's sales tax regime applies.

e. Purchase Agreement

The buyer of assets generally does not inherit whatever tax exposures exist in the seller (as opposed to the purchase of the seller itself), so the income tax elements of an asset purchase agreement ("APA") are generally much reduced than on a share purchase. Typically a buyer's income tax interest is limited to ensuring that the assets are being acquired free and clear of any tax liens or encumbrances, and that there is no withholding obligation on the buyer to remit a portion of the purchase price to the tax authorities (e.g. s.116 withholding on a sale of taxable Canadian property by a non-resident seller). The tax provisions of an APA tend to focus more on the sales tax/VAT elements of the transaction, in terms of identifying who bears the cost and compliance obligation of sales taxes and whether any exemptions exist (e.g. the s.167 Excise Tax Act exemption described above).

f. Depreciation and Amortisation

For Canadian tax purposes, depreciable properties are grouped into different classes, with each class having its own separate rate of capital cost allowance. When a taxpayer acquires a depreciable property of a particular class, the cost of that property is added to the pool of expenditures made by the taxpayer for depreciable property of that class. Each year, the taxpayer is entitled to take as a deduction in computing income a percentage of the remaining expenditure balance in that class (the "undepreciated capital cost", or "UCC" of that class), with different percentage rates applying to different classes of property. The UCC of each class is then reduced by the amount of that year's CCA deduction taken by the taxpayer in respect of property in that class, such that CCA functions on a declining-balance basis. Most intangibles (including purchased goodwill) are included in Class 14.1, which provides for an annual deduction equal to 5% of the year end UCC balance.

Dispositions of depreciable property also reduce the taxpayer's UCC of the relevant class of property. On a sale of depreciable property, any sale proceeds (up to the amount of the taxpayer's original cost of the property) are deducted from the UCC balance of the class to which it relates; any excess of the property's sale proceeds over its original cost is a capital gain to the taxpayer.

g. Transfer Taxes, VAT

The federal goods and services tax ("GST") is a value added tax levied at a 5% rate on the consumption in Canada of most property and services (there are a few notable exceptions such as most financial services). GST registered businesses that make taxable supplies of property and services in Canada must collect the applicable 5% GST on their sales and remit it to the Canada Revenue Agency ("CRA") and may claim an "input tax credit" in respect of (essentially a refund of) any GST they themselves pay on purchases of taxable goods and services used in their business. The result is that the GST is effectively borne only by the final consumer and for most businesses GST is largely a compliance matter, (i.e. collecting and remitting the tax on sales in Canada and claiming input tax credits on GST paid on business inputs). Many of the provinces have harmonised their sales taxes with the federal GST and as such receive a share of a higher combined sales tax (a harmonised sales tax or "HST") that is essentially the GST levied at a higher rate in that province and which combines the 5% federal component and a provincial component that varies by participating province. Quebec's sales tax very closely mirrors the federal GST but is not fully harmonised (Quebec administers the GST in Quebec on behalf of the federal government). Manitoba, Saskatchewan and British Columbia levy completely separate provincial sales taxes, while Alberta and the Northern territories levy no sales tax. See "Non-residents and Canada's VAT System", Tax Notes International, August 2012.

h. Asset Purchase Advantages

The principal advantages of an asset acquisition for the buyer include: (1) the ability to pick and choose which of the seller's assets and liabilities to acquire; (2) higher cost basis in the assets acquired; and (3) not effectively inheriting whatever tax exposures and liabilities exist within the selling entity (as would occur if the buyer simply acquired the shares of that entity).

i. Asset Purchase Disadvantages

The principal disadvantages of an asset acquisition for the buyer include: (1) the potential that the seller will demand a higher price to compensate it for what is generally less favourable seller tax treatment relative to a share purchase; (2) the need to deal with sales tax implications created by an asset sale; and (3) greater commercial/legal complexity involved in transferring assets, particularly where consents from third parties (such as the seller's creditors) are involved.

5. ACQUISITION VEHICLES

a. General Comments

The choice of which entity to use to make a share acquisition is important, as it will affect various matters such as: (1) the potential for a s. 88(1) cost-basis bump of the target corporation's non-depreciable capital property; (2) Canadian taxation of distributions out of Canada and gains on sale; and (3) Canadian tax deferral for sellers.

b. Domestic Acquisition Vehicles

It is common for foreign acquirors of Canadian corporations to use a newly created Canadian corporation as the direct purchaser of the Canadian target. The primary reason for so doing is to maximise the paid-up capital ("PUC") of the shares of the top tier Canadian entity. PUC is an extremely valuable tax attribute for foreign investors into Canada, since: (1) a Canadian corporation can return property to its shareholders as a PUC return (i.e. not a dividend) without incurring Canadian dividend withholding tax; and (2) PUC forms part of the "equity" of a Canadian corporation that determines how much cross-border non arm's length debt a Canadian corporation can deduct interest on under Canada's "thin capitalisation" rules (see below under Section 6 "Acquisition Financing").

When a Canadian corporation issues shares of itself, the amount received by the corporation is added to the "stated capital" of that class of corporation's shares under the relevant corporate law. PUC is essentially the Canadian tax equivalent of corporate law stated capital: it starts from corporate law stated capital and is subject to certain reductions under the Income Tax Act (Canada). A buyer of existing shares of a Canadian corporation will have a cost basis in those shares equal to the purchase price, but their PUC will be unaffected by the transfer since no new shares were issued. For this reason, foreign acquirors typically create and capitalise a new Canadian corporation such that the PUC of its newly issued shares (and their cost basis) equals their fair market value and then cause that corporation to buy the shares of the Canadian target, which can then be merged up into the buyer on a tax deferred basis. The use of a Canadian acquisition vehicle is also necessary to effect a s. 88(1)(d) cost basis step up.

c. Foreign Acquisition Vehicles

It is relatively unusual for a foreign entity to make a direct acquisition of a Canadian target corporation, for the reasons described above. This might occur where the PUC of the shares of the Canadian target corporation exceeds their fair market value (i.e. the opposite of the situation described in 5.b., above).

Considerable variation exists in the capital gains articles of Canada's tax treaties, in terms of when Canada is permitted to tax capital gains realised by non- residents. For this reason, foreign acquirors should generally consider carefully where the direct shareholder of the top tier Canadian should be fiscally resident (subject of course to treaty shopping constraints).

d. Partnerships and Joint Ventures

The general aspects of partnerships are as described above under Section 1, "Introduction." They are most typically used in a cross border context in situations where the Canadian source income being earned can be repatriated from Canada with only one level of Canadian taxation, as opposed to using a Canadian corporation which itself pays tax on the income earned and then bears Canadian interest or dividend withholding tax when it distributes the net profits out of Canada. Private equity investors often use partnerships for this reason. They are also advantageous in situations where considerable flexibility is required, since partnerships are generally governed only by the terms of the partnership agreement agreed to amongst the parties.



e. Strategic vs Private Equity Buyers

Private equity ("PE") buyers typically have a shorter time horizon for investing than strategic purchasers, so they will be often be more concerned about taking steps to minimise or eliminate the incidence of Canadian capital gains tax on an ultimate sale of the purchased shares (e.g. ensuring that the shares do not constitute "taxable Canadian property" under Canadian domestic law; structuring to seek tax treaty relief on gains, etc.). PE buyers may also have to deal with the tax preferences of multiple different investors in various jurisdictions, which may not be the same (i.e because they may be investing from different countries).

Strategic purchasers will often have to deal with anti-trust / competition law concerns that other buyers do not, potentially including a requirement to divest some of the Canadian target's property immediately post-acquisition to satisfy regulatory constraints. Such purchasers will be especially concerned with minimising the accrued gains on property to be sold, either through agreements with the seller for pre-acquisition use of target tax attributes, ensuring that the transaction qualifies for the s. 88(1) bump, or otherwise.

6. ACQUISITION FINANCING

a. General Comments

Canada has a direct tracing interest deductibility rule (interest on borrowed money used for an income earning purpose is deductible) and no group tax regime, so it is important to structure the financing of any Canadian share acquisition at the outset. The use of borrowed funds to acquire shares of a corporation that have some (if not immediate) possibility of producing dividend income will generally satisfy the required income earning purpose test under Canadian interest deductibility rules.

b. Equity

As noted above with reference to domestic acquisition vehicles, paid-up capital ("PUC") is an extremely important tax attribute for non-resident acquirors of Canadian companies, because: (1) PUC represents the ability to repatriate property from Canada without incurring dividend withholding tax; and (2) PUC is a key component of "equity" in the 1.5:1 debt/equity limit in Canada's "thin capitalisation" interest deductibility rules. PUC is created where new shares are issued but not when shares are merely transferred from one holder to another, therefore it is very common for foreign acquirors to create a new Canadian corporation to act as the direct purchaser, capitalise it with some or all of the purchase price (thereby creating a corresponding amount of PUC in the newly-issued shares), have it purchase the Canadian target, and then merge with that Canadian target immediately post-closing. This strategy usually maximises the cross border PUC of the resulting Canadian corporation.

c. Debt

Canadian buyers typically have no tax constraints on the use of debt to finance a share purchase. Conversely, foreign purchasers will generally have to consider both Canadian interest withholding tax and Canada's thin capitalisation rules. Canada imposes interest withholding tax on interest paid to non-resident lenders: (1) who deal non arm's length with the debtor; or (2) who are paid participating interest (interest computed by reference to profits, etc.). Hence, debt owing to a non-resident parent or sister corporation will generally attract Canadian interest withholding tax (subject to any tax treaty relief).



Canada's thin capitalisation rules limit the extent to which a Canadian corporation can deduct interest expense on debt owing to a non-resident who is either a 25% or more shareholder (by votes or value) or someone not dealing at arm's length with such a shareholder. If the amount owing by the Canadian corporation exceeds 150% of the corporation's "equity" for the year (basically the sum of start-of-year retained earnings plus the PUC of all shares owned by non-resident 25+ shareholders), interest on the excess amount is non-deductible for Canadian tax purposes and treated as a dividend for withholding tax purposes. Thus, CDN$100 of equity supports interest deductibility on CDN$150 of cross border non-arm's length debt. See "Tax Issues on Acquiring a Canadian Business," Tax Notes International, August 2015, p. 787.

As noted above no consolidation regime exists in Canada, so it is typical to merge a debt financed Canadian buyer corporation with the Canadian target immediately post-closing, in order to put the deductible interest expense in the same entity as the target's operating income so that one can be applied against the other. Where this cannot be accomplished for some reason, it is usually possible to effect a back-to-back debt restructuring to achieve comparable results.

Furthermore, new interest deductibility limits will come into effect in 2023. These new measures would limit the amount of interest deductible in a year for a corporation to a ratio of 30% of earnings before interest, taxes, depreciation and amortisation ("EBITDA"). Excess interest will not be allowed as an expense. However, it will be possible to defer disallowed interest for up to three years retrospectively or up to twenty years prospectively. In addition, a "group ratio" concept will also be incorporated. The latter will calculate a ratio in a group of companies on a consolidated basis. Thus, if the consolidated ratio of the group is less than 30%, it will be possible for the company whose interest has been refused to transfer it to other companies in the same group.

Corporations will have to start adjusting to these new rules shortly. Transitional rules will give corporations the opportunity to restructure. The deductibility ratio will initially be 40% as of 1 January 2023, and subsequently become 30% as of 1 January 2024.

d. Hybrid Instruments

Canadian tax law essentially acts as an overlay on top of the relevant corporate/commercial law, such that an instrument treated as debt under debtor/creditor law will also be treated as debt for tax purposes. As such, from a domestic law perspective, there are no hybrid instruments. On a cross border basis, there are structures used (both inbound and outbound) that focus on differences in Canadian and foreign tax laws (in particular U.S. tax laws, which include "check the box" election provisions), although these are coming under increasing scrutiny by Canadian tax authorities and so should therefore be used with caution.

e. Other Instruments

This section is left intentionally blank.

f. Earn-outs

Where some or all of the sale price is variable and computed with reference to post-closing profits, asset values, etc., this type of arrangement (an "earn-out") can result in the seller being deemed to receive all such amounts as regular income instead of capital gains (only 50% of which is included in income, and which can be offset by capital losses). Two potential exceptions to this rule may apply if the transaction is structured appropriately:

- Where shares are being sold to an arm's length buyer and the earn-out relates to underlying goodwill and is completed within 5 years, the seller may be permitted to use the "cost recovery" method such that no capital gain is realised until determination of the sale price is completed; and
- On a "reverse earn-out", the sale price is expressed as a maximum subject to reductions if reasonable conditions regarding future earnings are not met.

See "Tax Issues on Acquiring a Canadian Business," Tax Notes International, August 2015 at p. 783.

7. DIVESTITURES

a. Tax Free

Canadian individual shareholders who dispose of shares of a "qualified small business corporation" can realise up to roughly CDN$1 million of capital gains on a tax free (lifetime) basis. See "Tax Issues on Acquiring a Canadian Business," Tax Notes International, August 2015 at p. 794. As noted above, Canada's tax rules allow for a tax deferred rollover on certain exchanges of property in exchange for consideration that includes shares of a Canadian corporation that is the buyer.

b. Taxable

Profits from the disposition of shares are generally treated as capital gains, 50% of which are included in the seller's income and subject to tax at normal rates. A seller with available losses (capital or non-capital) may apply these to reduce or eliminate the amount of the capital gain otherwise added to income. In some cases, it may be advantageous for a seller to realise a pre-sale dividend from the corporation whose shares are being sol, and/or to claim a reserve on a portion of the sale price that is payable in a later year. See "Tax Issues on Acquiring a Canadian Business," Tax Notes International, August 2015 at p. 793.

c. Cross Border

As noted above, non-residents are generally taxable under Canadian domestic law on gains from the disposition of shares only where those shares have, at any time in the previous five years, derived their value primarily from Canadian real property. Where the shares in question are listed on a designated stock exchange, the holder (together with non arm's length persons) must have held 25% or more of any class of the issuer's shares at any time during the preceding five years for Canada to tax the gain. As noted, where shares of a corporation derive their value primarily (directly or indirectly) from land in Canada and are being disposed of by a non-resident of Canada, the 116 System applies to require: (1) the seller to notify the Canada Revenue Agency ("CRA") within 10 days of the sale; and (2) the buyer to withhold and remit 25% of the purchase price to the CRA as a pre-payment of the seller's tax liability (if any). This withholding obligation is a pre-payment towards the seller's capital gain tax liability (if any), rather than a separate tax.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Canada taxes its residents on their worldwide income, while non-residents of Canada are taxed on various forms of Canadian source income.

b. CFC Regime

In most cases it is advantageous for a Canadian corporation to carry on business outside Canada through a separate corporation that is not resident in Canada for tax purposes (i.e. a foreign subsidiary), rather than directly. Canada's rules for taxing income earned by foreign subsidiaries of Canadian corporations may be described at a very general level as follows:

The FAPI System : An anti-deferral regime applies to passive income ("foreign accrual property income" or "FAPI") earned by a foreign corporation in which a Canadian resident is a direct or indirect shareholder and which is controlled by the Canadian resident (itself or by non arm's length persons). FAPI earned by such a corporation (a "controlled foreign affiliate") is treated as if it had been earned by the Canadian taxpayer, such that Canadian tax applies immediately whether or not such income is actually distributed to the Canadian taxpayer.

The Surplus System : Canada has a separate set of rules dealing with how to tax distributions made to a Canadian resident corporation by one of its "foreign affiliates" ("FAs"), essentially foreign corporations in which the Canadian entity has at least a 10% direct or indirect interest. The surplus rules either exempt the distributions from Canadian tax (in the case of dividends from the FA's "exempt surplus", being active business income earned in a country with which Canada has a tax treaty or tax information exchange agreement) or provides for appropriate recognition of the foreign tax that the FA's income has borne.

c. Foreign Branches and Partnerships

If a Canadian corporation does operate directly in a foreign country (including through a partnership), Canada will tax the Canadian corporation on foreign income earned, subject to any relief provided under a tax treaty between Canada and that country. Canada will typically offer a foreign tax credit for foreign income or profits taxes paid on foreign source income, reducing Canadian tax owing by the amount of foreign taxes paid on the same foreign income.

d. Cash Repatriation

Dividends received from a foreign corporation are included in the income of any recipient that is a Canadian resident. If the recipient is a Canadian corporation in respect of which the dividend payer is a "foreign affiliate" (i.e. 10% ownership threshold), then the Canadian corporation may be entitled to deduct some or all of the amount included in income, depending on which of various "surplus" accounts maintained by the taxpayer in respect of its foreign affiliates the dividend is deemed to be attributable to. As noted above, a dividend received by a Canadian corporation from the exempt surplus of a foreign affiliate is received entirely tax free due to a 100% dividends received deduction. A dividend from the foreign affiliate's "pre-acquisition surplus" is also received tax free but reduces the Canadian corporation's cost basis in the shares of the foreign affiliate. Dividends attributable to the "taxable surplus" or "hybrid surplus" of the foreign affiliate will be received with a partial deduction in computing taxable income.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

These are described above under Section 3.a. "Share Acquisition, General Comments".

b. CbC and Other Reporting Regimes

Canada has a country by country reporting regime, created as part of the OECD Global forum on tax transparency. Ultimate parent entities ("UPEs") of multinational enterprise groups ("MNEs") with more than EUR750 million in consolidated group revenue in the immediately preceding tax year must file a country by country report (due 12 months from the last day of the taxation year). Under these rules, a Canadian member of a MNE group that is not the UPE is required to file a CbC report in various circumstances described in greater detail here: https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/rc4651.html

10. TRANSFER PRICING

Canada's transfer pricing rules apply to transactions between Canadian taxpayers and non-resident not dealing at arm's length. The statutory rules themselves are simply stated and require the taxpayer's transactions with a non-resident not dealing at arm's length to correspond to what would occur between arm's length parties in a similar situation. Essentially these require Canadians to pay no more than, or receive no less than, what an arm's length person would pay for goods or services received from, or provided to, the same counterparty. In situations where the taxpayer's transactions do not meet a "commercial rationality" standard, the Canada Revenue Agency ("CRA") is entitled to go beyond merely adjusting the terms and conditions of the actual transactions to meet the arm's length standard and can instead determine the taxable income that would arise from whatever transactions arm's length parties would have entered into. Penalties apply where transfer pricing adjustments exceed certain thresholds if the taxpayer has not made reasonable efforts to determine and use arm's length transfer prices and taxpayers who do not prepare and (when requested) provide contemporaneous transfer pricing documentation that meets certain statutory requirements are deemed not to have made such reasonable efforts. The CRA applies the OECD Transfer Pricing Guidelines (including the 2017 amendments) in enforcing Canada's transfer pricing rules, but Canadian courts have taken the position that such guidelines are not the law in Canada and cannot prevail over the domestic statute.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

As noted elsewhere, Canadian tax law classifies and treats entities based on their corporate/commercial law characteristics. Therefore, there is no Canadian tax law concept of a hybrid entity. U.S. taxpayers using entities such as unlimited liability companies that are treated as corporations for Canadian tax purposes and partnerships that are transparent for Canadian tax purposes should review Article IV(7) of the Canada-U.S. tax treaty for specific anti-hybrid rules in that treaty, which may apply in situations where the U.S. tax characterisation of such entities differs from their Canadian characterisation.

Non-residents should also be aware that the CRA's administrative position is that U.S. LLCs cannot claim benefits under the Canada-U.S. tax treaty except as permitted by Article IV(6) of that treaty, which essentially allows U.S. residents (but not residents of third countries) to claim treaty benefits "through" the LLC.



b. Use of Hybrid Instruments

As noted elsewhere, Canadian tax treatment of instruments is based on and generally does not differ from, its legal classification for corporate/securities law purposes, meaning that it is generally not possible to arbitrage tax and commercial law differences in Canada.

c. Principal/Limited Risk Distribution or Similar Structures

It is possible to structure Canadian business operations within the limited risk distribution model, so long as the parties are prepared to, live with and abide by, the commercial and legal constraints that this entails. Canadian tax authorities will carefully review the parties' legal documentation to ensure that its terms correspond with the parties' actual practice. Since Canadian tax authorities aggressively enforce Canada's transfer pricing rules (including the OECD Transfer Pricing Guidelines, which courts have stated are not the law in Canada), it is important that considerable efforts go into (determining and contemporaneously) documenting transfer pricing of all transactions between the Canadian entity and a non-resident not dealing at arm's length in a way that complies with Canada's transfer pricing rules on contemporaneous documentation.

d. Intellectual Property

Intellectual property is generally treated as depreciable property for purposes of Canada's tax depreciation regime and most typically falls into Class 14.1 (5% annual deduction on a declining balance basis) or Class 44 (generally a 25% annual deduction on a declining balance basis).

e. Special Tax Regimes

This section is left intentionally blank.

12. OECD BEPS CONSIDERATIONS

Canada has ratified the Multilateral Instrument ("MLI") arising from the OECD's BEPS Project, with the result that approximately 80 of Canada's bilateral tax treaties will be affected (but not the Canada-U.S. tax treaty). The key standards adopted relate to treaty abuse, including the prevention of such abuse through the application of a principal purpose test and also a dispute resolution process through mandatory binding arbitration.

In addition, Canada has accepted the following optional provisions:

- The treaty based rate of withholding tax on dividends received by corporate shareholders who hold a significant interest in the Canadian dividend payer will only be available if the non-Canadian resident recipient satisfies a 365 day holding period of the shares of that Canadian company.
- A 365 day look back period for non-residents who realise capital gains on the disposition of shares or other interests that derived their value from Canadian immovable property, before such gain could become exempt from Canadian taxation under the relevant treaty.
- The MLI provision for resolving dual resident entity cases.

13. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Canadian corporate law generally provides for a corporation to make distributions on its shares as either dividends or as a return of capital. There is generally no requirement that a corporation must have retained earnings or some similar surplus to pay a dividend or return capital, although most statutes require that the distribution should not result in the corporation being unable to repay its liabilities.

The tax character of a distribution generally follows from its corporate law character, in this respect, a dividend for corporate law purposes will generally be treated as a dividend for tax purposes as well (there is no U.S. style "earnings and profits" concept). There are some circumstances where a return of capital made by a corporation will be treated as a dividend for tax purposes, most notably to the extent that the amount distributed on the return of capital exceeds the "paid-up capital" ("PUC") of the shares on which the distribution is made. As noted above, since a Canadian corporation can distribute amounts to shareholders as a return of PUC without triggering non-resident dividend withholding tax, foreign investors are particularly attuned to maximising the PUC of any shares they acquire when investing in Canada.

b. Substance Requirements for Recipients

Canadian tax applies on the basis who the beneficial owner of property is, rather than who the holder of mere legal title is. The beneficial owner of property is generally considered to be the entity who enjoys possession and use of, and control over, the property in question, and who bears the risks and benefits of ownership. Agents, nominees and legal titleholders are generally ignored for Canadian tax purposes.

c. Application of Regional Rules

The Canadian provinces also have tax rules. Most of the provincial rules are harmonized with the federal one, however there are numerous differences in application. In addition, there is also a second government agency in Canada called Revenue Quebec. It administers, in addition to the Canada Revenue Agency, the returns of Quebec taxpayers. This means that Quebec taxpayers need to fill a federal tax return and a Quebec tax return. Furthermore, they can get audited by either agency.

d. Tax Rulings and Clearances

Parties may, but are not obliged to, seek an advance tax ruling from income tax authorities in respect of particular issues. This can be a time consuming process (generally 6 months or more, depending on the complexity of the transaction) and requires complete disclosure of all relevant facts to the tax authorities. As a result of the time and effort involved, in most cases the parties proceed without an advance tax ruling and instead rely on the advice of counsel as to the likely tax implications of the transaction.

14. MAJOR NON TAX CONSIDERATIONS

a. Corporate/Securities Laws

When acquiring shares of a corporation that are widely held or otherwise subject to securities laws, there are various restrictions on the way the target corporation must conduct discussions with a potential buyer and communicate with shareholders and regulators. Buyers are also subject to constraints on acquiring target securities without filing formal notification with regulators and on formally launching takeover bids to the target entity's shareholders. See "Mergers and Acquisitions in Canada" https://blg.com/en/News-And-Publications/Documents/Mergers-and-Acquisitions-in-Canada.pdf

b. Competition/Anti-Trust Laws

Canada's Competition Act requires pre-acquisition notification to the Competition Bureau where the parties' assets and/or revenues exceed certain prescribed dollar thresholds. The Bureau may challenge transactions that are likely to prevent or lessen competition materially in a market in Canada. The Investment Canada Act potentially applies where a foreign investor proposes to acquire a Canadian business (directly or indirectly) and the transaction exceeds certain dollar thresholds. The acquisition of culturally sensitive businesses or those involving national security interests are particularly subject to scrutiny. In both cases obtaining the approval of regulators can be a lengthy and time consuming process, so advice in these areas should be sought early in the process. See "Mergers and Acquisitions in Canada" https://blg.com/en/News-And-Publications/Documents/Mergers-and-Acquisitions-in-Canada.pdf

15. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends % [1], [2]	Interest %	Royalties %	Footnote
Algeria	15	15	15 / 0	[4]
Argentina	10 / 15	12.5	3 / 5 / 10 / 15	[14]
Armenia	5 / 15	10	10	
Australia	5 / 5	10	10	[5] [29]
Austria	5 / 15	10	10 /0	[3]
Azerbaijan	10 / 15	10	5 / 10	[15]
Bangladesh	15	15	10	
Barbados	15	15	10 / 0	[21]
Belgium	5 / 15	10	10 /0	[3] [6]
Brazil	15	10 / 15	25 / 15	[5] [8] [16]
Bulgaria	10 / 15	10	10 / 0	[21]
Cameroon	15 / 20	15 / 20	15 / 20	[9] [17] [29]
Chile	10 / 15	15	15	
China (PRC)	10 / 15	10	10	[5]
Colombia	5 / 15	10	10	
Croatia	5 / 15	10	10	
Cyprus	15	15	10 / 0	
Czech Republic	5 / 15	10	10	
Denmark	5 / 10 / 15	10	10 / 0	[3]
Dominican Republic	18	18	18/0	
Ecuador	5 / 15	15	10 / 15	[18]
Egypt	15 / 20	15	15	
Estonia	5 / 15	10	10 / 0	[3]
Finland	5 / 15	10	10 / 0	[3]
France	5 / 10 / 15	10	10 / 0	[20]
Gabon	15	10	10	
Germany	5 / 15	10	10 / 0	[3][5]
Greece	5 / 15	10	10 / 0	[21]

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Jurisdiction	Dividends % [1], [2]	Interest %	Royalties %	Footnote
Guyana	15	15 / 25	10	[9] [31]
Hong Kong	5 / 15	10	10	[7]
Hungary	5/10/15	10	10 / 0	[21]
Iceland	5 / 15	10	10 / 0	[3] [29]
India	15 / 25	15	10 / 15 / 20	[19]
Indonesia	10 / 15	10	10	
Ireland	5 / 15	10	10 / 0	[3]
Israel	5 / 15 5/15/0	10	10 / 0	[3] [7][11]
Italy	5 / 15	10	5 / 10 / 0	[15] [21]
Jamaica	15 / 22.5	15	10	
Japan	5 / 15	10	10	
Jordan	10 / 15	10	10	
Kazakhstan	5 / 15	10	10	
Kenya	15 / 25	15	15	
Korea	5 / 15	10	10	
Kuwait	5 / 15	10	10	
Kyrgyzstan	15	15	10 / 0	[3]
Latvia	5 / 15	10	10	
Lebanon	5 / 15	10	5 / 10	[3] [6]
Lithuania	5 / 15	10	10	
Luxembourg	5 / 10 / 15	10	10 / 0	[3]
Madagascar	5 / 15	10	5 / 10	[3]
Malaysia	15	15	15 / 0	[5]
Malta	15	15	10 / 0	[21][29]
Mexico	5 / 15	10	10 / 0	[7][21]
Moldova	5 / 15	10	10	
Mongolia	5 / 15	10	5 / 10	[3]
Morocco	15	15	5 / 10	[21]
Namibia	5 / 15	10	10 / 0	[6]

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Jurisdiction	Dividends % [1], [2]	Interest %	Royalties %	Footnote
Netherlands	5 / 10 / 15	10	10 / 0	[3][5]
New Zealand	5 / 15	10	5 / 10	[3] [7]
Nigeria	12.5 / 15	12.5	12.5	
Norway	5 / 15	10	10 / 0	[3]
Oman	5 / 15	10	10 / 0	[3] [7]
Pakistan	15 / 20	15 / 25	15 / 20 / 0	[3] [9] [10] [22]
Papua New Guinea	15 / 25	10	10	[29]
Peru	10 / 15	15	15	
Philippines	15 / 25	15	10 / 25	[23][29]
Poland	5 / 15	10	5 / 10	
Portugal	10 / 15	10	10	
Republic of the Ivory Coast	18 / 15	15	10	[30]
Romania	5 / 15	10	5 /10	[3]
Russia	10 / 15	10	10 / 0	[3]
San Marino				[5]
Senegal	16 / 15	20 / 16 / 15	15	[12] [29]
Serbia	5 / 15	10	10	
Singapore	15	15	15	
Slovak Republic	5 / 15	10	10 / 0	[21]
Slovenia	5 / 15	10	10	
South Africa	5 / 15	10	6 / 10	[3]
Spain	5 / 15 / 0	10	10 / 0	[21]
Sri Lanka	15	15	10 / 0	[21] [24] [27] [28]
Sweden	5 / 10 / 15 / 0	10	10 / 0	[3]
Switzerland	5 / 15 / 0	10	10 / 0	[3] [5]
Taiwan	10 / 15	10	10	[7]
Tanzania	20 / 25	15	20	[25]
Thailand	15 / 20	10 / 15 / 25	15 / 5	[13]
Trinidad and Tobago	5 / 15	10 / 5	10 / 0	[21]

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Jurisdiction	Dividends % [1], [2]	Interest %	Royalties %	Footnote
Tunisia	15	15	15 / 20 / 0	[21] [32]
Turkey	15 / 20	15	10	
Ukraine	5 / 15	10	10 / 0	[33]
United Arab Emirates	5 / 10 / 15	10	10 / 0	[3]
United Kingdom	5 / 15	10	10 / 0	[7] [21]
United States	5/15/0	0	10 / 0	[3] [11]
Uzbekistan	5 / 15	10	5 / 10	[3]
Venezuela	10 / 15	10	5 / 10	[3]
Vietnam	5 / 10 / 15	10	7.5 / 10	[26]
Zambia	15	15	15	
Zimbabwe	10 / 15 / 20	15	10	

Footnotes	
1	Dividends - For the vast majority of Canada's tax treaties, the reduced treaty rate applies where the beneficial owner of the dividends is a company which meets a specified ownership requirement with regards to the company paying the dividends. Note that in some case, the beneficial owner must be a company other than a partnership. In other cases, the reduced rate will only apply where the ownership requirement is met and the company paying the dividends is not a non-resident owned investment corporation resident in Canada.
2	Branch Tax - Many of Canada's tax treaties contains certain limits on Canadian branch tax.
3	Royalties - The reduced rate applies to • Copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or other artistic work (but not including royalties in respect of motion picture films nor royalties in respect of works on film or videotape or other means of reproduction for use in connection with television broadcasting); and • Royalties for the use of, or the right to use, computer software or any patent or for information concerning industrial, commercial or scientific experience (but not including any such royalty provided in connection with a rental or franchise agreement). Note that is some cases, the 0% rate will only apply where the payer and the beneficial owner of the royalties are not related parties."
4	Royalties - The 0% rate applies to royalties for the use of, or right to use, computer software or any patent (but not including information provided in connection with a rental or franchise agreement).
5	Under Negotiation/Re-Negotiation - This treaty is designated by the Canadian government as currently being negotiated or renegotiated.
6	Signed but not yet in force - This treaty is designated by the Canadian government as signed but not yet in force.

Footnotes	
7	Principal Purpose Test - The Principal Purpose Test will apply to deny access to certain treaty benefits where the principal purpose of a transaction or structure was to gain treaty benefits.
8	Interest - The 10% rate applies where the interest is arising in Brazil and paid to a resident of Canada in respect of a loan guaranteed or insured by the Export Development of Canada for a minimum period of 7 years.
9	Interest - The rates applied depend on the state in which the interest arises.
10	Dividends - The 15% rate applies where company paying the dividends is resident of Canada and where the company paying the dividends is resident of Pakistan and the recipient is a company which is a resident of Canada and which owns 25% or more of the share capital of the first mentioned company, the tax charged in Pakistan on such dividends shall not exceed: • 15% of the gross amount of the dividends where the first-mentioned company is engaged in an industrial undertaking; and • 20% of the gross amount of the dividends in all other cases."
11	Exempt Entities - This treaty exempts certain entities such as pension and retirement plans and certain investment funds.
12	Interest - The 20% rate applies to the gross amount of the interest on "bons de caisse" interest arising in Senegal, the 16 rate applies to all other interest arising in Senegal, and the 15% rate applies to interest arising in Canada.
13	Interest - The 15% rate applies to interest arising in Canada; the 10% rate applies to interest arising in Thailand where the interest is received by any financial institution (including an insurance company); and the 25% rate applies to all other interest arising in Thailand.
14	Royalties - The applicable rates are: 3% of the gross amount paid for the use of, or the right to use, news; 5% of the gross amount paid for the use of, or the right to use, copyright of literary, dramatic, musical or other artistic work (but not including royalties in respect of motion picture films and work on film or videotape or other means of reproduction for use in connection with television); 10% of the gross amount paid for the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial or scientific equipment, or for information concerning industrial or scientific experience, and includes payments for the rendering of technical assistance; and 15 of the gross amount of the royalties in all other cases.
15	Royalties - The reduced rate applies where the royalties are for the use of, or the right to use, computer software or any patent or for information concerning industrial, commercial or scientific experience (but not including any such royalty provided in connection with a rental or franchise agreement).
16	Royalties - The 25% rate applies to royalties arising from the use of, or right to use, trademarks.
17	Royalties - The 15% rate applies where the royalties arose in Canada and the 20% rate applies where the royalties arose in Cameroon.
18	Royalties - The 10% rate applies where the royalties are for the use of, or the right to use, industrial, commercial, or scientific equipment.

Footnotes	
19	Royalties - The 15% rate applies where the royalties are for the payment of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic, or scientific work, including cinematograph films or work on film tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof and the 10 rate applies where the royalties are for the payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial, or scientific equipment, other than payments derived by an enterprise of a Contracting State from the operation by that enterprise of ships or aircraft in international traffic shall be taxable only in that State.
20	Royalties - The 0% rate applies to: • Copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion picture films nor royalties in respect of works on film or videotape or other means of reproduction for use in connection with television broadcasting), • Royalties for the use of, or the right to use, computer software, • Royalties for the use of, or the right to use, any patent or for information concerning industrial, commercial or scientific experience (but not including any such information provided in connection with a rental or franchise agreement); or • Royalties related to cultural motion picture films (a) Paid to a resident of France in respect of French films which meet the requirements of Article 13 of Decree 59-1512 dated 30 December 1959 and which are included in the list of films referred to in Article 2 of Decree 71-46 dated 6 January 1971 which is used by the Art and Experimental Motion Picture Theatre Classification Board (Commission de classement des théâtres cinématographiques d'art et d'essai) provided for in Article 4 of Decree 71-46; (b) Paid to a resident of Canada in respect of films wholly or principally directed and produced in Canada and which are included in the list of films prepared by the Canadian Committee of selection that the Bureau of Film Festivals is authorised to convene under Order-in- Council PC 1975-2883 dated 11 December 1975."
21	Royalties - The reduced rate applies to copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion picture films and works on film or videotape for use in connection with television).
22	Royalties -The 20% rate of applies to royalties arising in Pakistan for the payments of any kind received as a consideration for the use of, or the right to use, any copyright, patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment and includes payments of any kind in respect of motion picture films and works on film or videotape for use in connection with television; the 15% rate applies to royalties arising in Pakistan for the payments received as consideration for technical know how or information concerning industrial, commercial or scientific experience and all royalties arising in Canada.

Footnotes	
23	Royalties - The 10% rate applies to royalties arising in Canada, and where the royalties arise in the Philippines, the tax shall not exceed the lesser of (a) 25% of the gross amount of the royalties, and (b) the lowest rate of Philippine tax that may be imposed on royalties of the same kind paid in similar circumstances to a resident of a third State.
24	Royalties - The 10% rate applies to royalties arising in Canada and royalties arising in Sri Lanka in respect of any contract for new technology.
25	Royalties - The 20% rate applies to patent royalties and royalties for the use or the right to use trademarks, motion picture films and films or videotapes for use in connection with television, or for the use of, or the right to use, industrial, commercial, scientific or harbour equipment.
26	Royalties - The 10% rate applies to royalties and the 7.5% rate applies to fees for technical services.
27	Interest - The 15% rate applies to interest arising in Canada and interest arising in Sri Lanka in respect of any debt claim, bond, debenture or other security arising from money received from abroad.
28	Dividends - The reduced rate applies to all dividends arising in Canada and to dividends arising in Sri Lanka paid in respect of any shares or other rights representing capital contributed from abroad to the company paying the dividends.
29	Dividends - The reduced rates apply depending on the residency of the company paying the dividends.
30	Dividends - The 18% rate applies where the dividends are paid by a company which is a resident of the Ivory Coast and which is exempt from tax on profits or which does not pay tax on the rate provided under general law.
31	Dividends - The 15% rate is applied to the gross amount of the dividend in the case of Canada and to the amount of the dividend actually distributed in the case of Guyana.
32	Royalties - The 20% rate applies to the gross amount of patent royalties and royalties for the use or the right to use trademarks, motion picture films and films or videotapes for use in connection with television, or for the use of, or the right to use, industrial, commercial, scientific or harbour equipment.
33	Royalties - The 0% rate applies to royalties for the use of, or the right to use, computer software.

For copies of all of the currently in force treaties and current status of tax treaty negotiations, visit:
https://www.canada.ca/en/department-finance/programs/tax-policy/tax-treaties.html

16. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

The following is a Canadian tax due diligence document request list for each Canadian company (collectively referred herein as the "Company" or "Target"). Unless otherwise noted, all information is requested for the open tax years, which is usually the last four year, and most recent interim period.

Note that this is not an all inclusive list as we may be requesting additional items as our diligence progresses.

Category	Sub-Category	Priority	Status	Question / Request
Tax Due Diligence	Canadian Tax	Medium	Open	Please include a full history of the Target in the structure.
Tax Due Diligence	Canadian Tax	High	Open	Copies of all Canadian federal and provincial income tax returns for the past four tax years.
Tax Due Diligence	Canadian Tax	High	Open	Copies of the following in Canadian dollars for the last four taxation years: (1) Unconsolidated financial statements, including note disclosures (2) Unconsolidated trial balances.
Tax Due Diligence	Canadian Tax	High	Open	Details of any income tax audits, reassessments, liens, disputes, objections and appeals (at all levels of government, Canadian or foreign).
Tax Due Diligence	Canadian Tax	High	Open	Copies of all assessments and reassessments (at all levels of government, Canadian or foreign) for last four years in respect of income taxes.
Tax Due Diligence	Canadian Tax	High	Open	Details of any intercompany or related party transactions during the last four years, including intercompany financing arrangements, loans or indebtedness, and intercompany service fees (including the specific nature of the service fees), and copies of T106 tax forms.
Tax Due Diligence	Canadian Tax	High	Open	Copies of transfer pricing reports and transfer pricing policies.
Tax Due Diligence	Canadian Tax	High	Open	Copies of GST, HST, Quebec Sales Tax ("QST") and provincial sales tax ("PST") filings for the entirety of the prior fiscal year, as well as tax authority correspondence (including notices of assessment, reassessment and statements of account).
Tax Due Diligence	Canadian Tax	High	Open	Details of any GST, HST, QST and PST audits, reassessments, liens, disputes, objections and appeals.
Tax Due Diligence	Canadian Tax	High	Open	In respect of the last four calendar years, copies of statements of account, T4 Summaries, RL-1 Summaries and notices of assessment or reassessment regarding withholding for employee federal and provincial income tax, CPP, employment insurance contributions, employee health tax and similar provincial plans ("payroll").
Tax Due Diligence	Canadian Tax	High	Open	Details of any payroll audits, reassessments, liens, disputes, objections and appeals.

CANADA

Category	Sub-Category	Priority	Status	Question / Request
Tax Due Diligence	Canadian Tax	Medium	Open	Description of types and quantum of payments made to individual independent contractors within the past four years, or confirmation that none have been made. Explanation of how a person may be considered an employee or an independent contractor (if applicable).
Tax Due Diligence	Canadian Tax	High	Open	Details regarding Regulation 102 and Regulation 105 withholdings in respect of non-residents performing services as employees or of independent contractors in Canada.
Tax Due Diligence	Canadian Tax	Medium	Open	Please provide copies of the Canadian tax provision working papers for the past two years.
Tax Due Diligence	Canadian Tax	High	Open	Copies of all tax planning memos prepared internally and by external tax advisors during the past 4 years.
Tax Due Diligence	Canadian Tax	High	Open	Copies of all NR4 and T5 summaries and slips issued during the past four years.

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CHILE

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1. INTRODUCTION

a. Forms of Legal Entity

Chilean law provides for several types of legal entities. The most common are:

- Limited Liability Companies (*Sociedad de Responsabilidad Limitada*) ("SRL")
- Corporations (*Sociedad Anónima*) ("SA")
- Simplified Corporations or Stock Companies (*Sociedad por Acciones*) ("SpA")

In the majority of cases, the type of organisation can be freely chosen, with the exception of specifically regulated business areas such as banking, financial services, insurance companies, and other activities for which the law determines the legal type that must be followed. SRL, SA and SpA are subject, in general, to the same tax treatment in Chile.

An SRL requires a minimum of two partners, with a maximum of 50. The partners have no personal liability for the company's obligations and their liability is limited to the capital they contributed. Management of the company can be freely agreed by the partners; it can be entrusted to one or more partners, a third party or to a board of directors.

An SA requires a minimum of two shareholders. If an SA has more than 500 shareholders, or if 10% of its subscribed capital is owned by 100 shareholders or more, it must register with the Financial Market Commission (*Comisión para el Mercado Financiero*) ("CMF") and also with a local stock exchange. The shareholders have no liability for the company's obligations and management is carried out by a board of directors with at least three members (for listed companies a minimum of five or seven directors is required, depending on the annual income of the company).

An SpA may have one or more shareholders. If an SpA has more than 500 shareholders, or if 10% of its subscribed capital is owned by 100 shareholders or more, excluding those holding 10% or more, the company must be transformed into a corporation and registered with the CMF as a listed corporation. The shareholders have no liability for the company's obligations, shares can be freely transferred, and management of the company can be freely agreed by the shareholders.



b. Taxes, Tax Rates

i Income Tax

Income taxation in Chile is based on two factors: the taxpayer's place of residence, and the source of income. All Chilean resident or domiciled taxpayers, whether individuals or corporations, are subject to taxes on their total income on a worldwide basis, with the sole exception of foreign individuals who pay taxes on Chilean source income only for their first three years of tax residence or domicile in Chile. Non-resident taxpayers are subject to income tax on the profits obtained from services provided to or assets located in Chile, which generate Chilean source income.

The Income Tax Law divides taxes into Category Taxes and Final Taxes.

ii Category Taxes:

First Category Tax or Corporate Income Tax (*Impuesto de Primera Categoría*) ("CIT"), is a flat rate tax applicable on income obtained from commercial, industrial, mining, and other business activities at a general 27% rate (a lower 25% rate is available for small and medium enterprises and some other entities).

- SMEs Tax Regime

Small and medium enterprises ("SMEs"), (i.e. companies whose annual sales, including related companies' sales, do not exceed *Unidades de Fomento* ("UF") 75,000, approximately USD3 million) may determine tax results under a simplified regime. For the application of the SMEs regime, a passive income threshold of up to 35% of total gross income must be met. The 25% CIT rate shall be fully creditable for shareholders subject to withholding tax ("WHT") or Global Complementary Tax ("GCT") (see below for further details, a reduced 10% CIT applies until 2022).

Second Category Tax or tax on labour income (*Impuesto de Segunda Categoría*) ("SCT"), is a progressive tax applied on income obtained from rendering personal services as an employee with rates ranging from 0% to 40%, calculated on a monthly basis.

iii Final Taxes:

Global Complementary Tax or personal income tax (*Impuesto Global Complementario*) ("GCT") is a progressive tax applied on the total income obtained by individuals domiciled or resident in Chile with rates ranging from 0% to 40%, including income that has been subject to CIT, being the CIT paid totally or partially creditable against the GCT.

Additional Tax or Withholding Tax (*Impuesto Adicional*) ("WHT") is a flat rate tax with a general 35% rate, applicable on the total gross income received by non-resident individuals or non-resident companies when income is withdrawn, distributed as dividends, or remitted abroad. Regarding dividend distributions, the CIT paid by the distributing company may be totally or partially credited against the WHT. Furthermore, if the partner or shareholder is a tax resident in a country with which Chile has a Double Taxation Treaty ("DTT"), the CIT paid shall be fully creditable against the WHT. In addition, WHT is triggered at different rates in the case of certain overseas payments made from Chile, such as technical assistance, interest, and royalties, among others.



iv Value Added Tax

A 19% Value Added Tax ("VAT") is applied, in general, to sales of movable or immovable tangible property located in Chile (excluding land) and for the provision or use of certain services in Chile, such as the activities of industries, commerce, financial and insurance services, marketing, and brokerage, among others. As from 1 January 2023 the general rule will be that all services are subject to VAT, unless exempted by the law.

v Regional Tax

Regional tax is levied at a 1% rate on the value of fixed assets that exceeds USD10 million, acquired in relation to investment projects that are subject to an environmental impact assessment (excluding projects related to health, education, scientific research or technological development, housing and offices), payable once permits are obtained, and operation of the projects initiated.

vi Municipal Licence

An annually levied tax applied for the development of commercial, professional, industrial, investment and business activities. The rate of the municipal licence is determined by each municipality, within a range from 0.25% to 0.5%. However, there is a minimum of 1 Monthly Tax Unit ("UTM") (approx. USD70) and a maximum of 8,000 UTM (approx. USD562,000).

vii Stamp Tax

Loans evidenced by documentation are subject to Stamp Tax at a rate of 0.066% for each month between granting and maturity, capped at 0.8%. In the case of foreign loans, Stamp Tax is applicable even if the loan is not contained in a written document when notarised in Chile or included in the accounting ledgers of the debtor, whichever happens first. Stamp Tax is not applicable to shares.

viii Foreign Trade

Custom duties are assessed ad valorem, which means on the value of the merchandise. The general rate of custom duty is 6%, although some goods are subject to a lower custom duty rate. Chile has an extensive network of Free Trade Agreements, and reduced custom duties, or no custom duty, is applicable to imports carried out under such agreements.

ix Real Estate Tax ("RET")

Owners of real estate property must pay an annual tax in four instalments, in April, June, September and November, based on the fiscal valuation of real estate as assessed by the Chilean Tax Authority. The RET rate for real estate of non-farming use is 1.4%, and for real estate of farming use is 1%. Where there are reassessments of the fiscal value, the tax rate is temporarily reduced and progressively adjusted according to the law to achieve moderate RET increases for taxpayers. A surcharge applies to taxpayers who own real estate properties with a fiscal valuation that exceeds approximately USD550,000.



x Royalty Tax

Royalty tax is applied at progressive rates ranging from 0% to 14% apply on profits obtained in relation to sales of mining products. A bill that aims to modify this tax is under discussion in Congress.

xi Carbon Tax

Carbon tax is applied on the emission of CO2 and particulate matter over certain thresholds that are set forth in the law, with some exempt industries. The calculation of the tax has to be considered on a case by case basis.

c. Common divergences between income shown on tax returns and local financial statements

The taxable basis for CIT is calculated over net profits based on rules in the Chilean Income Tax Law ("CITL") that resemble Generally Accepted Accounting Principles. Local financial statements follow International Financial Reporting Standards ("IFRS"). Therefore, adjustments are made to financial statements to determine the tax basis. For example, the depreciation charged in the financial accounts is replaced by depreciation determined under tax rules that include, for some assets, accelerated depreciation. Provisions are usually reversed for tax purposes, bad debts are deductible subject to certain rules provided in the CITL, non-monetary assets are adjusted according to local inflation or the applicable exchange rate for investments abroad in foreign currency, among others.

2. RECENT DEVELOPMENTS

a. Tax Modernisation Law

The tax modernisation law (Law No. 21,210), published on 24 February 2020, introduced several amendments to the Chilean Tax Law, designed to simplify them and provide legal certainty to taxpayers. New provisions were included in the law to digitalise administrative procedures and facilitate tax compliance. The tax modernisation law reduced the tax regimes that may apply to business income, introduced Value Added Tax ("VAT") rules for taxing digital (and other) services provided from abroad, set forth the obligation to provide electronic invoices in operations with individual customers, and some new taxes such as the Real Estate Tax ("RET") surcharge, the Regional Tax.

b. Economic Recovery Measures

On 2 September 2020, Law No. 21,256 was published that provides tax measures for encouraging economic recovery. The measures in Law No. 21,256 currently in force are the following:

- Transitional reduction of the CIT rate for companies subject to the SMEs Regime from 25% to 10%, applicable to income generated during business years 2020, 2021 and 2022.
- Instant tax depreciation of investments in fixed assets in Chilean territory, up to 21 December 2022.
- Instant tax amortisation of investments in certain intangible assets protected by law, namely (i) industrial property, (ii) intellectual property and (iii) new plant varieties, acquired until 31 December 2022.



c. Law No. 21.420 of 2022 that reduced or Eliminated Tax Expenditures

On 4 February 2022, Law No. 21,420 was published, which reduces or eliminates tax exemptions or special regimes. For example, the exemption provided in the Chilean Income Tax Law ("CITL") on capital gains arising on the sale of shares of publicly held corporations with liquidity requirements, provided certain conditions are met, was amended. From 1 September 2022, the capital gains arising in such cases will be taxed at a 10% sole tax rate. However, there will continue to be a full exemption if the seller is qualified as an institutional investor.

d. d. Imminent Tax Reform

The Government has announced it will present a tax reform to increase government funding, introducing relevant changes in the rates and credits contained in the current CITL.

3. SHARE ACQUISITION

a. General Comments

The purchase of shares means that the purchaser acquires the company. This includes all assets and liabilities, including any historical liabilities.

From a buyer's perspective:

The income generated by the acquired company (target) is subject to Corporate Income Tax ("CIT"), but only at the level of the company itself, and not at the level of the buyer. Tax losses carried forward may be forfeited following a change of ownership if there is a major change in the nature or conduct of the company's business, as provided in control rules set forth in the Chilean Income Tax Law ("CITL"). Tax losses that are not forfeited may be carried forward and offset against future taxable profits. Acquisitions from foreign resident shareholders of a Chilean company are generally subject to withholding obligations.

From a seller's perspective:

For individuals either local or foreign, Global Complementary Tax ("GCT") and Withholding Tax ("WHT") shall be payable on a cash or accrual basis, as chosen by the taxpayer. For other taxpayers, capital gains will always be considered income, subject to CIT or WHT on a cash or accruals basis.

The tax cost of the shares should be deducted from the sale price to determine the gain. In addition, the transfer of shares is straightforward and calculating the tax cost is relatively simple (applying local inflation rules). However, in some transactions the tax cost basis is hard to evidence (which may impact withholding obligations).

In the case of publicly listed companies, the sale of shares may qualify for a reduced capital gains tax rate of 10% as of 1 September 2022, or continue to be exempt for institutional investors.

Notwithstanding the rules explained above, if the seller is resident in a DTT partner country, reduced rates of capital gains tax may apply, subject to relevant conditions that apply under each DTT (for example, if the DTT excludes special regimes for real estate companies).



b. Tax Attributes

The general rule is that tax losses may be carried forward and offset against future taxable profits. However, tax losses may be forfeited following a change of ownership, (disposal of more than 50% to a non-related party). Losses may be offset against income obtained after the change of ownership provided that:

(i) The company does not alter its line of business within a year prior to and starting from the change of ownership;

(ii) The company contained upon change of ownership sufficient business assets to carry out its business, or in a value proportional to that of its shares upon acquisition; and

(iii) The company does not begin to obtain solely passive income.

c. Tax Grouping

Fiscal unity / tax grouping is not allowed in Chile.

d. Tax Free Reorganisations

A reorganisation is tax free if it qualifies as a corporate restructuring under Chilean tax laws. The conditions to be deemed as such a corporate restructuring are the following:

(i) The restructuring process must meet a criterion known as "legitimate business purpose"; broadly speaking, this means that it must be beneficial from an economic point of view and not carried out solely because of its tax benefits;

(ii) The contributing company must remain after the contribution;

(iii) The company contributing the assets must not receive an actual sum of money as a result of its transfer; and

(iv) The assets must be transferred and registered by the transferee at the same tax basis or book value at which they were recorded in the transferor's accounting records. This tax basis or book value must be shown in the Shareholders' resolution or public deed by which the assets were contributed to the company receiving them.

Spin-offs and mergers are also types of tax free reorganisations.

The Chilean Tax Code allows the Chilean Tax Authority ("Chilean IRS") to challenge the value of any transfer of property if such value differs from the market price of the property transferred, except where a property transfer takes place under the tax free reorganisation rules.



e. Purchase Agreement

The transfer of shares or "interests" / "rights" in an entity must comply with the legal formalities set forth by Chilean Law. The Purchase Agreement will typically contain tax warranties and indemnities. It is usual practice for a purchaser to perform due diligence on the target company, the result of which is reflected in the tax warranties and indemnities.

Income tax returns and accounting records for the last six fiscal years should be examined, according to the statute of limitations applicable for tax purposes in Chile. Late payment of taxes is subject to an 18% interest rate and penalties. However, automatic partial remission rules usually apply over both. Regarding Value Added Tax ("VAT") returns, the maximum statute of limitations is 36 months.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

The transfer of shares, as well as the transfer of other kinds of assets, is not subject to any kind of transfer tax.

g. Share Purchase Advantages

From a seller's perspective, the tax cost of the shares can be deducted from their sale price to determine the gain. The transfer of shares is usually a straightforward mechanism. In the case of publicly listed companies with a stock market presence, the sale of shares may qualify for a reduced 10% tax rate on the capital gains from 1 September 2022, if certain formal requirements of acquisition and sale are met; or may continue to be treated as exempt in the case of institutional investors.

The transfer of shares is not subject to VAT or any transfer taxes.

Carry forward losses may continue to be used by the transferred company provided that certain control rules in the CITL are not breached.

Generally, a 35% WHT will apply to a foreign resident seller of a Chilean company. Whereas, in the scenario of an asset sale, the distribution of profits by the seller company may be taxed at rates of up to 44.45% if the shareholder is not resident in a DTT partner country.

Tax goodwill rules allow for a step up of the tax basis of the non-monetary assets held by the acquired company up to their market value if the acquired company is merged into a Chilean buyer company and the buyer company becomes responsible for the tax liabilities of the absorbed subsidiary. Any amount that exceeds the market value of non-monetary assets will be considered as a non-amortisable intangible for tax purposes.

h. Share Purchase Disadvantages

All historical liabilities of the company are transferred, including tax liabilities.



4. ASSET ACQUISITION

a. General Comments

An asset acquisition allows a buyer to acquire the assets without the tax liabilities of the seller company being transferred. Asset deals, in general, are less common than share acquisitions.

From a buyer's perspective:

From a buyer's perspective, the seller's tax liabilities (as well as other liabilities) are not transferred. The full price paid for the acquisition of tangible assets can be depreciated. The price assigned to the acquisition of intangible assets cannot be amortised for tax purposes (other than under a special transitory regime in force until 2022).

The sale of inventory and some fixed assets is subject to Value Added Tax ("VAT"), which is not always recoverable by the buyer. Also, registration fees for certain property (e.g. real estate) may apply.

The Tax Code provides that if a taxpayer ceases its activities due to the sale, assignment, or transfer to another of all of its assets or businesses, the buyer will become guarantor with respect to the seller's tax obligations in relation to such assets.

From a seller's perspective:

Capital gains will usually be taxed as ordinary income. VAT recharge and payment obligations may become due.

b. Purchase Price Allocation

The purchase price must be allocated based on market value and it usually follows the allocation made between the parties in the purchase agreement.

c. Tax Attributes

Generally, tax attributes are not transferred in an asset acquisition, so they remain available for the seller. VAT paid by the buyer may constitute a VAT tax credit that may be refunded after a two month period if related to the acquisition of fixed assets, provided other requirements are met.



d. Tax Free Reorganisations

Tax free reorganisations apply to the contribution of assets provided:

(i) The restructuring process meets a criterion known as "legitimate business purpose"; broadly speaking, this means that it must be beneficial from an economic point of view and not carried out solely because of its tax benefits;

(ii) The contributing company must remain after the contribution;

(iii) The company contributing the assets must not receive an actual sum of money as a result of its transfer; and

(iv) The assets must be transferred and registered by the transferee at the same tax basis or book value at which they were recorded in the transferor's accounting records. This tax basis or book value must be shown in the Shareholders' resolution or public deed by which the assets were contributed to the company receiving them.

e. Purchase Agreement

In general, liabilities are not transferred other than under the rule transferring responsibility to the purchaser if the seller terminates its activities as a consequence of the sale.

f. Depreciation and Amortisation

The rules for tax and financial depreciation are different.

The Chilean Income Tax Law ("CITL") allows for the deduction of an annual amount of depreciation of tangible assets as an expense, calculated on the net value of the assets after the application of an adjustment for inflation rules.

Generally, the CITL does not allow the depreciation of intangible assets, land, or physical assets that are part of the inventory.

The Chilean Tax Authority ("Chilean IRS") publishes a table of the useful life of the fixed assets to be considered for tax purposes.

Tax law allows the application of a normal depreciation based on the useful life of assets published by the Chilean IRS; accelerated depreciation for one third of such useful life for certain type of assets, super accelerated depreciation considering one tenth of such useful life for certain SMEs and special rules for the depreciation of useless assets.

An instant depreciation regime will apply for certain assets acquired until 31 December 2022.

g. Transfer Taxes, VAT

19% VAT is applied, in general, to sales of movable or immovable tangible property located in Chile (excluding land) if the taxpayer is deemed to be a so called "customary seller", i.e. someone whose main and current activity is subject to VAT. Also, in some cases the sale of fixed assets is subject to VAT. VAT paid by the buyer may constitute a VAT tax credit that may be refunded after a two month period if related to the acquisition of fixed assets, provided other requirements are met. The Chilean IRS has to answer the request within 20 days of receipt of the documents.



h. Asset Purchase Advantages

The buyer will be able to apply depreciation rules (without further restructuring). Also, liabilities are not transferred.

i. Asset Purchase Disadvantages

VAT and other registration fees may apply. For a foreign resident shareholder, a dividend distribution paid from Chile derived from the gain of a sale of assets may be taxed up to a total burden of 44.45% WHT, which is higher than the 35% WHT maximum rate that may apply to gains on the sale of shares.

From a buyer's perspective, tax losses are not available.

5. ACQUISITION VEHICLES

a. General Comments

The structuring of investments in Chile may be achieved by using local and foreign companies, foreign trusts and local or foreign investment funds.

In general, it is possible to acquire assets through a foreign vehicle directly, although regulatory restrictions may apply in the case of border areas.

b. Domestic Acquisition Vehicle

Domestic vehicles can be incorporated or purchased by local or foreign investors without limitations. Foreign shareholders are required to obtain a Chilean Tax ID, but are not subject to further compliance obligations if they only act as a holder.

c. Foreign Acquisition Vehicle

Commonly used domestic vehicles include Limited Liability Companies (*Sociedad de Responsabilidad Limitada*) ("SRL"), Corporations (*Sociedad Anónima*) ("SA") Simplified Corporations or Stock Companies (*Sociedad por Acciones*) ("SpA"), and Investment Funds. Usually, domestic acquisition vehicles are funded through debt, as there is a reduced WHT rate applicable to interest remitted to a treaty country creditor or foreign financial institution.

Foreign acquisition vehicles may acquire shares of a local company or assets in Chile. The sale of the shares of the acquired company may qualify, upon exit of the investment, for reduced rates applicable to capital gains set forth in a Double Taxation Treaty ("DTT"), provided some requirements are met.

d. Partnerships and joint ventures

In Chile there are no transparent entities. Joint ventures are usually formed as companies and for some industries, such as hydrocarbons, joint ventures have a special regulation. There is a local equivalent *Asociación o Cuentas en Participación* ("ACP") whereby two or more business people acquire an interest in one or more commercial operations, which is executed by one of them, in its own name and being the one legally responsible regarding third parties, but subject to the obligation of rendering accounts to the other business people and to distributing profits or losses with them in the proportion agreed. The ACP does not constitute a separate legal entity.

e. Strategic vs Private Equity Buyers

This section is left intentionally blank.



6. ACQUISITION FINANCING

a. General Comments

In Chile, transactions are funded in different ways, namely equity contributions, debt or a combination of both. Each form has its own consequences from a tax perspective. Capital reductions may be repaid to shareholders without tax impact, provided that legal formalities are followed and that there are no taxable or financial profits pending distribution.

b. Foreign Acquirer

This section is left intentionally blank.

c. Debt

In the case where vehicles are financed through debt, interest payable to the non-residents, whether individuals or legal entities, is generally subject to a 35% Withholding Tax ("WHT"), unless a reduced tax rate applies according to the provisions of a Double Taxation Treaty ("DTT") or under local provision for foreign financial institutions. If the lender is a Chilean resident company, it will be subject to Corporate Income Tax ("CIT") (27%, 25% tax rate) on interest income. For a Chilean resident borrower, interest is deductible as an expense, provided that the general requirements set forth in the CITL are met.

Financing is generally subject to Stamp Tax at a rate that ranges between 0.066% and 0.8%.

i Limitations on Interest Deductions

Earnings stripping rules or thin capitalisation rules apply in relation to debts with foreign related parties if the debtor's debt to equity ratio exceeds 3:1. Any interest and other related financial expenses that are subject to WHT at a rate lower than 35% (including reduced DTT rates) on the excessive portion will be subject to a 35% tax at the level of the Chilean debtor with a credit of the WHT paid to be offset against the 35% tax.

Interest accrued on debt with a foreign resident related party cannot be deducted as an expense by the Chilean resident debtor if the corresponding WHT has not been paid.

Financing documents and some operations are generally subject to Stamp Tax at a rate that ranges between 0.066% and 0.8%.

ii Related Party Debt

Local and cross border transactions between related parties must be performed under market value conditions subject to transfer pricing rules and reporting obligations.

iii Debt Pushdown

A Chilean entity to which both equity and debt are contributed for acquiring the target company, should consider as a further step a debt pushdown as the interest expense at the holding level shall not be offset against profits distributed by the acquired company because there are not tax grouping provisions under Chilean law.



d. Hybrid Instruments

Chile does not have special rules for Hybrid Instruments of funding, other than some rules set forth in DTTs. As a result, where hybrid entities or instruments are used the application of tax rules is inherently uncertain and may be subject to challenge by the Chilean IRS.

e. Other Instruments

There are tax benefits applicable to mutual funds and investments or loans by multilateral organisations.

f. Earn-outs

Generally, earn-out payments should be structured under conditions to match the date of the earnout payment with the moment that the tax is triggered.

7. DIVESTITURES

a. Tax Free

The sale of shares and assets are both subject to taxes in Chile. However, in the case of publicly listed companies with a stock market presence, the sale of shares may be tax free and as from 1 September 2022 may qualify for a 10% reduced tax rate on the capital gains, if certain formal requirements of acquisition and sale are met; or continue to be treated as exempt in the case institutional investors.

b. Taxable

Taxable gains are generally considered to be ordinary income subject to income tax, except for some special regimes or exemptions set forth in the law, for example in respect of the sale shares of publicly listed companies provided certain requirements are met.

Chilean resident companies are taxed at a general 27% Corporate Income Tax ("CIT") (a lower 25% rate is available for small and medium enterprises and other entities).

Capital gains from a sale or transfer of shares or rights of a Chilean entity owned by a foreign entity are generally subject to a 35% Withholding Tax ("WHT"), unless this rate is reduced by a Double Taxation Treaty ("DTT").

c. Cross Border

Chile applies an indirect capital gains tax on the transfer by a foreign resident seller of shares of a foreign entity with relevant underlying assets in Chile. This applies if the assets represent at least 20% of the fair market value of the interest of the foreign entity being sold, or if the fair market value of the Chilean underlying asset being indirectly transferred exceeds 210,000 *Unidad Tributaria Anual* ("UTA") (approximately USD174 million), in both cases if 10% or more of the foreign entity is transferred. The indirect capital gains tax also applies if the foreign entity being transferred is resident in a low tax jurisdiction as defined in the Chilean Income Tax Law ("CITL").

The rate applicable to indirect transfer rules is 35% on the proportion that the Chilean assets represent in the capital gain, determined in accordance with the rules set forth in the CITL. The seller may opt to be taxed as if the Chilean assets had been directly sold. A corporate reorganisation process in respect of the foreign company, according to the requirements of the Chilean Income Tax Law, shall not be subject to the indirect transfer rules.



8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

All Chilean resident or domiciled taxpayers, whether individuals or corporations, are subject to taxes on their total income on a worldwide basis, with the sole exception that foreign individuals pay taxes on Chilean source income only, for their first three years of tax residence or domicile in Chile. Chilean resident or domiciled taxpayers are subject to taxation on foreign income when received, unless Controlled Foreign Corporations ("CFC") rules apply.

b. CFC Regime

Chile applies Controlled Foreign Corporations ("CFC") rules to tax passive income obtained by a CFC owned by Chilean taxpayers. These rules apply only when the amount of passive income is higher than *Unidades de Fomento* ("UF") 2,400 (approximately USD90,000). According to CFC rules, if a Chilean resident controls an offshore entity and the entity receives or accrues passive income, that resident must regard such passive income as taxable income.

c. Foreign Branches and Partnerships

Companies carrying on a trade in another territory though a foreign branch or permanent establishment must include the branch or permanent establishment results (income or loss) in the determination of the net income tax base. The net income or loss shall be determined according to the Chilean Income Tax Law ("CITL") provisions. Relief is given in Chile for income taxes paid abroad as a credit against Chilean income tax.

d. Cash Repatriation

Dividend distributions paid by an overseas company or by a Chilean branch to a Chilean resident company are subject to tax in Chile. Relief is given for income tax paid abroad as a credit against the Corporate Income Tax ("CIT"). Capital redemptions are not taxed if the investment is reported to the Chilean Tax Authority ("Chilean IRS").



9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

The transfer of real property (other than land) may be subject to Value Added Tax ("VAT"). The taxation applicable to the capital gain on a sale of shares in a company that owns real estate assets does not differ from the sale of shares in companies that are not real property rich. However, Double Taxation Treaties' ("DTTs") reduced rates on capital gains on the sale of shares generally do not apply regarding property-rich companies.

In addition, real estate property is subject to a yearly tax that is collected by the municipality or boroughs where the real estate is located. Real Estate Tax ("RET") is applied on the fiscal valuation of properties made by the tax authority. The owner of real estate property may pay this annual tax in four installments, in April, June, September and November.

Also, Law No. 21,210 on Tax Modernisation incorporated an RET surcharge, which applies to taxpayers who own properties whose total assessed value exceeds 670 *Unidad Tributaria Anual* ("UTA"), approximately USD550,000. The marginal rate applicable to the upper tax assessment bracket will be increased from 0.275% to 0.425% from 1 January 2023.

b. CbC and Other Reporting Regimes

Chile has adopted the OECD guidelines on transfer pricing reporting obligations including country by country reporting as recommended in action 13 of the BEPS actions.

In addition to the country by country report the Annual Master File Affidavit and the Annual Local File Affidavit must be submitted to the Chilean tax administration.

10. TRANSFER PRICING

Transactions with foreign resident related companies must be carried out under the arm´s length principle. If not carried out under market value, the Chilean tax administration may assess the price and charge a 40% penalty tax.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

Chilean Tax Law does not address the concept of hybrid entities or its effects, other than rules on Double Taxation Treaties ("DTT"). In practice, as a result, hybrid entities are not commonly seen in Chile.

b. Use of Hybrid Instruments

Chilean Tax Law does not address the concept of hybrid instruments or its effects, other than some rules on DTTs. However, hybrid mismatches may be reviewed under the General Anti-Abuse Rule. As a result, where hybrid instruments are used the application of tax rules is inherently uncertain and may be subject to challenge by the Chilean IRS.

c. Principal / Limited Risk Distribution or Similar Structures

Generally, Chile has implemented BEPS recommendations and follows the OECD methodologies for transfer pricing regulation.

d. Intellectual Property

Intellectual property is regulated and protected by Law No. 17,336, which regulates the registration of copyrights, and by Law No. 19,039, which regulates the registration of industrial property rights.

As a transitory measure, an instant amortisation regimen will apply up to 2022 on the acquisition of certain intangible assets protected by law, namely (a) industrial property (b) intellectual property and (c) new plant varieties.

e. Special Tax Regimes

There are some special tax regimes applicable to investments in extreme southern or northern regions of the country. There are also tax incentives for research and development and a VAT exemption for imports for investment projects of USD5 million or more. In addition, foreign investors who transfer capital or assets to Chile from abroad, of at least USD5 million or its equivalent in other currencies, are eligible for the new framework for foreign investment in Chile, established in Law No. 20,848. Some of the benefits of this law are:

- VAT exemption on the importation of capital goods (certain requirements must be met).
- The non-discrimination regime, in relation to domestic investors.



12. OECD BEPS CONSIDERATIONS

In general, Chile seeks to adopt and follow OECD guidelines, with local adaptation. All BEPS minimum standards have been implemented or are in the process of being implemented. Some of the recommended actions have not been implemented and their implementation is subject to amendment of local law; for example Action 2 (Neutralising the effects of hybrid mismatch arrangements) and Action 4 (Limitation on Interest Deductions) (although earnings stripping rules are in force in Chile).

Chile subscribed to the Multilateral Implement ("MLI") on 6 July 2017 and made the relevant deposit on 26 November 2020. The MLI has been in force since 1 January 2021.

13. ACCOUNTING CONSIDERATIONS

For financial purposes, Chilean companies keep their accounting under IFRS standards. For tax purposes, the Chilean Income Tax Law ("CITL") provides that investments should be re-registered at the acquisition value adjusted by local inflation on a yearly basis. If the investment is abroad, or liabilities are agreed in foreign currencies, such assets and liabilities are adjusted with the corresponding exchange rate on a yearly basis. In these cases, foreign exchange fluctuation may impact the tax results of the company.

As a general rule, the allowed currency for tax purposes is the Chilean peso. However, in some qualified cases the Chilean Tax Authority ("Chilean IRS") may authorise taxpayers to keep their accounting records in a different currency.



14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

From a legal perspective, distributions to shareholders require that the company has accumulated profits or financial distributable reserves. From a tax perspective, all profit distributions are subject to tax. For such purposes a Business Profits Registry must be prepared by each company.

Intragroup profit distributions are not taxed when both companies are domiciled or resident in Chile. If profits are distributed by a company to a shareholder domiciled or resident abroad, Withholding Tax ("WHT") will apply. Corporate Income Tax ("CIT") paid on such profits is allowed as a tax credit against Final Taxes on a full or partial basis, as explained.

b. Application of Regional Rules

As a member of the OECD, Chile generally follows OECD guidelines and recommendations.

c. Tax Rulings and Clearances

Generally, there is not a ruling or clearance process; however, the Tax Code allows a request for confirmation by the Chilean Tax Authority that a transaction would not be challenged under special or general anti-avoidance rules. The Chilean IRS has to answer the request within 90 days of receipt of the documents. There is also a procedure for requesting the Chilean IRS to confirm the gain derived form a transaction, although such voluntary procedure is usually not used.

15. MAJOR NON-TAX CONSIDERATIONS

Due regard should be given to the legal aspects that arise in the context of an M&A deal.



16. APPENDIX I - TAX TREATY RATES

Chile includes a clause in all tax treaties whereby the Withholding Tax ("WHT") on dividends remitted from Chile is not limited by the caps of the article on Dividends of the Double Taxation Treaty ("DTT"), provided that the first category tax is fully creditable in computing the amount of additional tax to be paid. Therefore, the second column below is only applicable to dividends received by Chile, whereas dividends remitted from Chile will be subject to the 35% WHT with a full credit for Corporate Income Tax ("CIT").

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Argentina	10 / 15	4 / 12	3 / 10 / 15	[1]
Australia	5 / 15	5 / 10	5 / 10	[2] [3] [4]
Austria	15	4 / 5 / 10	2 / 10	[3] [4]
Belgium	15	5 / 15	5 / 10	[3] [4]
Brazil	10 / 15	15	15	[5]
Canada	10 / 15	10 / 15	10	[5]
China	10	4 / 5 / 10	2 / 10	[3] [4]
Colombia	0 / 7	5 / 15	10	[6]
Croatia	5 / 15	5 / 15	5 / 10	[3] [4] [7]
Czech Republic	15	4 / 5 / 10	5 / 10	[3] [4]
Denmark	5 / 15	4 / 5 / 10	2 / 10	[4] [9]
Ecuador	5 / 15	4 / 5 / 10	10 / 15	[4]
France	15	4 / 5 / 10	2 / 10	[3] [4]
Ireland	5 / 15	4 / 5 / 10	2 / 10	[3] [4] [10]
Italy	5 / 10	4 / 10	2 / 10	[3] [4]
Japan	5 / 15	4 / 10	2 / 10	[4] [11]
Korea, Republic of	5 / 10	4 / 5 / 10	2 / 10	[4] [9]
Malaysia	5 / 15	15	10	[10]
Mexico	5 / 10	5 / 10	10	[10]
Norway	5 / 15	5 / 15	5 / 10	[4]
New Zealand	15	10 / 15	10	
Paraguay	10	10 / 15	15	[5]
Peru	10 / 15	15	15	[5]
Poland	5 / 15	4 / 5 / 10	2 / 10	[4]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Portugal	10 / 15	5 / 10 / 15	5 / 10	[4]
Russia	5 / 10	15	5 / 10	[4] [8]
South Africa	5 / 15	5 / 15	5 / 10	[3] [4] [8]
Spain	5 / 10	4 / 5 / 10	2 / 10	[3] [4] [12]
Sweden	5 / 10	4 / 5 / 10	2 / 10	[3] [4] [12]
Switzerland	15	5 / 15	5 / 10	[3] [4]
Thailand	10	10 / 15	10 / 15	
United Kingdom	5 / 15	4 / 5 / 10	2 / 10	[3] [4] [12]
Uruguay	5 / 15	4 / 15	10	[8]

Footnotes	
1	Dividends - The 10% rate applies when the beneficial owner is a company that directly owns at least 25% of the capital of the company paying the dividends.
2	Dividends - 5% rate applies to dividends paid to a company which holds directly at least 10% of the voting power of the paying company.
3	Interest - The reduced rate applies to interest on loans from banks, insurance companies, publicly traded securities and sale of equipment on credit.
4	Royalties - The reduced rate concerns the use or the right to use industrial, commercial or scientific equipment.
5	Dividends - The 10% rate applies when the beneficial owner is a company that directly or indirectly owns at least 25% of the capital of the company paying the dividends.
6	Dividends - A rate of 0% of the gross dividend applies if the beneficial owner is a company that directly owns at least 25% of the capital of the company paying dividends.
7	Dividends - The 10% rate applies when the beneficial owner is a company that directly owns at least 20% of the capital of the company paying the dividends.
8	Dividends - The 5% rate applies when the beneficial owner is a company that directly owns at least 25% of the capital of the company paying the dividends.
9	Dividends - The 5% rate applies when the beneficial owner is a company that directly or indirectly owns at least 25% of the capital of the company paying the dividends.
10	Dividends - The 5% rate applies when the beneficial owner is a company that directly owns at least 20% of the capital of the company paying the dividends.
11	Dividends - the 5% rate applies when the gross amount of the dividends if the beneficial owner is a company that directly owns, for a period of at least six months ending on the day on which the right to the dividends is determined, at least 25% of the voting rights of the company paying the dividends.



Footnotes	
12	Dividends - The 5% rate applies when the beneficial owner is a company that directly or indirectly owns at least 20% of the capital of the company paying the dividends.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Tax contact person available to discuss income and non income tax matters.
2	Tax Due Diligence	General	A current organisation chart, including all entities by full legal name, jurisdiction, date and place of formation, entity type, class of shares, and ownership percentages. Include a full history of each entity in the structure.
3	Tax Due Diligence	General Tax Information	IRS web portal information.
4	Tax Due Diligence	General Tax Information	Notifications, summons and tax settlements received, completed or in the process of being audited or sentenced.
5	Tax Due Diligence	General Tax Information	Copies of charges issued by the IRS.
6	Tax Due Diligence	General Tax Information	Debt certificates issued by the Chilean Treasury.
7	Tax Due Diligence	Income Tax	Income Tax Declaration for the past three years and corresponding status.
8	Tax Due Diligence	Income Tax	Observation letter of Income Tax Declaration for the past three years.
9	Tax Due Diligence	Income Tax	Annual affidavits and status for the past three years and corresponding status.
10	Tax Due Diligence	Income Tax	Observation letter of annual affidavits for the past three years.
11	Tax Due Diligence	Income Tax	Balance sheets for the past three years.
12	Tax Due Diligence	Income Tax	Net taxable Income for the past three years.
13	Tax Due Diligence	Income Tax	Detail of rejected expenses declared for the past three years.
14	Tax Due Diligence	Income Tax	Tax Equity Capital for the past three years.
15	Tax Due Diligence	Income Tax	General and journal ledgers for the past three years.
16	Tax Due Diligence	Income Tax	Income information, withholding agents and others for the past three years.
17	Tax Due Diligence	Income Tax	Taxable Profit Fund Ledger of periods 31 December 2015 and 31 December 2016.
18	Tax Due Diligence	Income Tax	Business Income Registry for the past three years.
19	Tax Due Diligence	Income Tax	Certification of taxes used as credit in Chile of investment abroad.
20	Tax Due Diligence	Income Tax	Auxiliary Book of use of asset for the past three years



Nº.	Category	Sub-Category	Description of Request
21	Tax Due Diligence	Monthly Tax	Form N°29 of Monthly Tax Declaration of Valued Added Tax ("VAT") and payment for the past three years.
22	Tax Due Diligence	Monthly Tax	Purchase and Sales Ledger for the past three years.
23	Tax Due Diligence	Monthly Tax	Invoices, debit notes, credit notes, fee receipts and other received documents, for the past three years.
24	Tax Due Diligence	Monthly Tax	Invoices, debit notes, credit notes, fee receipts and other issued documents, for the past three years.
25	Tax Due Diligence	Monthly Tax	Form No. 50 of Monthly Tax Declaration for the past three years.
26	Tax Due Diligence	Monthly Tax	Withholding ledger for the past three years.
27	Tax Due Diligence	Monthly Tax	Remunerations ledger for the past three years.
28	Tax Due Diligence	Others	Real estate and other assets purchase and sale agreements.
29	Tax Due Diligence	Others	Rentals and leasing contracts with amortisation tables.
30	Tax Due Diligence	Others	Promissory notes, financial or performance guarantees, loan or credit agreements, all mortgages, and any other documents that bear interest and adjustments.

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1. INTRODUCTION

a. Forms of Legal Entity

Three main categories of legal vehicles exist in China: Limited Liability Company (including Wholly Foreign Owned Enterprise ("WFOE") and Joint Venture), Partnership and Representative Office (although the Representative Office is not a legal person). A foreign company (other than a foreign company operating in the bank/insurance/finance service line) may not operate in branch form in China.

Limited partners of Partnerships and shareholders of Limited Liability Companies may forfeit their equity contributions but are not responsible for the obligations and debts of the companies themselves.

Under prevailing Chinese regulations, the legal nature (i.e. whether it is a legal entity or a contractual relationship) of a China Business Trust ("CBT") and its tax treatment (i.e. whether it is transparent for China tax purposes) are not entirely clear. Although it is not uncommon to encounter the use of a CBT historically within a multinational structure, few taxpayers are currently setting them up due to the uncertainties and the additional pressures of BEPS and OECD tax reforms. Taxpayers with CBTs should discuss and agree the relevant treatments with the competent authorities regularly (e.g. annually). However, any discussions and agreements on the treatment with the competent authorities may just be verbal and it is unlikely that the competent authorities would issue any written rulings or advice in this regard.

Foreign investment in certain industries in China may be restricted. Some industries do not admit foreign investors at all, others may permit <50% foreign investment, and others may not require any local investment, but local governments may request certain levels of local participation[1].

b. Taxes, Tax Rates

China's standard corporate income tax ("CIT") rate is 25%, but certain regimes may reduce such rate to 2.5%, 5% or 15% (e.g. high tech companies). The regime previously qualifying for a 5% rate (e.g. company with annual taxable income no more than RMB1 million) was lowered to 2.5% effective from January 2021 and the regime previously stipulating 10% (e.g. company with annual taxable income more than RMB1 million but no more than RMB3 million) was lowered to 5% from January 2022.

Limited Liability Companies are subject to CIT. Partnerships are not liable for income tax on their own income; rather, the partners of Partnerships are responsible for Chinese income tax at their own applicable tax rates on their income received from the Partnerships.

In addition to income taxes, China imposes standard Value Added Tax ("VAT") at rates that vary from 3%-13%, depending on activities and incomes[2]. Unlike CIT, both Limited Liability Companies and Partnerships would be liable for VAT and surcharges on their receipts subject to VAT. Owners of immovable properties in China would also be subject to property taxes including Real Estate Tax and Urban Land Use Tax. Further, China imposes Land Appreciation Tax ("LAT") at a rate of 30-60% on gains arising from direct transfers of immovable property (including land use rights). Indirect transfers of immovable property should technically not be subject to LAT in China; although on some rare occasions, certain local PRC tax authorities have sought to impose LAT even on indirect transfers of immovable property if they deem the transaction is a tax avoidance arrangement. M&A activity may also implicate other types of transfer taxes, such as Stamp Duty and Deed Tax (only on transfers of immovable property), amongst others.

1 Note that such requests may be tied to local regulatory approvals. In such cases, foreign investors may wish to consider whether the terms of the equity participation - preferred or common, voting or non-voting, term, and exit provisions. Local laws that may override the terms of equity participation should also be considered carefully, along with any implications of potential governmental ownership of the investor.

2 Careful analysis should be made when considering a toll manufacturing business or a contract manufacturing business (versus a full-risk manufacturing model), as the VAT costs of such operating arrangements can be prohibitive.



c. Common divergences between income shown on tax returns and local financial statements

In China, there are several discrepancies between accounting profits and taxable profits. Regarding M&A transactions, the common divergences are as follows:

- Permanent adjustments: entertainment expense exceeding certain specified thresholds, certain management fees, certain bad debt, government fines (such as tax penalties, etc.) etc.;
- Temporary adjustments: accrual expenses, annual limited staff welfare fee, inventory reserve, provisions, unrealised gains/ losses, etc.

In groups of Chinese companies, dividends distributed from a China subsidiary to a China parent company will not create taxable profits for such parent.

2. RECENT DEVELOPMENTS

A series of Covid-19 tax and social welfare policies were issued and implemented in early 2020 by the state government, most of which expired during 2021. However, following ongoing Covid-19 developments in China during March/April 2022, similar policies could be reactivated by the government in the upcoming months.

- Tax measures

a. Protective treatments and supplies

Equipment expenditures, which are incurred to increase production capacity by companies engaged in the production of key supplies for epidemic prevention and control, are allowed to full CIT deduction in a single year and apply for full refund of incremental retained VAT on a monthly basis. Allowances and bonuses obtained by individuals participating in the epidemic control and prevention and medicines and medical supplies given out to individuals for the purpose of prevention of coronavirus COVID-19 will be exempt from Chinese Individual Income Tax ("IIT").

b. Donations

In the tide of many companies and individuals actively making donations of money and goods to help fight against COVID-19, the Chinese government also guaranteed exemptions for the donors.

These exemptions cover goods donated through charity organisations, government authorities, or directly donated to the hospitals leading coronavirus containment which are entitled to VAT and Surtax exemption.

In addition, the donations made by enterprises or individuals through qualified organisations or government authorities can be fully deducted for CIT and IIT purposes.

c. Losses carried forward

In order to cushion the impact to businesses and the economy, the Chinese government is also working hard to reduce the tax burden on all sectors.

For industries that were significantly affected during the outbreak, especially for transportation, catering, accommodation and tourism, the ability to offset CIT losses incurred in 2020 will be extended from five years to eight years (i.e. losses incurred in 2020 will be able to be utilised up to and including the 2028 annual filing).



d. VAT on Small Scale Taxpayers

Going further, China's State Council has also decided to exempt VAT for small scaled taxpayers in Hubei province (where Wuhan is located) and reduced the VAT collection rate from 3% to 1% for small scale taxpayers in other areas, from 1 March 2020 and the monthly minimum threshold of taxable income will be increased from RMB 10,000 to RMB 15,000 from 1 April 2021.

- Social measures

The Chinese government provides a lot of Social Security deferral payment and subsidies. They responded by deferring payments and subsidised the small and medium sized enterprises' rates and the Social Security payments.

3. SHARE ACQUISITIONS

a. Tax Attributes

China does not restrict the use of net operating losses or other tax attributes upon a direct or indirect transfer of the shares of a Chinese company. However, in the case of an indirect transfer, the existence of tax assets on the books of a Chinese company may affect the share transfer tax analysis (see below).

b. Tax Grouping

China does not provide for group taxation of related Chinese entities. Each Chinese entity shall file income tax returns separately except for branches which calculate their portion of income tax based on certain factors within the company.

c. Tax Relieved Reorganisations

Deferral of CIT may be achieved with respect to the transfer of an asset or equity if:

- The transferor and transferee are Chinese companies, related via 100% direct equity ownership;
- The transfer occurs at net book value;
- Neither party recognises gain or loss under Chinese GAAP methods;
- The transaction is executed for a reasonable business purpose that is not primarily for the purpose of reducing, eliminating or deferring tax payment;
- The original business activities of the assets/equity being transferred should remain unchanged for a minimum period of 12 months following the transfers[3];

3 Cai Shui (2014) No. 109. and Cai Shui (2009) No.59



- The ratio of acquired, merged or divided assets or equity complies with the requirement (e.g. the assets/equity transferred are not lower than 50% of the total assets of the transferor enterprise/equity interests of the acquired enterprise), and in the case of a restructuring, the consideration paid for equity complies with such required ratio of 85%; and
- In the case of a transfer of a Chinese resident enterprise by a non-Chinese resident enterprise to its wholly-owned non-Chinese resident enterprise, the transferor is required to provide a written undertaking to the relevant PRC tax authorities that the transferor will not transfer the equity of the transferee within a period of three years following such initial transfer.

d. Purchase Agreement

In the context of an indirect transfer of the equity interests in a Chinese resident enterprise (see below), the tax exposures and tax reporting duties should be evaluated[4]. A buyer typically should seek legal protection in the purchase agreement to ensure that the seller will:

(i) Timely complete the appropriate reporting;

(ii) Provide a copy of all correspondence (including reporting acknowledgement notices, tax returns and tax payment receipts where applicable) with the PRC tax authority for the buyer's records and support of its tax cost base upon future transfer; and

(iii) Indemnify the buyer for any tax, interest and penalties imposed on the buyer in relation to the indirect transfer of the Chinese enterprise in case the seller fails to pay its own tax liabilities.

e. Transfer taxes on equity transfers (including mechanisms for disclosure and collection)

China imposes a 10% withholding tax ("WHT" or "STT") on the gains resulting from dispositions of "Chinese taxable property" by a non-Chinese tax resident enterprise which does not have a taxable establishment in China . Shares/equity interests/convertible bonds in Chinese resident entities, immovable properties in China and assets belonging to Chinese permanent establishments constitute "Chinese taxable property" such that their direct transfers are subject to STT.

Similarly, if equity interests of a company that owns Chinese taxable property are transferred, China may recharacterise (and impose CIT on) such an indirect transfer as a direct transfer of the Chinese taxable property if the transfer is not clearly supported by a "reasonable business purpose" and the company that owns the Chinese taxable property lacks sufficient economic substance[5].

4 Announcement of the SAT [2015] No.7 ("Circular 7", replacing Circular 698 re. indirect share transfer tax)

5 Article 1, Circular 7.



In determining whether a transfer has "reasonable business purpose", the tax authorities adopt a "green zone", "red zone", and facts and circumstances ("Seven Factors Test") approach as follows:

i "Green Zone" (Safe Harbor[6]): no recharacterisation of an indirect transfer may occur if:

- The initial acquisition and current sale are of a public listed company on the open market;
- A direct transfer of the Chinese assets by the non-resident seller would be exempt under the double tax treaty between China and the jurisdiction in which the non-resident seller is tax resident;
- The transfer is part of a group internal restructuring that involves each of the following:
  - The transferor and transferee are related by at least 80% common equity ownership (directly or indirectly[7]);
  - Indirect relation via "chains" of entities is determined by multiplying the equity ownership; and
  - If more than 50% of the value of the overseas enterprise being transferred is attributable to the immoveable property in China, the "common equity ownership" between the transferor and transferee will need to be increased to 100% (instead of 80%);
  - The PRC tax liability on any subsequent indirect transfer shall not be reduced as compared to a situation where such internal restructuring did not take place; and
  - Consideration for the transfer is wholly paid in the form of the equity of the transferee or an enterprise in which the transferee owns a controlling interest (i.e. cashless and debtless).

ii "Red Zone"[8]: an indirect transfer is automatically recharacterised as a direct transfer if each of the following is the case:

- 75% or more of the value of the equity of the overseas enterprise is (directly or indirectly) attributable to taxable assets in China;
- At any time within the preceding year before the indirect transfer, either at least:
- 90% of the gross assets of the overseas enterprise (excluding cash) comprise direct or indirect investments in China; or
- 90% of the gross income derived by the overseas enterprise is sourced directly or indirectly from China;
- The overseas enterprise conducts limited functions and bears minimal risks and generally lacks economic substance; and
- The income tax payable overseas for the indirect transfer is lower than the taxes which would be paid in China upon a direct transfer of the taxable assets in China.

6 Part 1, Article 4, SAT Announcement 7 (2015).

7 Although no legal definition for this has been set forth, equity ownership is generally understood to be measured by equity control with voting rights.

8 Article 4, Circular 7; generally speaking, the "red zone" is used to recharacterise transactions exclusively involving "shell companies."

iii Seven Factors Test: the existence of a reasonable commercial objective for a transaction which is not in the red or green zone is determined by taking into account the following actual circumstances:

- Whether the primary value of the equity of the overseas enterprise is, directly or indirectly, attributable to taxable assets in China;
- Whether the overseas enterprise's assets primarily comprise direct or indirect investments in China, or whether its income is derived mainly, directly or indirectly, from China;
- Whether the overseas enterprise and its subsidiaries and branches which directly and indirectly hold taxable assets in China perform enough functions and take on enough risk to demonstrate that the enterprise structure has economic substance;
- The duration of existence of shareholders, business model and the relevant organisation structure of the overseas enterprise;
- The amount of income tax payable overseas for the indirect transfer of taxable assets in China;
- From a commercial point of view, whether the non-Chinese resident transferor's indirect investment and indirect transfer of Chinese taxable assets could be replaced by a direct investment and direct transfer;
- The applicability of a tax treaty or arrangement with China for income derived from indirect transfer of taxable assets in China; and
- Any other relevant factors.

In summary, an indirect transfer of a Chinese enterprise may be recharacterised as a direct transfer of the Chinese enterprise if the primary equity or asset value or incomes are attributable to China, the offshore companies which hold the Chinese company lack economic substance, and/or the indirect transfer is tax advantageous to the transferor. The preponderance of the factors in each case will determine whether recharacterisation occurs.

Voluntarily Reporting and Documents Required

All parties to the transaction, including the transferee, transferor, or Chinese resident enterprise whose equity has been indirectly transferred, may voluntarily report the transfer to the relevant tax authorities where the Chinese resident enterprise is located. For an indirect equity transfer involving multiple Chinese resident enterprises in different locations, the reporting party may select one of these involved locations to perform the reporting.

The reporting party must provide:

- Copies of the transaction agreement (both English and Chinese translations);
- Structure charts before and after the transfer;
- Financial statements of the offshore entities who directly or indirectly hold the equity interests of the Chinese resident enterprise for the past two fiscal years;
- An articulation of why the transfer should not be recharacterised, in particular, whether the transaction has "reasonable business purposes"; and
- Other materials as requested by the PRC tax authorities.



If such voluntary reporting occurs within 30 days after the signing of the transaction agreement, penalties on the transferee for not fulfilling the withholding obligation (if any) may be mitigated or exempted. Otherwise, the transferee could be subject to a penalty of 50% to 300% of the tax payable, in addition to settling the unpaid/unwithheld tax.

After reviewing the reporting documents (a period of approximately one to two months, although this could be longer depending on the capacity of the tax authorities), the tax authorities will notify the reporting party if they would like to obtain more information in order to further assess and determine whether the transfer should be recharacterised as a direct transfer or if they have concluded that the transfer is taxable in China. Conversely, if the tax authorities consider the transaction is not taxable in China, they will remain silent and will not issue any formal written notification/conclusion. In the case of a taxable indirect transfer, penalties and interest should not apply to the taxpayer unless the tax payable remains unpaid after the time specified by the tax authorities for payment.

Stamp duty of 0.05% on the consideration is payable by each party to the agreement with respect to direct transfers of a Chinese enterprise. Generally speaking, stamp duty is not levied on indirect transfers of Chinese enterprises, even if they are recharacterised as direct transfers, unless the transfer agreement is executed in China. That said, we are aware of certain (less common) cases where certain aggressive tax authorities have sought to levy stamp duty in cases where the indirect transfer of a Chinese enterprise is recharacterised as a direct transfer.

f. Share Purchase Advantages

Given the steep rise in land and property values, particularly in large cities in China and more types of taxes being levied on direct transfers of land and property, an equity transfer of a Chinese company is often preferable considering the higher tax costs arising from an asset purchase[9]. Further, compared to an asset purchase, an equity transfer would be less costly, less time consuming and less administratively burdensome. On the other hand, an equity transfer will not step up the basis in the assets for the company being transferred for either Chinese tax or financial reporting purposes (see below for tax basis in the case of asset acquisition).

g. Share Purchase Disadvantages

Historical liabilities (tax and otherwise), contracts, and other agreements are typically retained by the entity whose equity is being transferred.

4. ASSET ACQUISITION

a. Purchase Price Allocation

In an asset acquisition, the tax authorities will typically review the contract value prior to final tax settlement and if the tax authorities consider the value to be not at arm's length, they may require an asset valuation report for tax assessment purposes.

b. Tax Deferred Reorganisations

The applicable tax deferral regime for an asset deal is listed above. Both parties to any such transaction shall submit written filing materials, as a recordal filing, to the tax authorities in charge together with its annual CIT filings following the completion of the transfer to demonstrate that the transaction complied with the requisite criterion for entitlement to the tax deferred treatment. No pre-approval from the tax authorities is required to benefit from the tax deferral treatment.

9 Note that, if the tax authorities believe a share transfer was affected solely for the purpose of tax avoidance, they may treat the share transfer as an asset transfer and impose LAT on it.



c. Depreciation and Amortisation

Depreciation is generally calculated and tax deductible on a straight line basis with respect to assets having useful lives in excess of one year. According to guidance from the tax authorities, different types of fixed assets are subject to specified minimum depreciation periods and accelerated depreciation methods may be adopted for certain specified assets.

Amortisation of intangible assets (other than goodwill) is calculated and tax deductible on a straight line basis over a period of at least ten years. The amortisation period of intangible assets may make reference to the period governed by law or contract. Goodwill amortisation may not be deducted for Chinese CIT purposes.

d. Transfer taxes, VAT

Both parties to the agreement would be subject to stamp duty (as discussed above). Further, the seller will be subject to VAT. The applicable VAT rates vary depending on the types of assets being transferred. The buyer, if registered as a general VAT payer, is allowed to claim input VAT credit on the asset purchase against the output VAT calculated under the general method (as opposed to the simplified method where no input VAT credit is allowed).

e. Asset Purchase Advantages

The tax basis of the acquired assets will be adjusted to the asset purchase value and the buyer will not inherit the historical liabilities of the seller.

f. Asset Purchase Disadvantages

If the non-resident shareholder of the Chinese resident enterprise would like to liquidate the company and withdraw the investment from China after the asset acquisition, additional tax costs (such as WHT on dividends and capital gains) and administrative costs may incur. The additional costs should be considered beforehand and be factored into the costs of the transaction.



5. ACQUISITION VEHICLES

a. Domestic Acquisition Vehicle

The most common Chinese legal entities used in acquisitions are the Limited Liability Company and the Partnership.

Setting up an acquisition vehicle in China can be time consuming (generally at least three to six months), as the company must register with various Chinese authorities, including Ministry of Commerce (MofCom), Administration for Industry and Commerce (AIC), State Tax Administration (STA), State Administration for Foreign Exchange (SAFE), Bank, Customs, Statistic Bureau, Financial Bureau, Police, Labor Bureau, Housing Fund Center and etc. before it can carry out business operations in China.

Some acquirors have used "shell companies" that have previously been engaged in business in China. Aside from the due diligence costs in assessing whether the "shell company" has any historical liabilities, such an acquiror should also schedule a minimum of six weeks to complete the share transfer procedures. Licenses and registrations of the "shell company" should be reviewed by the acquiror's lawyers to ensure they are appropriate and legally valid for carrying out the intended business operations going forward.

The shareholding of a Chinese entity should be carefully considered, especially with respect to (a) tax treaty relief on future dividends repatriation (i.e. reduction of withholding tax rates) and (b) whether the foreign shareholder satisfies the beneficial ownership requirements necessary to qualify for claiming tax treaty relief under the applicable tax treaty with China. Broadly, this would require the foreign recipient to have substantive economic substance in the foreign jurisdiction in which it is a tax resident (see the section "Substance Requirements for Recipients" below for further discussion of the beneficial ownership test).

b. Foreign Acquisition Vehicle

Historically Hong Kong, the BVI, and the Cayman Islands have been the common choices of holding company jurisdictions for investments in China due to (1) the lower Chinese WHT on dividends from China to Hong Kong under the double tax treaty arrangement between China and Hong Kong, (2) the preferential treatment in these jurisdictions on off-shore revenues, and (3) the legal feasibilities regarding confidentiality of the ultimate shareholder identifications. However, with the implementation of the Common Reporting Standard between China and acts such as the Notice of the Economic Substance Act in the BVI and the Cayman Islands, investors are considering other options when selecting their holding company jurisdictions for future Chinese investments.

c. Partnerships and joint ventures

Partnerships usually will be chosen by individual investors considering the tax efficiency on dividend and equity incentive plans. For special industries such as financial, publishing, agriculture, etc., joint ventures are the only permitted vehicles for foreign acquirors entering into Chinese market.

d. Strategic vs Private Equity Buyers

There are no particular differences in the considerations strategic vs private equity buyers have in terms of the Chinese Tax Regime.



6. ACQUISITION FINANCING

a. General Comments

China maintains strong restrictions on foreign exchange, such that funds entering or exiting China must be approved by the SAFE, and the management of the funds must comply with the approved arrangements and approved usage of the bank accounts.

For example, assume a Chinese entity has set up one RMB basic account and other foreign currency accounts like a EUR capital account, a USD settlement account, a HKD foreign loan account. Its capital account will only be used to receive the paid in capital from the shareholder up to its registered capital amount. Its settlement account can only be used to receive and make payments related to its daily foreign currency business transactions. Its loan account can only be used to receive the registered loan principal. Its RMB basic account is responsible for other daily transactions in RMB. For any foreign exchange activities, the company must file applications to the bank/SAFE by providing a list of requisite documents.

In general, there is no legal reserve requirement for the bank accounts including the requirement to maintain a minimum capital account balance. In order to manage the foreign exchange risk, currency hedging and currency preservation clauses are typically adopted in cross-border agreements. Under the PRC GAAP, Chinese company's accounts must be reflected in Renminbi (RMB).

Chinese companies are not allowed to provide loans to other companies within a group or other third parties unless the Chinese companies obtained a business license that specifically includes provision of loans in the business scope. However, Chinese companies can provide financing to other companies via an "entrustment loan" arrangement with a Chinese financial institution.

b. Equity

The Chinese Company Law regulates that the legal minimum registered capital for a normal company to be at least RMB30,000. Depending on the business scope to be applied for, the minimum capital requirement could be uplifted if the company is engaging in specific industry, (e.g. banking, insurance, freight forwarding, telecommunication, printing etc.). During the application for General VAT Payer in most regions in China, the tax authority prefer the registered capital to be no less than RMB500,000, however this is not compulsory.

c. Debt

i Limitations on debt and interest

Financial costs incurred during the usual course of business are generally deductible for CIT purposes, subject to tax thin capitalisation rules and transfer pricing requirements. The thin capitalisation rules operate to disallow the deduction of excessive interest expenses from related party loans (which exceeded the specified debt to equity ratio as noted below) for CIT purposes.

Interest paid to a related party is tax deductible to the extent the following debt to equity ratios are followed:

- 5:1 for financial institutions; and
- 2:1 for all other companies.

In the case of a specialised entity known as a "China Holding Company" that is set up to be the common owner of various Chinese investments, this ratio may be increased up to 6:1.

The above ratios should not apply if a company can prove that either (a) the financing is at arm's length (i.e. equivalent to the amount of loan and rates that can be borrowed from third party commercial financial institutions) or (b) the effective tax rate of the borrowing entity is not higher than that of the Chinese lending entity. Excessive interest is not deductible in the current and subsequent periods and might be recharacterised as dividends when paid.

According to the Chinese foreign exchange regulations and tax regulations, onshore and/or offshore loans from related parties or third parties can be undertaken but with certain limitations, i.e. offshore loans would be subject to the foreign debt quota, while related party financing is subject to the regulatory and tax thin capitalisation rules. After the foreign loan agreement is signed, the Chinese company must register the foreign loan with the SAFE before it can receive the loan principal. The foreign debt quota is generally calculated based on the Registered Capital (Paid-in Capital) of the Chinese borrower, see the table below for reference:

Paid-in Capital (X, unit in Million USD)	Maximum Foreign Loan (Y, unit in Million USD)
0 < X < 2.1	Y = 3/7 X
2.1 <= X < 5	Y = X
5 <= X < 12	Y = 1.5 X
12 <= X	Y = 2 X



d. Debt Pushdown

Other traditional debt push down methods might also be considered, such as setting up a new Chinese entity, funded with debt, to acquire the trade and assets of an existing Chinese entity; or acquiring another Chinese entity from the non-Chinese holding entity, while relevant tax costs such as VAT, CIT, stamp duty under each scenario must be considered.

e. Transfer Taxes, VAT

VAT (currently at 6%) will be levied on interest income received by the lender. However, the input VAT paid on interest expenses by the borrower would not be creditable against the borrower's output VAT payable. Local surcharges (ranging from 10-12% generally) would also be levied on the net VAT payable.

f. Hybrid Instruments

The concepts of hybrid instruments or indeed hybrid entities are not applicable in China.

g. Other Instruments

This section is left intentionally blank.

h. Earn-outs

Earn-out mechanisms have existed in China for many years. The instalment of contribution for earn-outs shall be subject to CIT at the time of the transaction. For earn-outs paid to non-Chinese tax resident enterprises, the Chinese entity has the obligation to report and withhold WHT on behalf of the non-resident at a 10% WHT rate.



7. DIVESTITURES

Overall, we would note that China treats a divestiture as a common asset transfer or equity sale and the tax treatment is therefore also referenced largely in sections 3 and 4 above.

a. Tax Free

Deferral of CIT may be achieved with respect to the divestitures if:

- The transferor and transferee are Chinese companies, related via 100% direct equity ownership;
- The transfer occurs at net book value;
- Neither party recognises a gain or loss under Chinese GAAP methods;
- The transaction is executed for a reasonable business purpose that is not primarily for the purpose of reducing, eliminating or deferring tax payment;
- The original business activities of the assets/equity being transferred should remain unchanged for a minimum period of 12 months following the transfers3;
- The ratio of acquired, merged or divided assets or equity complies with the requirement (e.g. the assets/equity transferred are not lower than 50% of the total assets of the transferor enterprise/equity interests of the acquired enterprise), and in the case of a restructuring, the consideration paid for equity complies with such required ratio of 85%; and

In the case of a transfer of a Chinese resident enterprise by a non-Chinese resident enterprise to its wholly-owned non-Chinese resident enterprise, the transferor is required to provide a written undertaking to the relevant PRC tax authorities that the transferor will not transfer the equity of the transferee within a period of three years following such initial transfer..

b. Taxable

Any gain (i.e. the fair market value after deducting booked cost) will be subject to CIT at 25% for Chinese entities. Further, for the assets, the Chinese entity will be subject to VAT, the applicable VAT rates (3% to 13%) vary depending on the types of assets being transferred.

c. Cross Border

The CIT levied on non-resident capital gains is 10% and VAT will not be applicable in most cases.



8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

Chinese citizens holding registered permanent residence and Chinese registered legal entities will be subject to CIT/IIT on their global income, subject to the provisions applicable under the relevant double tax treaty ("DTT") the taxes paid in those countries may be creditable against the Chinese tax due.

b. CFC Regime

China has implemented controlled foreign corporation ("CFC") rules. CFC's will be regarded as Chinese tax residents and their income will be regarded as taxable income in China. A CFC is defined as any foreign enterprise established and controlled by a Chinese tax resident (both enterprises and individuals) in a country (region) where the effective tax rate is less than 12.5% and whose non-distribution or reduced distribution of profit is not due to reasonable operational requirements. Control means substantive control over shares/equity, funds, business operations, purchases and sales, etc. Income of such a company will be deemed distributed to any Chinese resident shareholder who directly or indirectly owns 10% or more of the voting shares in the foreign enterprise on any day of the tax year and Chinese resident shareholders who jointly hold 50% or more of the shares in such foreign enterprise. Indirect shareholding by Chinese resident shareholders at multiple levels shall be computed by multiplying the shareholding percentage of the respective levels; shareholdings in excess of 50% at any point in the middle shall be deemed to be 100% for calculation purposes.

The deemed income in the current year of such shareholder is equal to:

- The deemed dividend distribution by the CFC x the number of days of actual shareholding / the number of days in the CFC's tax year × the shareholding percentage

Under the CFC regulations, a shareholder will not be subject to taxes again for the actual receipt of dividends from a CFC to the extent that the dividends have been taxed to such shareholder under the CFC rules. However, the current rules do not address the tax treatment of share dispositions of companies whose dividends have been taxed to a shareholder but not distributed. Such a shareholder may have a reasonable basis to argue that its tax cost basis in the shares can be stepped up by the amount of deemed dividend which has been taxed, but this would ultimately be subject to case by case negotiations and agreements with the relevant PRC tax authorities. If the Chinese shareholder can provide documentary evidence to prove that (1) the foreign company is incorporated in the white list jurisdictions which include the United States, Britain, France, Germany, Japan, Italy, Canada, Australia, India, South Africa, New Zealand or Norway, (2) the income of the company is active income, or (3) the annual profit is lower than RMB5 million, the profits of such foreign enterprises that are not distributed or are subjected to reduced distribution, will be exempt from being deemed to be distributed dividends and exempt from being included in the current income of the Chinese resident enterprises[10].

10 Guo Shui Han [2009] No.37.



9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

None.

b. CbC and Other Reporting Regimes

The CbC reporting forms are required from the Chinese resident enterprise if:

- It is the ultimate holding company of a group with consolidated revenues of over RMB5.5 billion; or
- It is nominated as the CbC reporting entity.

If the ultimate parent company is a Chinese tax resident enterprise and the information may be relevant to national security, then part or all of the CbC reporting can be exempt based on the relevant regulation. The CbC reporting forms provided in the new related party transaction forms as well as the instructions are consistent with BEPS Action 13.

The annual CbC report filing requirement mainly applies to the ultimate holding company in China. However, a subsidiary of a multinational group in China may also be required to submit a CbC report in a transfer pricing investigation if its ultimate holding company is responsible for preparing the CbC report according to the regulation of the jurisdiction in which it resides and any of the following conditions are met:

- The multinational group has not provided the CbC report to the tax authority of any jurisdiction;
- Although the group has submitted the CbC report, the jurisdiction collecting the report does not have an exchange of information mechanism with China; or
- Although the group has provided the CbC report and the jurisdiction collecting the CbC report has an exchange of information mechanism with China, the CbC report has not been successfully exchanged with China.

The fundamental challenges for preparing a CbC report include:

- Reconciliation between global and local reporting, which may create potential data mismatch issues; and
- Data collection and extraction, which may create additional processes and accounting tasks for tax departments.

10. TRANSFER PRICING

Under article 110 of the Implementation Regulations of the Enterprise Income Tax Law ("EITIR"), the arm's length principle is defined as the principle adopted by unrelated parties when conducting business transactions based on fair transactional prices and normal business practices. The rules in the EITIR acknowledge the arm's length principle as the preferred basis to be adopted in related party transactions and this is consistent with the internationally accepted arm's length principle set out in the OECD Transfer Pricing Guidelines.

Article 109 of the EITIR provides that two enterprises are "related" if one enterprise has the following relationships with another enterprise:

- Direct or indirect control with respect to capital, business operations, purchases and sales; or
- Direct or indirect common control by a third party; or
- Any other relationships arising from mutual interest.

According to article 2 of Notice 42 year 2016, parties are considered related if one of the following situations occurs:

(i) One party holds 25% or more of the shares in the other party directly or indirectly, or a third party holds 25% or more of the shares in both parties directly or indirectly. When one party holds shares indirectly in the other party through an intermediary, as long as it holds 25% or more of the shares in the intermediary, its shareholding percentage in the other party will be computed based on the intermediary's shareholding percentage in the other party. When two or more natural persons who are spouses, direct blood relatives, siblings or have other foster or support relations jointly hold shares in the same enterprise, the shareholding percentage will be aggregated when determining the related party relationship.

(ii) One party holds shares in the other party or a third party holds shares in both parties and the shareholding percentage does not attain the percentage stipulated in the provisions of item (i), but the total amount of borrowed funds between both parties constitutes 50% or more of the paid-up capital of either party, or 10% or more of the total borrowed funds of one party is guaranteed by the other party (except for loans or guarantees between the party and an independent financial institution).

(iii) One party holds shares in the other party or a third party holds shares in both parties and the shareholding percentage does not attain the percentage stipulated in the provisions of item (i), but the conduct of manufacturing and business operations of one party requires the provision of patents, non-patented technologies, trademarks, copyrights or other concessions provided by the other party.

(iv) One party holds shares in the other party or a third party holds shares in both parties and the shareholding percentage does not attain the percentage stipulated in the provisions of item (i), but the business activities of one party, such as procurement, sales and acceptance of services, are controlled by the other party. Control for this purpose means that one party has the right to decide the financial and business policies of the other party and accordingly derive gains from the business activities of the other party.



(v) More than half of the directors of one party or more than half of the senior management personnel (including board secretary, managers, deputy managers, chief financial officer and other personnel stipulated in the company's articles of association of a listed company) of one party are appointed or designated by the other party or are appointed concurrently as the directors or senior management personnel of the other party, or more than half of the directors or more than half of the senior management personnel of both parties is appointed or designated by a third party.

(vi) Two or more natural persons who are spouses, direct blood relatives, siblings or have other foster or support relations are related to both parties in any of the ways stipulated in items (i) through (v).

(vii) Both parties have other common interests substantially.

Article 43 of the Enterprise Income Tax Law requires the taxpayers to submit reporting forms on the transactions between related parties together with the annual enterprise income tax return. The tax return and the reporting forms are due on 31 May of the following year. In addition to the annual reporting forms on related party transactions, Notice 42/2016 introduces a three tier documentation framework, as set out in the OECD's framework in BEPS Action 13. Transfer pricing contemporaneous documentation consists of a Master File, a Local File and a Special Issue File.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

The concept of hybrid entities is not applicable in China.

b. Use of Hybrid Instruments

The concept of hybrid instruments is not applicable in China.

c. Principal/Limited Risk Distribution or Similar Structures

Many multinational enterprises have multiple companies in China with each company performing only a single function, such as manufacturing, distribution, R&D, and services and with the claim that each of these entities is entitled to a limited return. Others have some or all of manufacturing, distribution, R&D, and services functions in one entity and still claim that each of these functions is entitled to only a routine return. The Chinese tax administration takes the view that when a group has multiple single function entities, they may have to be taken into consideration as a whole in order to properly determine the return the group companies should earn in China. Similarly, an entity with multiple functions may have to be reviewed in its entirely in order to properly determine its returns. While China generally respects the limited risk characterisation of sole function entities; determining an adequate return for such entities is a challenge.

Further, China has legislated a specific article in its transfer pricing rules to require that such entities should not bear risks or suffer from losses arising from strategic failures, capacity under-utilisation, or hold-up in the sales of products, etc., if they do not perform business strategy decision making, product R&D, or sales functions. Simply put, if their upside is limited, their downside should be limited too.



d. Intellectual property

Chinese tax regulations set out a number of provisions for intangible asset transactions which are more or less in line with the rules in the BEPS Action Plan.

To determine the allocation of profits arising from the use of intangible assets, China tax regulation also follows DEMPE concepts. Notice No. 6/2017 adds a sixth function, promotion, to the "DEMPEP" function. Although the promotion function may already be covered by the DEMPE function under the OECD framework, the introduction of this function alone indicates that the Chinese tax authorities attach great importance to the value created by Chinese companies through their marketing activities.

e. Special tax regimes

This section is left intentionally blank.

12. OECD BEPS CONSIDERATIONS

China has been actively participating in the BEPS project as a G20 member and a cooperative partner of the OECD. On 10 October 2015 (shortly after the OECD released its final package), the State Tax Administration ("STA") published via its official website the Chinese translation of the BEPS 2015 Final Reports, demonstrating a strong urge within the Chinese government to stay abreast of the development of the international tax systems. The STA also addressed a general plan of actions, including, but not limited to, refining the prevailing tax legislative framework to incorporate certain BEPS Actions it considers to be practical, constructing a risk management mechanism, etc. Regarding BEPS Actions 6 and 15, China is likely to implement Limitation on benefits ("LOB") and Principal Purpose Test ("PPT") clauses in its treaties, and China intends to sign the Multilateral Instrument. Also, effective from 1 May 2017, the STA Notice [2017] No. 6 has addressed the detailed new clarifications with respect to the authority of a local Tax Bureau to review and approve the nature and content of intercompany charges between a Chinese entity and an overseas related party. This has created additional difficulties for a Chinese entity in making payment for non-trade items to offshore related parties (e.g. service fees for off-shore services provided by a headquarter to a Chinese subsidiary). Applications for such payments are more challenging and the tax bureau may request far more supporting documents regarding the service substance, including internal correspondence, etc. The tax bureau will reject the issuance of a tax clearance certificate if such further information is not provided or is unsatisfactory, in which case the service fee may not be remitted out of China and will have to be written-off on the Chinese books (creating income) or cleared via other arrangements.

13. ACCOUNTING CONSIDERATIONS

Different GAAPs in different countries will generate diverse accounting treatments, identification of whether the transaction is a business combination is crucial. Whether the transaction is to be recognised as a business combination or an asset acquisition, determines different accounting treatments in various items, such as goodwill, acquisition related cost, deferred tax and etc. Under IFRS, "a business combination" refers to a transaction or other event in which an acquirer obtains control of one or more businesses, "business" refers to an integrated set of assets and activities capable of being conducted and managed in order to provide a return directly to investors or other owners, members or participants.

Under PRC GAAP, different accounting treatments are applicable to business combinations, which are 1) involving enterprises under common control, or 2) not involving enterprises under common control. The main differences come from whether the measurement method follows existing book values or fair values.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

The following cash payments are subject to approval of authorities in China following a detailed review of the supporting documentation supplied by the payer.

10% of a Chinese company's after-tax profits must be retained (not distributed) by the company as capital reserve until the balance reaches 50% of the registered capital. The remaining portion of the profits may be distributed after settlement of the WHT at 10% (or a lower rate under an applicable double tax treaty). After the WHT is paid and the tax clearance certificate is issued, the bank/SAFE will allow such a dividend to be remitted.

Royalties normally will be subject to 10% WHT (or a lower rate under an applicable double tax treaty), 6% VAT and 0.6-0.72% surcharges (calculated based on 10% to 12% of VAT payable).

Service fees normally are subject to 6% VAT and 0.6-0.72% surcharges. On-shore service fees in relation to provision of services in China for less than 183 days are required to make separate application for enjoying tax treaty benefits (if provided under an applicable double tax treaty) in order to exempt from CIT; on-shore service fees in relation to provision of services in China for more than 183 days will additionally be subject to CIT at 25% on the assessable profits. Generally speaking, deemed profit method would be used to calculate the assessable profits, that is, the deemed profit will be calculated by applying a deemed profit rate ranging from 15% to 50% as specified below:

- 15% - 30% for contracting engineering work, design and consultancy services. (In practice, 20% is used for 3rd party transaction and 30% is used for related party transactions.);
- 30% - 50% for management services; and
- No less than 15% for other services or business activities other than provision of services.

Interest payments normally will be subject to 10% WHT (or a lower rate under an applicable double tax treaty), 6% VAT and 0.6-0.72% surcharges.

The withholding VAT paid for the above items (other than that related to interest payments) can be claimed by the Chinese payer as input VAT credit against its output VAT payable, provided that the payor is registered as a General VAT Payer and special VAT invoices (fapiao) are obtained. The surcharges are not creditable for VAT purposes.

b. Substance Requirements for Recipients

The foreign recipients of dividends, interest and royalties from Chinese companies will be subject to the test for beneficial ownership discussed above in order to enjoy tax treaty relief (i.e. reduction in WHT rate under the applicable double tax treaty). A shareholder will likely be viewed as not having sufficient economic substance and thus not satisfy the "beneficial ownership" test, if it (1) is obliged to transfer majority (at least 50%) of the income to a person/entity in a third jurisdiction within 12 months after receipt of the income, (2) does not have substantive operating activities apart from investment holding, such as manufacturing, distribution, management, and has limited functions and risks, (3) is exempt from tax or subject to low effective tax on the relevant income, (4) has a back-to-back loan arrangement with similar terms in place, and/or (5) has a back to back royalty arrangement with similar terms in place.



c. Tax Rulings and Clearances

Apart from transfer pricing, China generally does not provide advance tax rulings and clearances. Further, many approval procedures in the past, including tax treaty relief claims, have been changed to recordal filing procedures. Therefore, taxpayers would no longer receive tax approval/clearances from the tax authorities for applying certain tax treatments (e.g. reduced WHT rate). However, the tax treatment adopted may be subject to audit/investigations by the tax authorities within the statute of limitation period.

15. MAJOR NON-TAX CONSIDERATIONS

This section is left intentionally blank.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends % **	Interest %	Royalties %	Footnote
Albania	10	10	10	
Algeria	5 / 10	7	10	[1]
Argentina*	10 / 15	12	3 / 5 / 7 / 10	[2] [3]
Armenia	5 / 10	10	10	[4]
Australia	15	10	10	
Austria	7 / 10	10	10	[5]
Azerbaijan	10	10	10	
Bahrain	5	10	10	
Bangladesh	10	10	10	
Barbados	5	10	10	
Belarus	10	10	10	
Belgium	5 / 10	10	7	[6]
Bosnia (Yugoslavia)	10	10	10	
Botswana*	5	7.5	5	
Brazil	15	15	15 / 25	[7]
Brunei	5	10	10	
Bulgaria	10	10	7 / 10	[8]
Cambodia	10	10	10	
Canada	10 / 15	10	10	[9]
Chile	10	10	10	
Croatia	5	10	10	
Cuba	5 / 10	7.5	5.0	[10]
Cyprus	10	10	10	
Czech	5 / 10	7.5	10	[11]
Denmark	5 / 10	10	7 / 10	[12] [13]
Ecuador	5	10	10	
Egypt	8	10	8	
Estonia	5 / 10	10	10	[14]

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Jurisdiction	Dividends % **	Interest %	Royalties %	Footnote
Ethiopia	5	7	5	
Finland	5 / 10	10	7 / 10	[15] [16]
France	5 / 10	10	10	[17]
Gabon*	5	10	5 / 7.5	[18]
Georgia	0 / 5 / 10	10	10	[19]
Germany	5 / 10 / 15	10	6 / 10	[20] [21]
Greece	5 / 10	10	10	[22]
Herzegovina (Yugoslavia)	10	10	10	
Hong Kong	5 / 10	7	7	[23]
Hungary	10	10	10	
Iceland	5 / 10	10	7 / 10	[24] [25]
India	10	10	10	
Indonesia	10	10	10	
Iran	10	10	10	
Ireland	5 / 10	10	6 / 10	[26] [27]
Israel	10	7 / 10	7 / 10	[28] [29]
Italy	10	10	10	
Jamaica	5	7.5	10	
Japan	10	10	10	
Kazakhstan	10	10	10	
Kenya*	5	10	10	
Korea	5 / 10	10	10	[30]
Kuwait	5	5	10	
Kyrgyzstan	10	10	10	
Laos	5	10	10	
Latvia	5 / 10	10	10	[31]
Lithuania	5 / 10	10	10	[32]
Luxembourg	5 / 10	10	6 / 10	[33] [34]
Macao	10	7 / 10	10	[35]

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Jurisdiction	Dividends % **	Interest %	Royalties %	Footnote
Macedonia	5	10	10	
Malaysia	10	10	10 / 15	[36]
Malta	5 / 10	10	7 / 10	[37] [38]
Mauritius	5	10	10	
Mexican	5	10	10	
Moldova	5 / 10	10	10	[39]
Mongolia	5	10	10	
Montenegro (Yugoslavia)	5	10	10	
Morocco	10	10	10	
Nepal	10	10	15	
New Zealand	5 /15	10	10	[67]
Nigeria	7.5	7.5	7.5	
Norway	15	10	10	
Oman	5	10	10	
Pakistan	10	10	12.5	
Papua New Guinea	10	10	10	
Philippines	10 / 15	10	10 / 15	[40] [41]
Poland	10	10	7 / 10	[42]
Portugal	10	10	10	
Qatar	10	10	10	
Romania	3	3	3	
Russia	5 / 10	10	6	[43]
Saudi Arabia	5	10	10	
Serbia (Yugoslavia)	5	10	10	
Seychelles	5	10	10	
Singapore	5 / 10	7 / 10	10	[44] [45]
Slovakia (Czechoslovakia)	10	10	10	
Slovenia	5	10	10	
South Africa	5	10	7 / 10	[46]

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Jurisdiction	Dividends % **	Interest %	Royalties %	Footnote
Spain	5 / 10	10	10	[47]
Sri Lanka	10	10	10	
Sudan	5	10	10	
Sweden	10	10	7 / 10	[48]
Switzerland	5 / 10	10	9	[49]
Syria	5 / 10	10	10	[50]
Taiwan*	5 / 10	7	7	[51]
Tajikistan	5 / 10	8	8	[52]
Thailand	15 / 20	10	10	[53]
The Netherlands	5 / 10	10	6 / 10	[54] [55]
The Republic of Congo*	5 / 10	10	5	[56]
Trinidad And Tobago	5 / 10	10	10	[57]
Tunis	8	10	5 / 10	[58]
Turkey	10	10	10	
Turkmenistan	5 / 10	10	10	[59]
U.K.	5 / 10 / 15	10	6 / 10	[60] [61]
USA	10	10	7 / 10	[62]
Uganda*	7.5	10	10	
Ukraine	5 / 10	10	10	[63]
United Arab Emirates	7	7	10	
Uzbekistan	10	10	10	
Venezuela	5 / 10	5 / 10	10	[64] [65]
Vietnam	10	10	10	
Zambia	5	10	5	
Zimbabwe	2.5 / 7.5	7.5	7.5	[66]

* Countries in Highlight represent those who have signed DTT with China, but it has not yet taken effectiveness.

** In Chinese Corporate Income Tax Law, the standard With Holding Tax "WHT" rate on dividends will be 10%, as the lower one between DTT and local rule will be effective, any listed in this column more than 10% (such as 15%, 20% in DTT) will still be subject to 10% WHT on dividends when remitting out of China.



Footnotes	
1	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
2	Dividends - The 10% rate applies if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend).
3	Royalties - The 3% rate applies to royalties paid for the use of, or the right to use, any item of news; The 5% rate applies to royalties paid for the use of, or the right to use, any copyright of literary, artistic or scientific work; The 7% rate applies to royalties paid for the use of, or the right to use containers; The 10% rate applies to royalties paid in the other cases.
4	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends.
5	Dividends - The 7% rate applies if the beneficial owner is a company which holds directly at least 25 per cent of the voting shares of the company paying the dividends.
6	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which, prior to the moment of the payment of the dividends, has been holding, for an uninterrupted period of at least twelve months, directly at least 25 per cent of the capital of the company paying the dividends.
7	Royalty - The 25% rate applies if the royalty paid as a consideration for the use or the right to use trade marks.
8	Royalties - The 7% rate applies if the payments are any kind received as a consideration for the use of, or the right to use industrial, commercial or scientific equipment.
9	Dividends - The 10% rate applies if the beneficial owner is a company which owns at least 10 per cent of the voting stock of the company paying the dividends.
10	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
11	Dividends – 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
12	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends.
13	Royalties - The 7% rate applies if the payments are any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment.
14	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends.
15	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
16	Royalties - The 7% rate applies if the payments are any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment.



Footnotes	
17	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends.
18	Royalties - The 5% rate applies to royalties on the studies, technical, financial, accounting or tax support.
19	Interest-The 0% rate applies if the beneficial owner is a company which holds directly or indirectly at least 50% of the capital of the company paying the dividends and has invested more than EUR2 million in the capital of the company paying the dividends and 5% rate applies if the beneficial owner is a company which holds directly or indirectly at least 10% of the capital of the company paying the dividends and has invested more than EUR100,000 in the capital of the company paying the dividends
20	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; the 15% rate applies if the dividends are paid out of income or gains derived directly or indirectly from immovable property by an investment vehicle which distributes most of this income or gains annually and whose income or gains from such immovable property is exempted from tax.
21	Royalties - The 6% rate applies if the payments are any kind received as a consideration for the use of, or the right to use, any industrial, commercial or scientific equipment.
22	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
23	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
24	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
25	Royalties - The 7% rate applies if the payments are any kind received as a consideration for rental of industrial, commercial or scientific equipment.
26	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
27	Royalties - The 6% rate applies if the payments are any kind received as a consideration for the use of, or the right to use industrial, commercial or scientific equipment.
28	Interest - The 7% rate applies if it is received by any bank or financial institution; the 10% rate applicable for all other cases.
29	Royalties - The 7% rate applies if the payments are any kind received as a consideration for the use of, or the right to use, any industrial, commercial or scientific equipment.
30	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
31	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
32	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
33	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.



Footnotes	
34	Royalties - The 6% rate applies if the payments are any kind received as a consideration for the use of, or the right to use industrial, commercial or scientific equipment.
35	Interest -The 7% rate applies to royalties on the bank or financing institution.
36	Royalties - The 15% rate applies if the payments are any kind received as a consideration for the use of, or the right to use any copyright of literary or artistic work including cinematographic films, or tapes for radio or television broadcasting.
37	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
38	Royalty - The 7% rate applies if the payments are any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment.
39	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
40	Dividends - The 10% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10%t of the capital of the company paying the dividends.
41	Royalties - The 15% rate applies if the royalties arising from the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films or tapes for television or broadcasting. And the 10% rate applies if the royalties arising from the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or from the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.
42	Royalties - The 7% rate applies if the payments are any kind received as a consideration for the use of, or the right to use, any industrial, commercial or scientific equipment.
43	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends and this holding amounts to at least 80,000 Euros or its equivalent in any other currency.
44	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of company paying the dividends.
45	Interest - The 7% rate applies if the interest is received by any bank or financial institution.
46	Royalties - The 7% rate applies if the payments are any kind received as a consideration for the use of, or the right to use industrial, commercial or scientific equipment.
47	Dividends - The 5% rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend.
48	Royalties - The 7% rate applies if the payments are any kind received as a consideration for the use of or the right to use industrial, commercial or scientific equipment.
49	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
50	Dividends-5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
51	Dividends - The 5% rate applies if the beneficial owner is a company which controls directly or indirectly at least 25% of the company paying the dividends.



Footnotes	
52	Dividends - 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends;
53	Dividends - The 15% rate applies if the recipient holds directly at least 25% of the shares of the company paying the dividends.
54	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
55	Royalties - The 6% rate applies if the payments are any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment.
56	Dividends - The 5% rate applies if the beneficial owner is a company which controls directly or indirectly at least 25% of the company paying the dividends.
57	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
58	Royalties - The 5% rate applies if it is paid for technical or economic studies or for technical assistance and the 10% rate applies if it is paid for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematography films, or films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific experience;
59	Dividends – 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
60	Dividends - The 5% rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends; the 15% rate applies if the dividends are paid out of income or gains derived directly or indirectly from immovable property by an investment vehicle which distributes most of this income or gains annually and whose income or gains from such immovable property is exempt from tax.
61	Royalties - The 6% rate applies if the payments are any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment.
62	Royalties - The 7% rate applies if the payments are any kind received as a consideration for the rental of industrial, commercial or scientific equipment.
63	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
64	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25%t of the capital of the company paying the dividends.
65	Interest - The 5% rate applies if beneficial owner is a bank institution.
66	Dividends - The 2.5% rate applies if the beneficial owner is a company which controls directly or indirectly at least 25% of the company paying the dividends.
67	Dividends - The 5% rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend).

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

The standard statute of limitations in China are as follows:

- China applies a three year statute of limitation for unintentional errors and five years if the amount of unpaid tax is CNY100,000 or more;
- A ten year statute of limitation applies to special tax adjustments, (e.g. transfer pricing, CFC, or the anti-avoidance rules); and
- No statute of limitation applies to tax evasion or defrauding of tax payments.

The statute of limitations should be considered when determining the period for which information is requested during tax due diligence processes.

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	Overview of the Business	Chart showing equity structure of the business.
2	Tax Due Diligence	Overview of the Business	Chart showing organisational structure of the business.
3	Tax Due Diligence	Overview of the Business	Summary of key historical developments of the Covered Entity (i.e. incorporation, change of ownership, acquisitions, divestitures, restructuring, etc.).
4	Tax Due Diligence	Overview of the Business	Articles of association, business licenses, certificates of approval and capital verification reports of the Covered Entity. Also include licenses under application.
5	Tax Due Diligence	Overview of the Business	Explanation of the current business process adopted by the Covered Entity.
6	Tax Due Diligence	Overview of the Business	Number of employees by function.
7	Tax Due Diligence	General and Contractual Matters	Joint Venture Agreement.
8	Tax Due Diligence	General and Contractual Matters	Access to minutes of meetings of the shareholders for the Covered Period.
9	Tax Due Diligence	General and Contractual Matters	Significant contracts with customers.
10	Tax Due Diligence	General and Contractual Matters	Agreements with shareholders.
11	Tax Due Diligence	General and Contractual Matters	Land Use Right Certificate, Property Ownership Certificate and relevant purchase agreement.
12	Tax Due Diligence	General and Contractual Matters	Any recent appraisals of the Target's properties or facilities.
13	Tax Due Diligence	Financial Statement Information	Audited financial statements for the Covered Entity, including accountant's report for the Covered Period.
14	Tax Due Diligence	Financial Statement Information	Trial Balances with (detailed sub-ledgers) for the Covered Entity, including accountant's report (on a calendar year basis).
15	Tax Due Diligence	Financial Statement Information	Selling, administrative and other operating expenses broken down by significant components.
16	Tax Due Diligence	Financial Statement Information	Breakdown and nature of other receivables/payables.
17	Tax Due Diligence	Financial Statement Information	Breakdown and nature of other income and expenses.



Nº.	Category	Sub-Category	Description of Request
18	Tax Due Diligence	Financial Statement Information	Breakdown and nature of non-operating income and expenses.
19	Tax Due Diligence	Financial Statement Information	Warranty and R&D expenses, if any.
20	Tax Due Diligence	Financial Statement Information	Details on any events considered by management to be unusual or non-recurring.
21	Tax Due Diligence	Related Company Transactions	List of related parties showing the relationship with the Covered Entity and business relationship with the Covered Entity (e.g. Customers or suppliers).
22	Tax Due Diligence	Related Company Transactions	Schedule of significant related party transactions for the Covered Period, showing the name of entity, nature, amounts, terms of trade, transfer pricing policy, etc.
23	Tax Due Diligence	Related Company Transactions	Agreements/contracts with related parties.
24	Tax Due Diligence	Related Company Transactions	Annual Report of Related Party Transactions (included in the annual EIT filing package).
25	Tax Due Diligence	Related Company Transactions	Group TP Policies, if available.
26	Tax Due Diligence	Related Company Transactions	TP Contemporaneous Documentation Report, if applicable.
27	Tax Due Diligence	Related Company Transactions	Details and documentation in relation to transfer pricing investigations or queries raised by the tax authorities regarding the inter-company transactions and charges.
28	Tax Due Diligence	Enterprise Income Tax	Tax Audit Report for the Covered Entity in the Covered Period, if applicable.
29	Tax Due Diligence	Enterprise Income Tax	Details of any EIT investigations or significant matters in dispute with tax authorities, if applicable.
30	Tax Due Diligence	Enterprise Income Tax	Annual EIT returns and the respective tax payment certificates.
31	Tax Due Diligence	Enterprise Income Tax	Confirmation issued by the tax authorities regarding the tax losses carried forward, if any.
32	Tax Due Diligence	Enterprise Income Tax	Confirmations issued by the tax authorities regarding the preferential tax treatments granted and relevant application documents.
33	Tax Due Diligence	Value Added Tax	VAT general taxpayer registration certificate of the entities concerned, their branch offices and representative offices.
34	Tax Due Diligence	Value Added Tax	Details of any VAT investigations or significant matters in dispute with tax authorities.
35	Tax Due Diligence	Value Added Tax	VAT returns (for both domestic and export sales) of December of each year during the Review Period and sample VAT payment certificates.
36	Tax Due Diligence	Value Added Tax	Analysis of transactions of VAT payable account.
37	Tax Due Diligence	Value Added Tax	Details, amount and percentage of raw materials imported and domestic purchased and specify the percentage of imported raw materials that were imported free from customs duty and import VAT.



Nº.	Category	Sub-Category	Description of Request
38	Tax Due Diligence	Value Added Tax	Details and amount of service income that is subject to VAT.
39	Tax Due Diligence	Value Added Tax	Samples of VAT invoices issued to the customers and received from the suppliers.
40	Tax Due Diligence	Value Added Tax	Movement of inventory related to any deemed sales transactions.
41	Tax Due Diligence	Withholding Taxes	Analysis of remittance and accrued expenses payable to foreign parties with withholding tax implications, such as interest, rent, contractor's fee, and royalties.
42	Tax Due Diligence	Withholding Taxes	Documents or agreements in support of the above payment and expenses, such as, loan agreement and rental agreement.
43	Tax Due Diligence	Withholding Taxes	Resolutions on dividend repatriation
44	Tax Due Diligence	Withholding Taxes	Related withholding tax returns and withholding tax payment certificates.
45	Tax Due Diligence	Individual Income Tax	Sample copies of monthly IIT returns filed for the local and expatriate staff and the related tax payment certificates issued by the respective tax authorities.

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COLOMBIA

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1. INTRODUCTION

a. Forms of Legal Entity

Colombian law provides for several types of legal entities:

Corporations

Business in Colombia is typically carried on through two types of corporate vehicles, Simplified Stock Companies ("SAS") and Corporations ("SA").

Although there are other corporate legal entities, SAS is the most common type of corporation used by both local and foreign investors, due to the flexible and simplified structure. This allows easier administration and management of the company. Traditional legal entities such as SA and Limited Liability Companies are still used. SA is mandatory, for instance, in the case of listed (public) entities on the Colombian stock exchange.

"Patrimonios autónomos" ("PA")

A PA is a sort of local trust, deemed to be a pass through vehicle for Colombian income tax purposes. The activities of a PA should be recognised by the beneficiaries as if no PA exists (i.e. income, costs, expenses, assets, liabilities, and equity).

Non-profit organisations (Foundations and associations)

These entities are characterised by having a general interest social purpose. Under Colombian laws, non-profit entities cannot distribute profits among their members at any given moment, including at the dissolution of the entity. In addition, non-profit organisations meeting certain requirements can ask the Tax Office to include them within the Special Tax Regime ("STR").

The STR implies:

(i) A special way of determining the taxable income (net profit or surplus);

(ii) Exemption and/or a lower tax rate (20%); and

(iii) Exemptions whose application depends on the destination of the profits or surplus of the entity.

Private equity funds

Colombian funds are not liable to income tax. However, funds' investors are liable to tax as if they had obtained income or gains. Consequently, funds are treated as transparent or pass through entities for tax purposes in Colombia. Additionally, income obtained through Colombian funds accrues for investors only upon effective profit distributions by funds (unlike the general rule that applies to other transparent vehicles, such as PAs, whereby income accrues at the same time it is received by the vehicle) provided certain legal requirements are met. Therefore, investors must assess and pay only the corresponding income tax liability whenever there is a profit distribution by the fund (i.e. there is a deferral in the accrual of income until there are effective distributions). Note that private equity funds are allowed to distribute cash to investors as reimbursements of capital with no taxation for the investors.



b. Taxes, Tax Rates

National taxes[1]

i Income Tax and Corporate Income Tax ("IT")

Colombia employs a progressive income tax system for individuals, under which tax rates increase as the taxpayer's taxable income increases (rates vary from 0% to 39%).

Colombian entities and permanent establishments ("PEs") are subject to corporate income tax on their Colombian and non-Colombian source income (worldwide source income) at a flat rate of 35%. A 20% special tax rate applies to companies located in free trade zones (commercial users in these zones must apply the general corporate tax rate).

Foreign non-resident entities and individuals are subject to income tax only on their Colombian sourced income and capital gains.

For income tax purposes, the taxable period is the calendar year. Every year, the Government establishes the due dates (deadlines) for filing and payment purposes regarding taxes at national level.

ii Capital Gains Tax ("CGT")

Certain income is deemed to be a capital gain (not ordinary income) and is, therefore, subject to capital gains tax at a 10% rate (instead of income tax). Among others, the following are considered capital gains:

- Gains on the transfer of fixed assets owned for at least two years.
- Gains derived from the winding-up or liquidation of companies in excess of the amount of capital being contributed if the company has existed for at least two years.
- Income derived from donations, or any other type of free of charge transfer, is deemed to be capital gains and therefore, subject to CGT.

iii Value Added Tax ("VAT")

As a general rule, VAT in Colombia is levied on the following:

- The sale of tangible movable and immovable goods, except for those expressly excluded by law.
- The sale or transfer of rights over intangible assets related to industrial property.
- The provision of services within Colombian territory or from abroad, except on those expressly excluded.
- The importation of tangible assets, except on those expressly excluded.

1 Under Colombia's political system, there are three different taxing authorities: (i) the National Government; (ii) States (departamentos) authorities and (ii) the Municipal and District authorities.



In general, the VAT taxable base is the total amount of the transaction, including financing expenses and complementary expenses. The general VAT rate of 19% applies to all supplies of goods or services unless a specific measure provides for a reduced rate of 5%, a zero rate (exempted goods or services) or an exclusion.

VAT responsible entities (i.e. Colombian companies that carry out activities subject to VAT) are allowed to offset in their VAT returns, the input VAT (VAT paid) against output VAT (VAT charged) provided that the input VAT is paid on costs and expenses deemed as deductible for income tax purposes and that goods or services acquired are related to transactions subject to VAT.

iv Financial Transaction Tax ("FTT")

Also known as debit tax, FTT is triggered by:

- The transfer of funds from savings and checking accounts, as well as from accounts held with the Central Bank of Colombia.
- The disbursement of loans.
- Debits made by entities subject to surveillance by the Colombian Financial Superintendence, for accounting purposes, or to make any payments or transfers to third parties different from the disposal of funds from savings, deposit and checking accounts.

When triggered, the FTT rate is 0.4% of the total amount of the transaction. The tax is applied on every transaction made to dispose of the funds deposited in the bank account and will be levied directly by the Colombian bank where the account is opened. The payer of this tax is the transferor. Consequently, the beneficiary of the transfer does not have to bear any economic burden.

Regional Taxes

v Turnover Tax or Industry and Commerce Tax

Individuals, legal entities and de facto companies who carry out industrial, commercial or service activities in a municipal jurisdiction in Colombia, directly or indirectly, permanently or occasionally, are subject to turnover tax on gross income at rates that vary from 0.2% to 0.7% for industrial activities and 0.2% to 1.5% for commercial and services activities.

vi Real Estate Tax

This tax is levied on the ownership of real estate. It is payable annually and the rate varies depending on the designation of the property (schools, churches, housing, commercial and industry facilities, etc.). Each municipality has its own rules on real estate tax rates. However, the maximum rate is 1.6%.

c. Common divergences between income shown on tax returns and local financial statements

Although Colombia adopted the formal connection between income tax rules and the International Financial Reporting Standards ("IFRS" adjusted to the Colombian economic reality) in 2016, the taxable base for income tax purposes regularly differs from the accounting profit in the financial statements. These differences may be caused by differences on accrual of revenues and expenses, depreciation/ amortisation, deductibility of certain expenses, and the treatment of applicable exemptions, among others. These differences may impact the taxation of dividends to shareholders, as explained below.

2. RECENT DEVELOPMENTS

Recent tax reforms have recognised several corporate reorganisations as tax neutral transactions. Current tax rules recognise mergers, spin-offs and capital/in-kind contributions as tax neutral transactions. These new rules (introduced and developed since 2012) submit the tax neutral status to different requirements that must be complied with; among others, tax neutral status depends on different business purpose criteria, no substantial transfer of assets/shares, and corporate documentation.

As of 2020, the Colombian tax regime introduced new rules on the participation exemption regime and indirect transfer of Colombian assets.

Under these new rules, the Colombian Tax Code provides for a participation exemption regime, the so-called Colombian Holding Company Regime ("CHC") applicable to Colombian companies whose main purpose is to invest or hold interests in Colombian and foreign entities.

Additionally, the transfer of shares, rights, or assets located in Colombia through the transfer (at any legal title) of shares or rights in a foreign non-resident entity, is subject to income tax in Colombia as if the transaction were on the Colombian assets directly. This rule is applicable whether the transfer is made to a related entity or not, and whether there is a partial or a full transfer of the shares, rights or assets. The direct transferor (seller) is compelled to comply with formal tax duties in Colombia. This rule is not applicable under certain circumstances.

3. SHARE ACQUISITION

a. General Comments

As a general rule, the transfer of shares in Colombian companies is deemed as taxable Colombian source income for the seller. The gain derived from the transfer of shares is subject to capital gains tax in Colombia at a rate of 10%, provided the sold shares have been held for more than two years. If this rule is not complied with, the profit is subject to corporate income tax at a rate of 35%.

According to Colombian tax law, the purchase price must be the fair market value of the assets being transferred at the time of transfer (the FMV principle). If the purchase price is lower than 85% of the market value, or higher than 125% of it (the 25% Deviation Rule), the Tax Office has the power to readjust the purchase price in such a way that the appropriate tax effects are derived from the transaction. The FMV principle is applicable to non-related and related transactions among related parties in Colombia; if the transaction is performed with related entities outside Colombia, the FMV principle is not applicable, though the transfer pricing regime is.

From a buyer's perspective:

The acquisition of shares does not have immediate implications for the buyer. The tax cost basis of the shares is the purchase price, and the tax cost basis of the assets at the target company level remains the same - it is not stepped up. In cases where the seller is a non-Colombian resident and the buyer is a Colombian resident, an income tax withholding applies on the full price paid to the seller.

From a seller's perspective:

As a general rule, the transfer of shares of Colombian companies is deemed as taxable Colombian source income for the seller. The capital gain derived from the transfer of shares is subject to capital gains tax in Colombia at a rate of 10%, provided that the shares being sold have been owned for more than two years; otherwise, the profit is subject to income tax at a rate of 35%.



The profits derived from the sale of shares listed in the Colombian stock exchange are not subject to income tax or capital gains tax, provided that the sale does not exceed 10% of the outstanding shares of the company in the same taxable year.

Under the double tax treaties ("DTTs") in force, in general, capital gains derived from the transfer of Colombian shares are subject to tax in Colombia only if more than 50% of the value of the shares is, derived, directly or indirectly, from real estate located in Colombia. Some DTTs provide for rules under which a capital gains obtained from the transfer of Colombian shares is also subject to tax in Colombia if the seller has owned at any time in the 12 months prior to the sale, directly or indirectly, 25% or more of the capital of the Colombian company.

b. Tax Attributes

In a shares deal, the target company preserves its tax attributes such as net operating losses and tax credits without any modification or limitation due to the change in control. Income tax payers may offset tax losses against ordinary net income of the subsequent 12 taxable years.

The ability to offset tax losses is limited in the case of a corporate reorganisation. Companies resulting from mergers or spin-offs are allowed to offset net operating losses of the spin-off or merged companies up to an amount equivalent to the ratio of the equity of these entities to the equity of the company resulting from the merger or spin-off. The offset of tax losses is only allowed if the economic activity of the entities involved in the merger or spin-off is the same before and after the reorganisation.

Shareholders are not allowed to offset losses generated by the company against their net income (there are no provisions on the transfer of losses by the company to its shareholders).

c. Tax Grouping

Tax grouping does not exist under current tax rules in Colombia.

d. Tax Free Reorganisations

Gains derived from a transfer of Colombian assets carried out as part of in-kind contributions to Colombian entities and merger or spin-off transactions (provided that the absorbing entity or the spin-off beneficiary are Colombian entities) are generally non-taxable events provided they meet certain requirements applicable to both the shareholders of the involved entities and the absorbing entity or spin-offs beneficiaries. For instance, tax neutral status depends on different business purpose criteria, no transfer of assets/shares, transfer of ongoing businesses units (in spin-off cases) and corporate documentation. Failure to comply with these requirements means the reorganisation could be treated as a transfer of assets or a transfer of shares. Such transfers may be taxable for income tax purposes as explained in Section 3.a.



e. Purchase Agreement

When the buyer is a Colombian resident, income tax withholding ("WHT") is generally required only if the seller is a foreign, non-resident person. This withholding is based on the gross amount being paid as purchase price for the shares (i.e. final price to pay is net of the WHT, which must be paid directly to the Colombian Tax Office).

As a general rule, the statute of limitations ("SoL") to audit tax returns is three years starting from:

(i) The filing due date;

(ii) The date of filing (in case of late filing); or

(iii) The date of a refund request or compensation of balances in favour.

Hence, the purchase agreement may include representation and warranties clauses to protect the purchaser against possible tax contingencies that may arise during the SoL.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

The sale of shares in a Colombian company is not subject to VAT, stamp tax, or registration tax. The sale of social quotas of limited liability companies is subject to registration tax at a rate of 0.7% on the transfer value.

g. Share Purchase Advantages

- Acquisitions of shares are not subject to VAT or stamp tax in Colombia.
- No transfer taxes are triggered by a share acquisition (e.g. documentation transfer taxes such as registration taxes due to the transfer of real estate).
- The acquisition price will be the tax cost basis of shares of the buyer for subsequent sales.
- Tax attributes of underlying assets and attributes remain at the acquired entity level.

h. Share Purchase Disadvantages

- The target company's liabilities and possible tax contingencies remain at the target company level. As general rule, the SoL in Colombia is three years (refer to 3.e. above).
- Losses derived from the sale of an entity are not deductible for Colombian tax purposes.
- Goodwill deductibility for the acquisition of shares is not allowed.

4. ASSET ACQUISITION

a. General Comments

Structuring asset deals usually involves Colombian entities or PEs as buyers, since activities developed by using such assets imply a taxable presence in Colombia. Buyers are allowed to amortise or depreciate assets by considering the purchase price as their new tax cost basis; no step up in basis higher than the price paid is allowed. A buyer may benefit from amortisation on the price paid attributed to intangible assets other than goodwill (i.e. goodwill is not tax deductible).

From a buyer's perspective:

As a general rule, under Colombian tax law, in an asset deal, the pre-closing tax liabilities of the seller are not assumed or transferred to the buyer of the assets.

Additionally, the purchase price paid by the buyer and allocated to each asset (asset by asset allocation is required) will be the tax cost basis of such assets.

From a seller's perspective:

Profits derived from the transfer of assets are subject to either income tax or capital gains tax in Colombia, depending on whether such assets are fixed assets to the seller or not and the ownership period of the assets.

If the assets being transferred are not deemed to be fixed assets of the seller, gains derived from the transfer will be subject to income tax. Taxable income is determined by the positive difference between purchase price and the taxable base, which is subject to tax at the corporate rate of 35% (legal entities).

If the assets are fixed assets of the seller, but they were owned for less than two years, profits derived from the transfer are subject to income tax under the above rules and rates. On the other hand, if the assets being transferred are deemed fixed assets of the seller and such fixed assets were owned for two years or more, profits derived from the transfer are subject to capital gains tax at a rate of 10%.

In the case of fixed assets, if they were subject to deductible depreciation or amortisation, profit derived from the transfer should be deemed to be a taxable recapture at the corporate rate. Any profit in excess of the recapture should be subject either to capital gains tax or to income tax according to the above rules.

b. Purchase Price Allocation

In an asset deal, the purchase price paid by the buyer must be allocated to each asset, and such allocation will be the tax basis of such assets.

According to Colombian tax law, the purchase price must follow the fair market value ("FMV") Principle and the 25% Deviation Rule. If the 25% Deviation Rule is not complied with, the Tax Office has the power to readjust the purchase price so that the appropriate tax effects are derived from the transaction. The FMV principle is applicable to non-related transactions and to related transactions among related parties in Colombia. If the transaction is performed with related entities outside Colombia, the FMV principle is not applicable, but the transfer pricing regime is.

c. Tax Attributes

Existing tax attributes of the seller, such as net operating losses, are not transferred to the buyer of the assets.



d. Tax Free Reorganisations

Gains derived from a transfer of Colombian assets carried out as part of in-kind contributions to Colombian entities and merger or spin-off transactions (provided that the absorbing entity or the spin-off beneficiary are Colombian entities) are generally non-taxable events insofar as they meet certain requirements applicable to both the shareholders of the involved entities and the absorbing entity or spin-off beneficiaries.

Among other criteria, tax neutral status depends on different business purpose criteria, no transfer of assets/shares to third parties (i.e. there can be no change in ownership to different parties other than those involved in the reorganisation), transfer of ongoing businesses units (in spin-off cases) and corporate documentation. Failure to comply with these requirements, can result in the reorganisation being treated as a transfer of assets or a transfer of shares, as the case may be. Such transfers are taxable for income tax purposes as explained in Section 4.a.

e. Purchase Agreement

There are two relevant aspects to consider in a Purchase Agreement:

- The responsibility of the acquirer, particularly in cases where there may be a potential transfer of an ongoing business (the transfer of assets may be subject to income tax withholding, VAT, other indirect taxes and formal responsibilities to be borne by the buyer).
- The purchase price must be allocated to the acquired assets to determine the tax cost basis for purposes of depreciation or amortisation and invoicing. Consequently, there must be a purchase price agreed among the parties for the purpose of transferring the assets. Otherwise, the Colombian Tax Office may:
- Challenge the transaction by readjusting or determining the applicable purchase price, assessing a taxable profit, demanding the applicable tax, and imposing penalties (ranging from 10% to 100%) and late payment interests; or
- Consider that the assets were transferred free of charge to the acquirer, meaning such transfer represents a gift subject to the gift tax at a 10% rate on the equity value of the asset (this tax is payable by the buyer).

f. Depreciation and Amortisation

The purchase price paid by the buyer and allocated to each asset will be the tax basis of such assets. This cost is the depreciation or amortisation base for tax deductibility purposes. Under Colombian tax regulations, the useful life for income tax purposes is the one applicable under the accounting standards (e.g. IFRS), provided that such useful life for accounting purposes ("Accounting UL") does not exceed the maximum rates set forth by law ("Tax UL") or by the Colombian Government whenever it issues an applicable decree.



g. Transfer Taxes, VAT

Sales of movable assets not excluded or exempted from VAT are subject to tax, generally at a rate of 19%. The sale of fixed assets is not subject to VAT.

There is a special VAT income tax credit upon the acquisition of productive fixed assets. Colombian VAT payers have the right to a tax credit equivalent to 100% of the input VAT for the acquisition or importation of productive fixed assets subject to VAT at the general rate. This credit must be used in the income tax return of the relevant taxable year in which the productive fixed asset is imported or acquired or in any of the following years. It may not be treated as a deductible expense for income tax purposes, or as offsetable input VAT for VAT purposes. However, if the special VAT credit is not used, the investor may use the input VAT amount as a higher value of the asset acquired and treat it as a deductible expense for depreciation purposes.

In addition, if the buyer is an income tax withholding agent (i.e. Colombian entity), it will have the obligation to apply a 2.5% income tax withholding on the amount paid or accrued for the acquisition of the assets.

h. Asset Purchase Advantages

- The target company's liabilities and possible tax contingencies remain at the seller's level.
- Although goodwill deductibility for the acquisition of shares is not allowed, the acquisition of other intangible assets could give rise to tax deductibility at the buyer's level.

i. Asset Purchase Disadvantages

- Existing tax attributes of the seller, such as net operating losses, are not transferred to the buyer of the assets.
- Acquisition of movable tangible assets is subject to VAT.
- Transfer taxes are triggered by a share acquisition (e.g. documentation transfer taxes such as registration taxes due to the transfer of real estate).



5. ACQUISITION VEHICLES

a. General Comments

When determining the ideal type of vehicle to make an acquisition, an investor must weigh the facts and circumstances of the situation, including the financing structure that will be used and the desired legal and tax consequences of the acquisition. Under a share deal, it is customary to use acquisition vehicles outside Colombia, while under an asset deal, the acquisition vehicle is local. However, should the transaction be financed, tax structuring is required to perform a debt pushdown to facilitate financing cost deductibility.

b. Domestic Acquisition Vehicle

There are two main types of corporations used for these purposes, an SAS or SA. Both have legal personality and are deemed to be independent income tax payers for Colombian tax purposes.

Disregarded entities for income tax purposes are also common in certain acquisitions, these include:

***Patrimonio Autónomo* ("PA")**

This is a type of local trust which is transparent, or pass through for income tax purposes. The PA acts as a pass through entity and thus its beneficiaries should declare all revenue, costs, expenses, assets and liabilities arising at the trust level, as if they were owned directly in absence of the trust. The trust is not a taxpayer for income tax purposes, income tax due is determined at the level of the beneficiaries.

Private Equity Funds

Colombian funds are not liable to income tax. Rather, funds' investors are liable to tax as if they had obtained income or gains. Consequently, funds are treated as transparent or pass through entities for tax purposes in Colombia. Additionally, income obtained through Colombian funds accrues for investors only upon effective profit distributions by funds (unlike the general rule that applies to other transparent vehicles, such as PAs, whereby income accrues at the same time it is received by the vehicle), provided certain legal requirements are met. Therefore, investors will have to assess and pay the corresponding income tax liability only when there is a profit distribution by the fund (i.e. there is a deferral in the accrual of income until there are effective distributions). Note that private equity funds are allowed to distribute cash to investors as reimbursements of capital with no taxation for the investors.

c. Foreign Acquisition Vehicle

There are no restrictions on investment in Colombia through a foreign vehicle. It is usual to plan acquisitions by using investment vehicles located in DTT jurisdictions, since withholding income tax rates applicable to outbound payments (i.e. interest, dividends, royalties, and capital gains) may be reduced [2].

d. Partnerships and joint ventures

For Colombian tax purposes, joint venture agreements are non-incorporated (i.e. they do not create or incorporate a separate legal entity different from the joining parties). Entities such as consorcios and uniones temporales (types of partnership) and association agreements are not separate income tax payers for Colombian income tax purposes.

2 As of the date of this document, Colombia has enforceable DTTs with the following jurisdictions: (i) Canada, (ii) Mexico, (iii) Chile, (iv) Spain, (v) Portugal, (vi) India, (vii) Czech Republic, (viii) Switzerland, (ix) South Korea, (x) United Kingdom, (xi) France; (xii) Italy, and (xii) the Andean Community (Ecuador, Peru, and Bolivia).



Based on this, the joining parties shall independently declare assets and liabilities that contribute to the joint business (if any), as well as income, costs, and expenses under the joint business, according to their participation in the joint venture in absence of such a non-incorporated joint venture agreement.

Hence, members of the joint venture must keep a record of the activities executed to comply with their obligations under the agreement, in such a way that the Tax Office (upon official audit) is able to determine the distribution of income, costs, and expenses under the agreement.

Since the joint venture is effectively a tax pass-through, if a foreign entity is a party to the joint venture, it could create the risk of having a PE in Colombia. Hence, if the foreign entity directly performs activities in Colombia, it could have a fixed place of business in Colombia. The existence of a PE would imply that the PE would be subject to corporate income tax on its worldwide attributable income. Therefore, tax structuring alternatives should be analysed closely.

e. Strategic vs Private Equity Buyers

Certain non-income tax payers (e.g. local pension funds) prefer to structure their investments via non-taxed acquisition vehicles (e.g. private equity funds) for the purpose of not adding taxable layers of activity (e.g. if the acquisition is made by using an income tax payer such as a company). This is also applicable whenever foreign non-resident persons subject to special exemption regimes due to international rules (e.g. treaties) are involved.

Other than that, there are no special differences between the ways that strategic corporate buyers and private equity buyers invest in Colombia.

6. ACQUISITION FINANCING

a. General Comments

Transactions in Colombia may be funded either by capital or debt. The decision over funding the transaction depends on the specific financial and corporate requirements at the moment of funding, by balancing, besides the financial criteria:

(i) The tax aspects applicable to capitalisations in Colombian companies (i.e. registration taxes, non-applicability of the transfer pricing rules and cash-out strategies (dividends); and

(ii) The tax aspects applicable to granting loans to Colombian companies (i.e. interest deductibility, thin capitalisation rules, withholding income tax rate on interest payments, interest accruing and the transfer pricing regime when applicable).

b. Foreign Acquirer

This section is left intentionally blank.



c. Debt

As a general rule, foreign non-resident entities are subject to income tax in Colombia solely on their Colombian source income. For instance, interest derived from loans owned in Colombia is usually deemed as Colombian source income.

Based on the above, interest paid by a Colombian resident entity (a Colombian borrower) to a foreign non-resident lender is subject to tax in Colombia. Payments of interest to foreign non-resident entities are subject to income tax withholding. The general rate is 15% if the term of the loan is longer than one year; otherwise it is 20%.

Nevertheless, certain special rules apply to the tax rate applicable, the source of the interest income, or on interest payments in DTT jurisdictions:

Special tax rates

1%, 5%, or 35% depending on the nature of the loans being granted or the specific assets to be acquired by using the proceeds (e.g. the mentioned 1% is applicable to acquisition or leasing of aircraft, ships and helicopters, or 35% on loans granted by lenders located in low tax or non-cooperative jurisdictions (formerly known as tax havens) or subject to preferential tax regimes, under certain circumstances.

Other non-Colombian source income loans

Certain foreign debt granted to Colombian residents gives rise to interest payments not subject to withholding taxes in Colombia, since interest income is deemed non-Colombian source income for the foreign non-resident lender (e.g. short-term loans, export financing, loans to certain financial entities, among others and subject to certain legal requirements).

Interest payments under DTTs

The general income tax withholding rate may be reduced if the payment is made for the benefit of a tax resident of a jurisdiction with which Colombia has entered into a DTT. In general, all DTTs signed by Colombia include rules under which:

(i) Interest payments to resident entities/individuals in such jurisdictions are reduced to 10%; and

(ii) Interest payments to resident financial entities (banks) in such jurisdictions are reduced to 0% (although this is not a provision accepted in all the enforceable Colombian DTTs).



Payments made from Colombia to foreign lenders will be deductible in Colombia provided certain requirements are met, namely:

- Any applicable withholding tax in Colombia is duly performed.
- The cost/expense has a cause effect relation with the payer's income producing activity.
- The cost/expense is necessary.
- The cost/expense is proportional under commercial criteria.
- The transaction is duly subject to the transfer pricing regime (only applicable to financing granted by related entities outside Colombia).
- The transaction is duly subject to the thin capitalisation regime (only applicable to financing granted by related entities).
- The transaction is duly subject to the foreign exchange regime (i.e. loan disbursement and payments are duly registered by the Central Bank).

i Limitations on Interest Deductions

Deductions of interest arising from debts between related parties (either local or foreign) are subject to the thin capitalisation rules. Under these rules, interest payments are deductible when the total average amount of said debts, during the taxable period, does not exceed the 1:2 debt to equity ratio compared to the net worth on 31 December of the previous year. If it does exceed that ratio, excess interest expenses would not be deductible.

This thin capitalisation rule is not applicable to:

(i) Borrowers subject to surveillance of the Colombian Financial Superintendence.

(ii) Borrowers authorised to be devoted to factoring transactions, and provided such factoring transactions are not granted, in more than 50%, to related parties.

(iii) Borrowers who are in pre-operative phase (i.e. with no subject-to-tax earnings).

(iv) Loans aimed at financing transport infrastructure projects or public service infrastructure.

Based on this, and on loans granted by non-related parties, the Colombian borrower must demonstrate such loans are not granted by conduit lenders under transactions in which, in substance, the actual lender is a related party. To such end, the lender (either local or foreign non-resident) must issue a certification that states the relevant loan does not correspond to a conduit loan transaction. Such certification will be deemed as a declaration under oath.

ii Related Party Debt

In general terms, Colombian taxpayers who are engaged in transactions with non-resident related parties are subject to the Colombian transfer pricing regime. Accordingly, taxpayers subject to this regime must conduct their transactions with related parties on an arm's length basis.

From an international tax standpoint, under the arm's length principle, related parties in a specific transaction should not agree a price or a profit margin differing from prices and profit margins used in similar transactions between independent parties. This principle was adopted in Colombia under section 260-2 of the Colombian tax code.



Based on the above, such transactions would be subject to the transfer pricing regime. Consequently, th e terms and conditions of any loan subject to the regime should meet the arm's length principle. Such arm's length conditions in the context of a foreign debt transaction should consider the capital amount, the term, the risk rating, warranties, the borrower's credit worthiness and the interest rate.

When a foreign debt transaction does not comply with the above comparability criteria, interest payments will not be deductible and the foreign indebtedness will be recharacterised as a capital contribution and the interest payments thereon as a dividend payment.

iii Debt Pushdown

One of the strategies used to perform a debt pushdown on acquisitions is the use of a special purpose vehicle ("SPV") funded by way of a loan to carry out the acquisition of a Colombia target company. After the acquisition, the SPV may be merged into the target company to pushdown the debt into the target company. Generally, interest expenses arising in this regard are deductible against target's taxable income, however, depending on how this pushdown is achieved, the deducibility could be jeopardized since the Tax Office does challenge such deductibility.

d. Hybrid Instruments

Preferred shares in Colombian entities may be treated as debt for tax purposes, provided that the following conditions are met:

(i) The shares do not encompass political/voting rights.

(ii) The Colombian entity (issuer of the shares) has the obligation to repurchase the shares at a fixed date.

(iii) The owner of the shares is entitled to receive payments before the winding up of the Colombian entity.

(iv) The shares are not listed on the Colombian Stock Exchange.

Additionally, whenever a foreign indebtedness transaction does not comply with the comparability criteria (see section 6.c. above), interest payments will not be deductible and the foreign indebtedness will be recharacterised as a capital contribution. As a result, the interest payments thereon, would be treated as a dividend payment.

e. Other Instruments

This section is left intentionally blank

f. Earn-outs

Earn-outs are usually agreed as adjustments to the purchase price. Hence, such an increase in price will follow the same tax treatment of the initial profit derived from the transaction (i.e. it is subject to income tax in Colombia under the rules applicable to the sale of shares; capital gains tax at a 10% rate if the sold shares have been owned for more than two years, 35% otherwise).

If structured as a service fee, it would be subject to income tax at the general corporate income tax rate (35%) and to VAT at the general rate of 19%.

7. DIVESTITURES

a. Tax Free

In general, transfers of shares or assets are taxable events. However, there are special regimes under which a sale of shares may not subject to income tax (either because of an exemption, a tax neutral event - in-kind contributions, mergers or spin-offs - or transactions that do not trigger the tax:

- Profits derived from the sale of shares listed on the Colombian Stock Exchange will not be subject to income tax or to capital gains tax, provided that the sale does not exceed 10% of the outstanding shares of the company in the same taxable year.
- Gains derived from a transfer of Colombian assets carried out as part of in-kind contributions to Colombian entities and merger or spin-off transactions (provided that the absorbing entity or the spin-off beneficiary are Colombian entities) are generally non-taxable events, provided they meet certain requirements.
- Capital gains obtained by a Colombian Holding Company ("CHC") because of the transfer of shares in its affiliates, are tax exempt in Colombia (see section 11.e.).

b. Taxable

Please refer to Sections 3.a and 4.a.

c. Cross Border

As a general rule, the transfer of Colombian assets is deemed to be subject to tax and therefore Colombian source income for the seller. However, gains derived from a transfer of Colombian assets carried out as part of in-kind contributions to Colombian entities and merger or spin-off transactions (provided that the absorbing entity or the spin-off beneficiary are Colombian entities) are generally non-taxable events provided they meet certain requirements.

The transfer of assets located in Colombia because of international mergers or spin-off transactions (between non-resident entities) is deemed a taxable transfer of assets. Nevertheless, this general rule does not apply to such a transfer of Colombian assets when 100% of the book value of the assets located in Colombia, owned by the group to which the merging/spin-off entities belong to, do not represent more than 20% of the total assets of such a group according to the consolidated financial statements. That means, should this 20% rule be met, the transfer of assets is not deemed to be a taxable event in Colombia.

Additionally, the transfer of Colombian assets through the disposal of any legal title of non-Colombian shares/entities, is subject to Colombian income tax or Colombian capital gains tax as if the transaction were on the Colombian assets directly (i.e. this transaction implies the indirect transfer of Colombian assets for income tax purposes in Colombia). Under the indirect transfer tax regime, the transferor is subject to Colombian income tax.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Colombian entities and PEs are subject to corporate income tax on their Colombian and non-Colombian source income (worldwide source income) at a rate of 35% (i.e. Colombia has a worldwide tax system). A 20% special tax rate is applicable to companies located in free trade zones (commercial users in such zones must apply the general corporate tax rate).

However, foreign non-resident entities and individuals are subject to income tax only on their Colombian sourced income and capital gains.

For income tax purposes, the taxable period is the calendar year. Every year, the Government establishes the filing due dates (deadlines) for filing and payment of taxes at national level.

b. CFC Regime

Under the Colombian CFC regime, an entity is considered a CFC if it has no tax residence in Colombia, and is controlled by one or more Colombian tax residents (whether they are entities or individuals) as per the criteria laid down by the Colombian transfer pricing regime to regard an entity as an affiliate or subordinated entity (related party).

For instance, a non-resident entity is considered as a CFC if a Colombian tax resident holds an interest representing 50% or more of its capital or has the right to obtain 50% or more of its profits.

If an entity is considered as a CFC, a Colombian tax resident who owns a direct or indirect interest representing 10% or more of its capital or 10% or more of its profits must comply with the Colombian CFC regime. Under this, any passive income obtained by the CFC must be attributed (i.e. deemed income) to the Colombian tax payer in the fiscal year when it is accrued by the CFC, regardless of whether such CFC has been distributed or not to the Colombian tax resident.

Except for some exceptions, dividends, royalties, leases, financial yields are deemed passive income.

Colombian residents who are liable to apply the Colombian CFC regime, may use the corresponding foreign tax credits in Colombia (if any).

c. Foreign Branches and Partnerships

Foreign branches are permanent establishments ("PEs") in Colombia, subject to corporate income tax on their Colombian and non-Colombian source income (worldwide source income) (see section 8.a.).



d. Cash Repatriation

Capital redemption

Capital redemptions will not be subject to taxation in Colombia to the extent the amounts reimbursed to the shareholders/partners do not exceed the amounts originally contributed to the Colombian entity.

Dividends

Dividends paid to foreign entities and profits paid by PEs to foreign shareholders/ or to a holding company outside Colombia are subject to income tax as follows:

(i) Dividends paid out of profits that were subject to income tax at the corporate level will be subject to income tax, via withholding at a rate of 10%

(ii) Dividends paid out of profits that were not subject to income tax at the corporate level will be subject to a recaptured corporate income tax, via withholding, at a rate of 35% plus, the above 10% tax rate, to be levied on the net amount after the recaptured 35%. The WHT rates may vary if a Double Tax Treaty is applicable.

Interest

Outbound payments for foreign indebtedness are subject to a 15% withholding tax rate if the loan exceeds one year and to 20% WHT if the loan is for less than one year. The WHT rates may vary if a Double Tax Treaty is applicable.

Winding-up

The repayment of capital to the shareholders, as a result of the winding-up of a Colombian company, will not be deemed to be income. Any gain resulting from the settlement of a company, in excess of capital contributed or invested, not distributable as dividends will be deemed to be a capital gain (subject to tax at 10%) as long as the company has fulfilled two or more years of existence at the date of settlement. The gain resulting from the liquidation of a company whose term of existence is less than two years will be treated as net income (and taxed at a rate of 35%, FY 2022). Any retained profit distributed as a consequence of a company winding-up is deemed as an extraordinary dividend distribution subject to the above rules.



9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Under the DTTs in force, in general, capital gains derived from the transfer of Colombian shares are subject to tax in Colombia only if more than 50% of the value of the shares is derived, directly or indirectly, from real estate located in Colombia. Some DTTs provide for rules under which the capital gain obtained from the transfer of Colombian shares is also subject to tax in Colombia if the seller has owned, at any time during the 12 months prior to the sale, directly or indirectly, 25% or more of the capital of the Colombian company.

Note that the transfer of real property is also subject to stamp or documentation taxes, such as:

Notary rights

Pursuant to the provisions of Resolution 1450 of 2004 of the Superintendence of Notaries and Registries, solemnisation of private agreements triggers notary fees from 0.27% to 0.3% of the value of the agreement to be notarised. As an example, the notary rights are due in the register of companies' incorporations or the sale of real property in Colombia.

Registration tax

Registration of a private document or a public deed of incorporation at the Chamber of Commerce triggers a registration tax, which amounts to 0.7% of the subscribed capital. If real estate property is sold, or contributed to the capital of a company, this tax must be paid at the Public Instruments Bureau (Oficina de Instrumentos Públicos) and evidence of such a payment must be attached to the other documents of incorporation to be filed at the Mercantile Registry.

b. CbC and Other Reporting Regimes

Transfer pricing disclosure returns

Income tax payers who carry out transactions with related parties and have gross assets equal to or greater than 100,000 Tax Value Units (about USD1 million) or with gross income equal to or greater than 61.000 Tax Value Units (about USD610,000) must comply with the following obligations:

(i) File the transfer pricing return for information purposes.

(ii) Submit and send the transfer pricing documentation, which must include a Master File with global information about the MNE and a Local File with information about each operation.

Additionally, income tax payers who comply with certain conditions must file a Country by Country ("CbC") report, with the global allocation of income and taxes paid by the MNE group.



Ultimate beneficial owners

As of 2022, Colombian entities, PEs, non-incorporated vehicles managed in Colombia (e.g. PAs and funds) and foreign entities whose assets located in Colombian represent more than 50% of the total value of their assets, must supply the Colombian Tax Office with information regarding the ultimate beneficial owners ("UBO") of the corporate structures. The information submitted must include the relevant names, tax identifications, nationalities, and locations of the UBOs. In addition, information is required on the criteria that will determine the ultimate beneficial owner, shareholding percentages, and dates on which UBO status is acquired or lost.

10. TRANSFER PRICING

In general terms, Colombian taxpayers who engage in transactions with non-resident related parties are subject to the Colombian transfer pricing regime. Accordingly, taxpayers subject to this regime must conduct transactions with related parties on an arm's length basis.

From an international tax standpoint, under the arm's length principle, related parties to a specific transaction should not agree a price or a profit margin differing from prices and profit margins used in similar transactions between independent parties.

Taxpayers exceeding the amounts established by law who carry out transactions with foreign related parties are required to file annually an Informative Return and provide supporting documentation (i.e. transfer pricing study) to prove the application of the transer pricing regime. Formal obligations related to the country by country ("CbC") reporting and the Master File were introduced by a 2016 tax reform in accordance with the Base Erosion and Profit Shifting ("BEPS") OECD Report of 2015.

Based on the above, transactions executed between related parties are subject to the transfer pricing regime.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

The concept of hybrid vehicles is not expressly recognised by Colombian law. Though there are different tax regimes globally applicable to different types of vehicles outside Colombia, if such vehicles accrue Colombian source income, they generally become income tax payers in Colombia.

Colombian tax law assumes that if a Colombian resident owns participations in a foreign entity domiciled in a low tax or non-cooperative jurisdiction (formerly known as tax havens) or a preferential tax regime, such foreign entity is a controlled foreign corporation ("CFC"). To consider a given jurisdiction as a tax haven for Colombian tax purposes, it is included in a Government black list[3] issued by way of a decree under certain grounds established by law (which follow, in general, the guidelines issued to such purposes by the OECD). Meanwhile, preferential tax regimes are defined by law, which lists grounds under which a given tax regime would be regarded as preferential; these grounds must be considered by the taxpayer to make their own qualification (i.e. there is no black list in this regard).

3 Tax haven jurisdictions: The Government has qualified the following jurisdictions as tax haven jurisdictions: (i) Antigua and Barbuda; (ii) Svalbard Archipelago; (iii) Overseas Collectivity of Saint Pierre and Miquelon; (iv) Commonwealth of Dominica; (v) Commonwealth of the Bahamas; (vi) Kingdom of Bahrain; (vii) Nation of Brunei; (viii) Abode of Peace; (ix) Independent State of Samoa; (x) Grenada; (xi) Hong Kong; (xii) Queshm Island; (xiii) Cook Islands; (xiv) Pitcairn, (xv) Henderson; (xvi) Ducie and Oeno Islands; (xvii) Salomon Islands; (xviii) Labuan; (xix) Macau; (xx) Hashemite Kingdom of Jordan; (xxi) Co-operative Republic of Guyana; (xxii) Republic of Angola; (xxiii) Republic of Cape Verde; (xxiv) Republic of the Marshall Islands; (xxv) Republic of Liberia; (xxvi) Republic of the Maldives; (xxvii) Republic of Mauritius; (xxviii) Republic of Nauru; (xxvix) Republic of Seychelles; (xxx) Republic of Trinidad and Tobago; (xxxi) Republic of Vanuatu; (xxxii) Yemeni Republic; (xxxiii) Lebanese Republic; (xxxiv) Saint Kitts and Nevis; (xxxv) Saint Vincent and the Grenadines; (xxxvi) Saint Helena, (xxxvii) Ascension and Tristan da Cunha; (xxxviii) Saint Lucia; (xxxix) Sultanate of Oman; (xl) State of Kuwait; and, (xli) the State of Qatar.



b. Use of Hybrid Instruments

Preferred shares in Colombian entities can be treated as debt for tax purposes provided that the following conditions are met:

(i) The shares do not encompass political/voting rights.

(ii) The Colombian entity (issuer of the shares) has the obligation to repurchase the shares at a fixed date.

(iii) The owner of the shares is entitled to receive payments before the winding-up of the Colombian entity.

(iv) The shares are not listed on the Colombian Stock Exchange.

Additionally, when a foreign indebtedness transaction does not comply with the comparability criteria (see section 6.c.ii. above) interest payments will not be deductible and the foreign debt will be recharacterised as a capital contribution and the interest payments on it as dividend payments.

c. Principal/Limited Risk Distribution or Similar Structures

No specific rules exist in Colombian tax law regarding hybrid entities or instruments, or any other feature covered by Action 2 under BEPS.

However, the Colombian general anti-abuse rule ("GAAR") grants the Tax Office sufficient administrative powers to re-characterise a transaction or series of transactions as abusive and disregard their tax effects. The Tax Office can exercise such powers in the context of an ordinary audit with no other prior processes.

The Tax Office is empowered to issue all the necessary official actions to assess the corresponding tax effects (that would otherwise be derived from the actual transaction), penalties and late payment interest derived from a transaction or series of transactions deemed abusive (such as tax avoidance, the abuse of law and simulation). Colombian tax law defines tax abuse as using or implementing one or several artificial legal acts, with no economic/commercial purpose or reason, to obtain an improper tax benefit, irrespective of any other subjective reason.

d. Intellectual Property

Outbound payments for granting the use or enjoyment of patents, certificates of invention or improvement, brands, trade names, authors' rights over literary, artistic or scientific works, including films and recordings for radio or television, formulas, industrial, commercial or scientific procedures or equipment, or information relating to commercial, industrial or scientific experiences, are subject to income withholding tax at a 20% rate and are subject to VAT to be collected and paid to the Tax Office via the reverse charge mechanism.

The transfer of intellectual property by the seller is subject to the same tax treatment as the transfer of intangible assets described in section 4.f. above. Income obtained by a foreign resident from the transfer of goods or rights located in Colombia at the time of the transfer is deemed to be Colombian sourced income, subject to income tax in Colombia as described in Section 3.



As a general rule, amortisation of acquired intangible assets for income tax purposes is allowed for the buyer. If the intangible asset has the following features:

(i) It has a defined useful life.

(ii) It can be identified and measured reliably.

(iii) Its acquisition triggers income which is subject to tax in Colombia for the seller ("FMV"), or when the transfer is made to a non-related third party.

Currently, there are two tax incentives for international productions filming, partly or entirely, in Colombia:

- Audio-visual Investment in Colombia Certificates ("CINA"): This is a tax credit certificate that can be sold, transferred, or traded in the financial markets equivalent to a value of 35% of the total qualifying foreign filming investment in Colombia. A fee of 5% is payable to the Colombian Film Commission on the issued certificates resulting in a net value of 33.25% of the total qualifying spend.
- Colombian Film Fund: Production companies of audio-visual works, filmed totally or partially within Colombian territory, may benefit from a cash rebate of up to:

  (i) 40% of the value of the expenses incurred in the country for film services contracted with Colombian film service companies, before VAT; and

  (ii) 20% of the value of hotel, food, and transportation expenses, before VAT. This benefit applies to producers of national and non-national works.

e. Special Tax Regimes

Participation exemption / Holding company regimes

From 2020, the Colombian tax regime introduced new rules on the participation exemption regime and the indirect transfer of Colombian assets.

Under these rules, the Colombian Tax Code provides for a participation exemption regime, applicable to Colombian companies whose main purpose is to invest or hold interests in Colombian and foreign entities.

To apply to the CHC regime, a domestic corporation must:

- Have a direct or indirect participation in, at least, 10% of the capital of two or more national and/or foreign companies or entities for a minimum period of 12 months;
- Develop its corporate purpose in Colombia with at least 3 direct employees and one administrative office in the country; and
- Make an application to the Colombian Tax Office.

Under this regime, income received by a CHC through dividends from foreign non-resident entities and affiliates and capital gains from transferring shares in such affiliates, is tax exempt in Colombia. In addition, dividends distributed by the CHC to foreign non-resident shareholders out of exempt profits at the level of the CHC, will not be subject to income tax at the level of such foreign non-resident shareholders (i.e. no Colombian income tax withholding would be applicable).



Private Equity Funds

Colombian funds are not liable to income tax. Instead, funds' investors are liable to tax as if they had obtained income or gains. Consequently, funds are treated as transparent or pass-through entities for tax purposes in Colombia. Additionally, income obtained through Colombian funds accrues for investors only upon effective profit distributions by funds (unlike the general rule that applies to other transparent vehicles, such as PAs, whereby income accrues at the same time it is received by the vehicle) – provided certain legal requirements are met. Therefore, investors must assess and pay the corresponding income tax liability only when there is a profit distribution by the fund (i.e. there is a deferral in the accrual of income until there are effective distributions). Note that private equity funds are allowed to distribute cash to investors as reimbursements of capital with no taxation for the investors.

Patrimonio autónomos ("PA")

A PA is a type of local trust, deemed to be a pass-through vehicle for Colombian income tax purposes. Economics at the PA level shall be recognised by the beneficiaries, as if no PA exists (i.e. income, costs, expenses, assets, liabilities, and equity).

Non-profit organisations

These entities are characterised as having a general interest social purpose. Under Colombian regulations, non-profit entities cannot distribute profits among their members at any given moment, including at the dissolution of the entity. In addition, non-profit organisations meeting certain requirements can request before the Tax Office to be included within the Special Tax Regime ("STR"). The STR implies:

(i) A special way of determining the taxable income (net profit or surplus).

(ii) Exemption and/or a lower tax rate (20%).

(iii) Exemptions whose application depends on the destination of the profits or surplus of the entity.

12. OECD BEPS CONSIDERATIONS

Colombia officially became the 37th member of the OECD on 28 April 2020. Tax reforms introduced in Colombia since 2016 have led to an early adoption of BEPS actions within the Colombian tax regime (i.e. CFC rules, transfer pricing regime and anti-abuse rules, among others).

Additionally, Colombia is one of the jurisdictions that have signed the Multilateral Instrument ("MLI"). Once the MLI is ratified, two rules regarding treaty abuse will be added to Double Tax Treaties ("DTT") defined as covered tax agreements by Colombia (i.e. minimum standards to counter treaty abuse and limitation on benefits). The modifications the MLI will make with regard to treaty abuse will imply further analysis for taxpayers when of applying a DTT.

13. ACCOUNTING CONSIDERATIONS

In 2016, Colombia adopted the formal connection between income tax rules and the International Financial Reporting Standards ("IFRS", IFRS adjusted to the Colombian economic reality). However, the taxable base for income tax purposes regularly differs from the accounting profit under the financial statements. These differences may be caused by factors including differences on accrual of revenues and expenses, depreciation/amortisation, deductibility of certain expenses and the treatment of applicable exemptions. These differences may impact the taxation of dividends to shareholders, as explained below.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Dividend tax is triggered when the distribution of profits is declared by the shareholders, even if they are not effectively paid at that point in time.

Colombian tax law provides for a system aimed at avoiding the double taxation of corporate profits by identifying dividends out of profits which have been subject to tax and dividends not taxed at the corporate level.

If the dividends distributed to shareholders are paid out of profits not subject to corporate income tax at the level of the distributing company, they will be subject to corporate income tax at the level of the shareholders (corporate income tax recapture). In such cases, the recapture is collected via withholding tax. The recapture WHT rate for foreign shareholders of a Colombian company is 35%. In general, this local rule applies regardless of the country of residence of the shareholder, unless a tax treaty is applicable.

Note that such dividend tax will be applicable upon the distributions of dividends, whether or not such dividends are paid out of profits which have been subject to tax at the distributing entity's level (i.e. the 10% WHT is applicable whether the corporate income tax recapture is applicable or not). This is, if dividends are distributed out of profits subject to corporate income tax at the level of the distributing company, the withholding tax would be 10%; and, if dividends are distributed out of profits not subject to corporate income tax at the level of the distributing company, the withholding tax would be 35% (income tax recapture), plus a 10% income tax withholding on dividends on the net amount once the recapture is performed (i.e., effective tax rate of 41.5%).

b. Application of Regional Rules

This section is left intentionally blank.

c. Tax Rulings and Clearances

The Colombian Tax Office issues non-binding opinions for taxpayers. Such opinions are entitled to support the Tax Office's actions based on the law. They are useful to understand the applicable interpretation the Tax Office may adopt in the event of an audit process.

The non-binding opinions should be delivered within 30 days by the Tax Office. However, the Tax Office usually takes longer to answer.

15. MAJOR NON-TAX CONSIDERATIONS

As a general rule, the transfer of Colombian assets and shares in Colombian entities is deemed to be subject to tax, i.e. it is Colombian source income for the seller.

Foreign entities transferring Colombian assets subject to the direct investment registry of the Central Bank, must file a transactional income tax return reporting the profit, if any, derived from the transaction within the month after the transaction is performed. Other types of assets carry the same filing obligation, but such a tax return must be filed within the first four months of the year after the one in which the transaction is performed, according to the deadlines imposed by the Government.

To this end, foreign entities must register with the Colombian Tax Office to obtain a Colombian Tax ID. The process of obtaining a Tax ID usually takes at least two weeks.



16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Albania	10 if arising from taxed profits at corporate level, or consolidated 41.5 if dividends arise from untaxed profits.	20	20	[A], [B]
Argentina	10 or 41.5 consolidated	20	20	[A], [B]
Armenia	10 or 41.5 consolidated	20	20	[A], [B]
Australia	10 or 41.5 consolidated	20	20	[A], [B]
Austria	10 or 41.5 consolidated	20	20	[A], [B]
Azerbaijan	10 or 41.5 consolidated	20	20	[A], [B]
Bangladesh	10 or 41.5 consolidated	20	20	[A], [B]
Barbados	10 or 41.5 consolidated	20	20	[A], [B]
Belarus	10 or 41.5 consolidated	20	20	[A], [B]
Belgium	10 or 41.5 consolidated	20	20	[A], [B]
Bolivia	10 or 41.5 consolidated. In Bolivia, the dividends paid by a Colombian entity shall be treated as exempted income.	20	20	[A], [C]
Bosnia and Herzegovina	10 or 41.5 consolidated	20	20	[A], [B]
Botswana	10 or 41.5 consolidated	20	20	[A], [B]
Brazil	10 or 41.5 consolidated	20	20	[A], [B]
Bulgaria	10 or 41.5 consolidated	20	20	[A], [B]
Canada	5 if the recipient is an entity that owns at least 10% of the shares of the paying entity. 15 if otherwise.	10	10	[A], [D]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Chile	0 if the recipient is an entity that owns at least 25% of the shares of the paying entity. 7 if otherwise.	5 if the recipient is a bank or insurance company. 15 if otherwise.	10	[D]
China	10 or 41.5 consolidated	20	20	[A], [B]
Croatia	10 or 41.5 consolidated	20	20	[A], [B]
Cyprus	10 or 41.5 consolidated	20	20	[A], [B]
Czech Republic	5 if the recipient is an entity that owns at least 25% of the shares of the paying entity. 15 if otherwise.	10 provided the interest arises from a credit sale of merchandise or equipment, or from a banking loan with a term longer than three years.	10	[D]
Denmark	10 or 41.5 consolidated	20	20	[A], [B]
Egypt	10 or 41.5 consolidated	20	20	[A], [B]
Estonia	10 or 41.5 consolidated	20	20	[A], [B]
Faroe Islands	10 or 41.5 consolidated	20	20	[A], [B]
Finland	10 or 41.5 consolidated	20	20	[A], [B]
France	5 if the recipient is an entity that owns at least 20% of the shares of the paying entity. 15 if otherwise.	0 for: Loans arising from public entities or the central bank; Credit sales of commercial, scientific or industrial equipment; Credits with a term of at least 3 years. 10% if otherwise.	10	[D]
Gambia	10 or 41.5 consolidated	20	20	[A], [B]
Georgia	10 or 41.5 consolidated	20	20	[A], [B]
Germany	10 or 41.5 consolidated	20	20	[A], [B]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Greece	10 or 41.5 consolidated	20	20	[A], [B]
Hungary	10 or 41.5 consolidated	20	20	[A], [B]
Iceland	10 or 41.5 consolidated	20	20	[A], [B]
India	5	10	10	[A], [B]
Indonesia	10 or 41.5 consolidated	20	20	[A], [B]
Ireland	10 or 41.5 consolidated	20	20	[A], [B]
Israel	10 or 41.5 consolidated	20	20	[A], [B]
Italy	5 if the recipient is an entity that owns at least 20% of the shares of the paying entity or a pension fund. 15 if otherwise.	0 for: Loans arising from public entities or the central bank; Credit sales of commercial, scientific or industrial equipment Credits with a term of at least three years, 5 if the recipient is a pension fund, 10 if otherwise.	10	[D]
Jamaica	10 or 41.5 consolidated	20	20	[A], [B]
Japan	10 or 41.5 consolidated	20	20	[A], [B]
Kazakhstan	10 or 41.5 consolidated	20	20	[A], [B]
Kenya	10 or 41.5 consolidated	20	20	[A], [B]
Korea, Republic of	5 if the recipient is an entity that owns at least 20% of the shares of the paying entity. 10 if otherwise.	0 if the grantor is a public entity, 10 if otherwise.	10	[D]
Latvia	10 or 41.5 consolidated	20	20	[A], [B]
Lithuania	10 or 41.5 consolidated	20	20	[A], [B]
Luxembourg	10 or 41.5 consolidated	20	20	[A], [B]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Macedonia	10 or 41.5 consolidated	20	20	[A], [B]
Malaysia	10 or 41.5 consolidated	20	20	[A], [B]
Malta	10 or 41.5 consolidated	20	20	[A], [B]
Mauritius	35	35	35	[A], [B]
Mexico	0	0 for loans arising from public entities or the central bank; 5 if the recipient is a bank or pension fund. 10 if otherwise.	10	[D]
Montenegro	10 or 41.5 consolidated	20	20	[A], [B]
Namibia	10 or 41.5 consolidated	20	20	[A], [B]
Netherlands	10 or 41.5 consolidated	20	20	[A], [B]
New Zealand	10 or 41.5 consolidated	20	20	[A], [B]
Nigeria	10 or 41.5 consolidated	20	20	[A], [B]
Norway	10 or 41.5 consolidated	20	20	[A], [B]
Pakistan	10 or 41.5 consolidated	20	20	[A], [B]
Philippines	10 or 41.5 consolidated	20	20	[A], [B]
Poland	10 or 41.5 consolidated	20	20	[A], [B]
Portugal	10	10	10	[D]
Romania	10 or 41.5 consolidated	20	20	[A], [B]
Russia	10 or 41.5 consolidated	20	20	[A], [B]
Saudi Arabia	10 or 41.5 consolidated	20	20	[A], [B]
Serbia	10 or 41.5 consolidated	20	20	[A], [B]
Singapore	10 or 41.5 consolidated	20	20	[A], [B]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Slovakia	10 or 41.5 consolidated	20	20	[A], [B]
Slovenia	10 or 41.5 consolidated	20	20	[A], [B]
South Africa	10 or 41.5 consolidated	20	20	[A], [B]
Spain	0 if the recipient is an entity that owns at least 20% of the shares of the paying entity. 5 if otherwise.	0 for: loans arising from public entities or the central bank; Related to credit sales; Credits granted by a bank or financial institution. 10 if otherwise.	10	[D]
Sri Lanka	10 or 41.5 consolidated	20	20	[A], [B]
Switzerland	0 if the recipient is an entity that owns at least 20% of the shares of the paying entity. 15 if otherwise.	0 for: loans arising from public entities or the central bank; Related to credit sales; Credits granted by a bank or financial institution. 10 if otherwise.	10	[D]
Taiwan	10 or 41.5 consolidated	20	20	[A], [B]
Tanzania	10 or 41.5 consolidated	20	20	[A], [B]
Thailand	10 or 41.5 consolidated	20	20	[A], [B]
Trinidad and Tobago	35	35	35	[A], [B]
Tunisia	10 or 41.5 consolidated	20	20	[A], [B]
Turkey	10 or 41.5 consolidated	20	20	[A], [B]
Ukraine	10% or 41.5% consolidated	20	20	[A], [B]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
United Kingdom	0 if the recipient is a pension fund; 5 if the recipient is an entity that owns at least 20% of the shares of the paying entity. 15 if otherwise.	0 for: Loans arising from public entities, the central bank or pension funds; Related to credit sales of scientific, commercial, and/or industrial equipment; Credits granted by a bank or financial institution. 10 if otherwise.	10	[D]
United States	10 or 41.5 consolidated	20	20	[A], [B]
Venezuela	10 or 41.5 consolidated	20	20	[A], [B]
Vietnam	10 or 41.5 consolidated	20	20	[A], [B]
Zambia	10 or 41.5 consolidated	20	20	[A], [B]
Zimbabwe	10 or 41.5 consolidated	20	20	[A], [B]

Footnotes	
[A]	Section 245 of the CTC
[B]	Section 408 of the CTC (Interests & Royalties).
[C]	Section 11 of the Andean Community decision 578, Section 408 of the CTC (Interests & Royalties).
[D]	Sections 10, 11 and 12 of the DTT.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	Financial statements	Balance sheet and income statement for the years open to review by the tax authorities.
2	Tax Due Diligence	Financial statements	Balance sheet with the temporary or permanent book/tax differences.
3	Tax Due Diligence	Corporate tax	Copy of the corporate income tax returns for the fiscal years open to review.
4	Tax Due Diligence	Corporate tax	Copy of the annexes of the income tax returns for the three previous years.
5	Tax Due Diligence	Income withholding tax	Copy of the income withholding tax returns for the fiscal years open to review.
6	Tax Due Diligence	Transfer pricing	Transfer Pricing Studies of the last five fiscal years.
7	Tax Due Diligence	Formal duties	Updated copy of the Registro Único Tributario Tax ID, including all of its pages.
8	Tax Due Diligence	Formal duties	Account tax statement (Estado de cuenta corriente de impuestos) issued by the Colombian Tax Authority and district and/or municipal tax authorities where the company is a taxpayer.
9	Tax Due Diligence	Litigations	Brief description of any pending litigation procedures that could affect the company's results, including an estimate of the contingency.
10	Tax Due Diligence	Balances in favour	Information about any requests for the refund of balances in favour.
11	Tax Due Diligence	VAT	Copy of VAT returns filed for the three previous taxable years, along with the payment receipts (Including the bank stamp or watermark as applicable).
12	Tax Due Diligence	Turnover tax	Copy of the turnover withholding tax returns filed on the three previous taxable years, along with the payment receipts.
13	Tax Due Diligence	Assets located abroad	Copy of the Assets Located Abroad return, including their corresponding annexes, for the three previous taxable years.
14	Tax Due Diligence	Transfer pricing	Copy of the transfer pricing supporting documentation (e.g. local file and master file) for the three previous taxable years (if applicable).
15	Tax Due Diligence	Formal duties	Ten (10) invoices issued by the company and ten (10) invoices received by the company.
16	Tax Due Diligence	Real estate	Real estate tax receipts for the current year and supporting documents for payment in the fiscal years open to review.

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CYPRUS

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1. INTRODUCTION

a. Forms of Legal Entity

There are several types of companies that may be formed in Cyprus:

- Private and public limited liability companies by shares and/ or by guarantee;
- Partnerships; and
- European companies (societas europaea).

Most companies registered in Cyprus are private companies limited by shares. The memorandum of association contains the objects of the company and the statement that the company is a private one; the articles of association contain the regulations under which the company is managed as well as restrictions that satisfy the definition of "private company", namely restrictions on the right to transfer shares and prohibitions of any invitation to the public to subscribe for any shares in the company.

The liability of the shareholders is extended to the unpaid amount on the shares they hold.

Companies limited by guarantee limit their liability to the amount their shareholders undertake to contribute to the company in the event of the company being wound up. Unlimited liability companies (i.e. partnerships) do not limit the liability of their shareholders.

b. Taxes, Tax Rates

i Corporate Income Tax

The corporate tax rate for all companies is 12.5%.

In the case of insurance companies, where the corporation tax payable on the taxable profit of the life insurance business is less than 1.5% of the gross premium, the difference is paid as additional corporation tax.

ii Personal Income Tax

The income tax law in Cyprus for individuals is taxed in accordance with the progressive scale of state taxation in Cyprus as follows:

Chargeable income for the tax year €	Tax Rate %	Tax amount €	Cumulative tax €
First 19.500	Nil	Nil	Nil
From 19.501 – 28.000	20	1,700	1,700
From 28.001 – 36.300	25	2,075	3,775
From 36.301 – 60.000	30	7,110	10,885
Over 60.000	35		

iii VAT

The standard VAT rate in Cyprus is 19%. However, a reduced VAT rate is applied at a rate of 9% for goods and services related to the domestic road passenger passport, hotel accommodation, restaurants and catering cafes.

In addition, a reduced VAT rate is applied to 5% for goods and services that are related amongst others with certain foodstuffs, non-alcoholic beverages, books (excluding e-books), works of art, collectors' items and antiques.

A 0% VAT rate is taxed for intra-community and international transport and for goods purchased on international flights.

c. Common divergences between income shown on tax returns and local financial statements

In Cyprus, the values reflected in the financial statements of a company generally agrees with the tax return's balance sheet unless a valuation is required for tax purposes.

2. RECENT DEVELOPMENTS

According to the latest amendment of the Special Defence Contribution N.195 (I)/2021, dividends distributed to a Cyprus company by a foreign entity, that is considered to be a non-cooperative jurisdiction according to the EU list are subject to a 17% withholding tax. The EU list of the non-cooperative jurisdictions for tax purposes adopted by the Council on the 24 February 2022 is composed of the following countries, American Samoa, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu.

The 5th Anti Money Laundering ("AML") Directive was harmonised in the Cypriot legislation on 23 February 2021, pursuant to which EU Member States are required to establish a register of beneficial owners and all legal entities have the obligation to register their beneficial owners in the publicly accessible register of beneficial owners.

On 21 December 2021, an amendment to the Income Tax Law was published in the Cyprus Government Gazette whereby an additional corporate tax residency test was introduced based on incorporation. This additional test aims to capture Cypriot incorporated/registered companies that are not tax resident in any other jurisdiction. In accordance with the Corporate Income Tax Law, a company is considered to be a tax resident of Cyprus if its management and control are exercised in Cyprus. The existing corporate tax residency test will continue to apply, so that a company that has its' management and control in Cyprus will continue to be considered as a tax resident of Cyprus, (i.e. its' tax residency status will not be affected by the Law amendment). In accordance with the Law amendment the definition of a "resident in the Republic" is enhanced so that a company established or registered under any applicable Law in the Republic, which has its' management and control exercised outside the Republic, is considered to be a resident of the Republic, unless such company is tax resident in any other jurisdiction. This means that Cyprus incorporated/registered companies, with (i) management and control exercised outside Cyprus ; and (ii) which are not tax resident in any other jurisdiction will now be considered as Cypriot tax residents; as such, they will be taxed in Cyprus on their worldwide income.

3. SHARE ACQUISITION

a. General Comments

The acquisition of a company can be made either via the acquisition of its shares or via acquisition of its assets/business. With a share acquisition, no direct taxes are usually triggered for the buyer.

Where the relevant share purchase agreement is found to be subject to stamp duty in Cyprus, the tax obligation rests with the buyer unless the contract provides otherwise. A contract is exempt from stamp duty when the acquisition is affected as a result of a company reorganisation.

The stamp duty is:

- For sums EUR1- 5,000 : Nil.
- For sums EUR5,001- 170.000 : 1.5%.
- For sums exceeding EUR170.000 : 2% capped at a maximum of EUR20,000.

b. Tax Attributes

Tax losses incurred in any one year that cannot be wholly offset against other income may be carried forward for five years and set off against profits resulting in subsequent years.

However, according to the law, losses incurred by a company cannot be carried forward if:

- Within any three years, there is a change in the ownership of the shares of the company and there is a substantial change in the nature of the business of the company (a significant change can be interpreted as a drastic change in the types of activities offered by a company for example, it originally sells computers and then stops to commence trading in pharmaceuticals). or
- If at any time since the scale of the company's activities has diminished or has become negligible and before any substantial reactivation of the business, there is a change in the ownership of the company's shares.

A change in the ownership of the shares of the company occurs:

(i) if a person acquires more than 50% of the ordinary share capital of the company; or

(ii) if two or more persons jointly or severally acquire at least 5% of the ordinary share capital of the company so that all together acquire more than 50% of the ordinary share capital of the company.

There is no change in the ownership of the shares of the company if the change involves a gift made from a parent to a child, between spouses or relatives up to the second degree of kindred or to a limited company all shareholders of which are or continue to be members of the disposer's family for a period of 5 years after such gift.

Losses may be surrendered by a Company resident in Cyprus (the "surrendering company") to another Company resident in Cyprus (the "claimant company").



In order to align the Cypriot tax laws with the European Court of Justice decision the law has been amended so that a subsidiary company which is tax resident in another EU member state can surrender it's taxable losses to another group member company tax resident in Cyprus, provided the subsidiary has exhausted all the means of surrendering or carrying forward the losses in the member state of subsidiary or to any intermediary holding company.

The Law has also been amended to allow, for the purposes of considering whether two companies are members of the same group, the interposition of holding companies are members of the same group, the interposition of holding companies established in:

(a) Another EU member State;

(b) In a State with which Cyprus has concluded a double tax treaty; or

(c) In a State which has signed the OECD multilateral convention for exchange of information.

The surrendering company may surrender all of its loss or part of its loss to any other member of the group, upon a claim made by the claimant company.

c. Tax Grouping

No fiscal consolidation regime exists under the domestic law. However, companies within the same group can use the group relief provisions to offset losses. Two companies are considered to be a group for group relief purposes if:

- One company is a 75% subsidiary of the other; or
- Both companies are 75% subsidiaries of a third company.

A company is considered to be 75% controlled by another company if at least 75% of the ordinary share capital with voting rights is held directly or indirectly and the holding company is entitled to not lower than 75% of the subsidiary's:

- Distributable profits; and
- Assets of the subsidiary that would have been available for distribution to the shareholders on liquidation.

The offset of losses between group companies is only permitted where the surrendering company and the claimant company are part of the same group for the whole of the tax year.

From 1 January 2012, in cases where a company has been incorporated by its parent company during the tax year, this company will be deemed to be a member of the group for group relief purposes for that tax year.

If a payment for group relief occurs (i.e. a payment is made by the claimant company to the surrendering company for the amount of tax losses surrendered by way of group relief), such a payment:]

- Shall not be regarded in any way, as a distribution; and
- Shall be ignored in computing the taxable profits or losses of either company.

d. Tax Free Reorganisations

When a transaction falls into the definition of a "reorganisation", it is exempt from corporation tax, capital gains tax, stamp duties and transfer fees.

"Reorganisations" include mergers, demergers, partial divisions, transfer of assets, exchange of shares, transfer of registered office of a European company ("SE") or a European Cooperative company ("SCE").

Cyprus has implemented the EU Merger Directive provisions in its national income tax legislation, enabling tax neutral reorganisations. According to Cypriot Tax Law, the transfer of assets and liabilities in the course of a reorganisation does not give rise to any taxable profits at the level of the transferring company. Accumulated losses of the transferring company moved to the receiving company may be offset and the relevant provisions for the consolidation of losses are applied.

Equally, profits derived at the level of the receiving company as a result of the cancellation of its participation in the transferring company do not give rise to any taxable obligations. The issue of shares in the receiving company to the shareholder of the transferring company in consideration for the shares in the transferring company does not give rise to any taxation on the gains or losses at the shareholder level. In order to qualify for the tax exemption, the corporate reorganisation should not involve a cash payment exceeding 10% of the nominal value of the shares.

e. Purchase Agreement

The use of tax grouping can be considered (please see section 3.c).

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

Stamp duty at nominal rates is payable on a variety of legal documents and may apply in the case of a transfer of shares. Specifically, stamp duty is governed by the Stamp Duty Law (19/ 1963), within which article 4 (1) provides that the documents specifically presented in its first schedule are subject to stamp duty if these documents concern property situated in the Republic of Cyprus, as well as matters or things to be performed in Cyprus, irrespective of the place of execution of such documents. Agreements for the purchase of shares in a Cypriot company, which are executed in Cyprus, are not required to be stamped in Cyprus and it is also the actual practice of the Stamp Duty Commissioner to exclude and exempt such documents from stamp duty. Further, the following are not required to be stamped in Cyprus:

- Instruments relating to the transfer of shares in a Cypriot Company which are executed in Cyprus;
- Agreements for the purchase of the shares in a foreign Company which are executed in Cyprus; and
- Instruments for the transfer of shares in a foreign company which are executed in Cyprus.

g. "Purchase accounting" applicable to share acquisitions

S.142 (ι) (a) CAP 113 stipulates that a Cypriot company should prepare financial statements under International Accounting Standards ("IFRS").

h. Share Purchase Advantages

One important tax advantage of a share acquisition is that the sale of shares is totally exempt from all taxes in Cyprus unless there is immovable property situated in Cyprus, which is subject to 20% capital gains tax. Gains from the sale of shares listed on a recognised stock exchange are exempt from capital gains tax.



i. Share Purchase Disadvantages

The buyer also acquires all of the historical, current, prospective and contingent liabilities, including tax liabilities. In addition, the assets in the company sold will not be revalued at market value.

4. ASSET ACQUISITION

a. General Comments

Where there is an acquisition of immovable property, the buyer is liable for a transfer fee. Transfer taxes range from 3% to 8%, depending on the value of the property. The tax is:

- 3% on amounts up to EUR85,000 of the sale price or market value.
- 5% on amounts between EUR85,001 and EUR170,000.
- 8% on any amount exceeding EUR170,000.

The above transfer fees are reduced by 50% where the purchase of the immovable property is not subject to VAT.

Immovable Property Tax was abolished as of 1 January 2017. Until the tax year 2016, the owner of immovable property situated in Cyprus was liable to pay an annual immovable property tax which was calculated on the market value of the property as at 1 January 1980, at varying rates, which applied per owner and not per property.

The agreement for the acquisition of immovable property or any other asset may also be subject to stamp duty in Cyprus. Stamp duty is imposed on contracts relating to assets located in or "things" to be done in Cyprus. If the provisions of a reorganisation are applied, as defined under Cypriot law (which is in line with the provisions of the EU Merger Directive), such a purchase can be tax neutral.

Depending on the nature of the assets transfer fees may apply. The purchase of a company's assets, unlike the purchase of shares, may be subject to VAT, currently 19%.

In terms of utilisation of tax losses, tax losses are not available for set-off in the case of a share deal and given that profits from the sale of shares are generally exempt from tax. In the case of a taxable sale of immovable property, any losses realised may be set off against similar profits that may arise in the future. The same principle applies to gains and losses resulting from the sale of other assets, where gains are taxable, the deductibility of losses may be allowed.

b. Purchase Price Allocation

There are no specific rules in Cyprus regarding the allocation of the total acquisition price of a business to individual assets. Therefore, the IFRS treatment is followed unless a detailed valuation is in place.



c. Tax Attributes

i Upon acquisition

The cost of assets acquired are recorded in the balance sheet as part of the acquisition price and they can be depreciated over their useful economic life. From a tax point of view, the depreciated rate (Wear and Tear) follows a certain percentage provided by the tax office.

ii Upon divestiture

Gains arising on the disposal of business assets are exempt from direct taxes in Cyprus. Gains from the disposal of immovable property situated in Cyprus is subject to 20% capital gains tax.

d. Tax Free Reorganisations

When a transaction falls into the definition of a "reorganisation", it is exempt from corporation tax, capital gains tax, stamp duties and transfer fees.

"Reorganisations" include mergers, demergers, partial divisions, transfer of assets, exchange of shares, transfer of registered office of a European company ("SE") or a European Cooperative company ("SCE").

Cyprus has implemented the EU Merger Directive provisions in its national income tax legislation, enabling tax neutral reorganisations. According to Cypriot Tax Law, the transfer of assets and liabilities in the course of reorganisation does not give rise to any taxable profits at the level of the transferring company. Accumulated losses of the transferring company moved to the receiving company may be offset, and the relevant provisions for the consolidation of losses are applied.

Equally, profits derived at the level of the receiving company as a result of the cancellation of its participation in the transferring company do not give rise to any taxable obligations. The issue of shares in the receiving company to the shareholder of the transferring company in consideration of shares in the transferring company does not give rise to any taxation on the gains or losses at the shareholder level. In order to qualify for tax exemption, the corporate reorganisation should not involve a cash payment exceeding 10% of the nominal value of the shares.

e. Purchase Agreement

The use of tax grouping can be considered (please see section 3.c).

A sale and purchase of assets involves the need to identify every single asset and liability of the business and to determine whether the asset or liability is to transferred to the buyer or if it will remain with the seller. Therefore, it will be essential to ensure that the sale and purchase agreement identifies, by list or by generic descriptions, exactly which assets and which liabilities are to be transferred to the buyer and which remain with the seller.

f. Depreciation and Amortisation

Goodwill is not subject to amortisation. Since Cyprus applies International Financial Reporting Standards ("IFRS"), goodwill is tested for impairment (comparing recoverability with the carrying amount) annually or whenever there is an indication of a possible reduction in value.

For impairment testing, goodwill is allocated to the relevant cash generating unit (the lowest level within the entity for internal management purposes) and this cash- generating unit is tested for impairment. An impairment loss of goodwill cannot be carried back. Goodwill does not appear on individual statutory statements; it only appears in consolidated financial statements. Trading Goodwill is subject to direct tax at the rate of 12.5%.

g. Transfer Taxes, VAT

The Cypriot Value Added Tax Law is fully harmonised with the EU Sixth Directive. In particular, the transfer of a business as a going concern is outside the scope of VAT, provided certain conditions are met. The actual end result of such transfer needs to be that a new owner is established who will be operating the business as such. Therefore, the mere sale of assets does not constitute in itself a transfer of a business as a going concern.

Where land and buildings are sold, it is recommended that professional advice is obtained on a case by case basis.

The stamp duty payable is explained in section 3.a.

h. Asset Purchase Advantages

Evaluation of assets can be effected via an independent valuation. Any increase or decrease in the value of assets is reflected accordingly.

The increase in value is recorded as a capital reserve. Generally, there is no tax obligation with respect to the sale of assets. However, depending on the nature of the assets, corporation tax or capital gains tax may be imposed in the case of sale.

Purchased goodwill is tax deductible.

No previous liabilities, including tax liabilities of the company are inherited in an asset acquisition.

The acquisition of assets provides the possibility to take on a part of the business, providing in this way greater flexibility on funding options.

i. Asset Purchase Disadvantages

A sale and purchase of assets involves the need to identify every single asset and liability of the business and to determine whether the asset or liability is to transferred to the buyer or if it will remain with the seller. Therefore, it will be essential to ensure that the sale and purchase agreement identifies, by list or by generic descriptions, exactly which assets and which liabilities are to be transferred to the buyer and which remain with the seller.

It will also be necessary to comply with all formalities for the transfer of title to each and every asset which is included in an asset.



5. ACQUISITION VEHICLES

a. General Comments

Cyprus is renowned as a jurisdiction for holding companies. In the majority of cases, its domestic legislation allows a tax free treatment of incoming dividends from foreign subsidiaries. It also allows the distribution of dividends to non-resident shareholders free from withholding taxes.

Equally, from a financing perspective, any interest payments to non-residents can also effectively be free from withholding taxes. In any case, transactions between the Cypriot company and other group companies should follow transfer pricing regulations.

Currently, there are no detailed transfer pricing rules nor any TP documentation requirements regarding transactions with related parties (except for certain intragroup financing transactions which are financed by debt). Notwithstanding the above, transactions between related and connected parties should be concluded on an arm's length basis.

It should be noted that detailed TP rules are expected to be introduced in Cyprus in the next few months with possible retroactive effect as of 1 January 2021. Based on the new rules, there will be a requirement to document all types of intercompany transactions and prepare a Local and Master File in line with the OECD TP guidelines and prepare a Summary Information table. The Local File is expected to include the documentation of transactions exceeding in aggregate the amount of EUR750,000 per category.

Further, to mitigate tax effects, in the case of acquisitions, an important parameter that should be taken into consideration is the provisions of the relevant agreement for the avoidance of double taxation (if any) between Cyprus and the country in which the subsidiary and/or parent will be located. Any additional specific issues to be considered in the case of acquisitions of Cypriot Companies by foreign investors will need to be also examined on a case by case basis, depending on the industry sector involved and the investor's jurisdictional origin.

A purchaser making use of a Cypriot acquisition vehicle in order to execute an acquisition for cash can fund the vehicle with debt, equity, or hybrid instruments that combine the characteristics of debt and equity together. Further, as a general rule, in order to ascertain a physical or legal person's chargeable income, only the outgoings and expenses that are wholly and exclusively incurred by such a person in the production of taxable income can be deducted for tax purposes.

b. Domestic Acquisition Vehicle

Resident holding companies are often used domestically and internationally for the acquisition of target companies. It should be noted, however, that in the case of a pure holding company, there is normally no taxable base from which the interest expense can be deducted, except in cases where shares are acquired directly or indirectly in a wholly-owned subsidiary.

c. Foreign Acquisition Vehicle

The use of a foreign acquisition vehicle is possible. However, it offers no real advantage.



d. Partnerships and joint ventures

Investments may be acquired via a Cypriot partnership. Partnerships are not regarded as separate tax entities and are subject to taxation on a transparency basis. Any of the profit or losses of the partners is divided according to the profit-sharing arrangements in the period of the account concerned. Once the partnership's profits for a period of account have been computed, they are shared between the partners using the profit-sharing ratio.

e. Strategic vs Private Equity buyers

This section is left intentionally blank.

6. ACQUISITION FINANCING

a. General Comments

Generally speaking, a company is not prohibited from being financed either by debt or equity. Funds may be used once available on account.

b. Equity

i Dividend distribution in Cyprus

- Dividend distributions by a Cypriot company to a foreign recipient are generally subject to 0% withholding tax.
- Dividend income is not subject to income tax, however special defence contribution ("SDC") is payable on dividends at a rate of 17% by tax resident individuals who are also Cypriot domiciled.

Non-resident individuals and generally companies are not liable to SDC.

- Dividends are exempt if received by non-resident individuals.
- Dividends distributed by a Cyprus entity to a foreign company that is considered by the EU to be in a non-cooperative jurisdiction are subject to 17% withholding tax.

ii Notional interest deduction

In 2015, Cyprus introduced a Notional Interest Deduction ('NID') in its tax law, which relates to a notional interest deduction on new equity, which can be set against taxable income generated by the company as a result of the funds from the new equity.

Under the current Cyprus NID provisions, the annual NID rate is determined by reference to the yield rate of the 10 year government bonds of the country where the funds are employed in the business of the company plus a 5% premium. The notional interest to be deducted cannot exceed 80% of the taxable income of the company for the year before the deduction of this notional interest.



c. Debt

i Limitations on the use of debt

Cypriot income tax law does not provide for any specific debt to equity ratio. However, it does provide for an interest limitation rule (see below).

ii Limitations on Interest Deductions

Cyprus has three types of limitations on the deductibility of interest on borrowings currently in force: (i) limitation related to the purpose of the expense; (ii) limitation based on transfer pricing rules; and (iii) the limitation on interest deductions provided by ATAD.

- Limitation related to the purpose of the interest expense : only expenses wholly and exclusively incurred for business purposes are tax deductible. In addition, following an amendment to the Cypriot Law in 2012, any interest expense relating to the acquisitions of shares after 1 January 2012 may be deducted from taxable income on the provision that the acquired company is directly or indirectly wholly acquired (i.e. 100% shareholding and the acquired company holds assets which are all used for business purposes).
- Limitation based on transfer pricing rules : Cypriot transfer pricing rules are defined in Section 33 of the Cypriot income tax law. Section 33 provides a legal basis for transfer pricing adjustments where associated enterprises deviate from the arm's length standard.
- Limitation on interest deduction of ATAD : As from 1 January 2019, with the implementation of the Anti-Tax Avoidance Directive ("ATAD") into the Cypriot legislation, the interest limitation rule provides that the excess borrowing cost which exceeds 30% of EBITDA is not deductible for the purpose of calculating the taxable income of a company. Losses brought forward are not taken into account for the calculation of EBITDA. The excess borrowing cost is deducted up to the amount of EUR3 millions per fiscal year, per company or Cypriot group. Where the company is a member of the Cypriot Group, the interest limitation rule is applied at the level of the group, as defined in the Corporate Income Tax Law (i.e. 75% participation group).

The interest limitation rule does not apply to:

- Financial undertakings;
- Standalone entities;
- Loans used to fund long term infrastructure projects where the project operator, borrowing cost, asset and income are all in the European Union; and
- Loans that were concluded before 17 June 2016, but the exclusion shall not extend to any subsequent modification of such loans.

iii Related Party Debt

Where the company is a member of a Cypriot Group, the interest limitation rule is applied at the level of the group, as this is defined in the Corporate Income Tax Law (i.e. 75% participation group).

Where a company is a member of a consolidated group for financial accounting purposes, it may choose for each tax year to fully deduct the amount of the excess borrowing cost if it is possible to demonstrate that the ratio of its equity over its total assets is equal to, or higher than, the equivalent ratio of the group.

iv Debt Pushdown

With a properly designed tax structure, debt pushdown can be achieved. Cypriot Companies Law specifically provides for the prohibition of financial assistance given by a company whether directly or indirectly, for the purchase or subscription of its own or its holding company's shares. In line with this, in a transaction with multiple dealings, share acquisition financing may not be linked to debt pushdown, given that this may be treated as indirect financial assistance.

However, express exclusions from the scope of this provision are included in the law. The application of the provisions of the EU Merger Directive incorporated into Cypriot Law may prove to be beneficial in achieving debt pushdown. An intermediary company may be incorporated in order to acquire the target. The intermediary company can subsequently be merged with the target company.

Expert advice should be sought. In particular, considering the latest tax developments, which outlined "substantial activity" as a core element for tax free reorganisations. Generally, if the structure and the transaction have sufficient underlying substance, any risks of avoiding taxation are effectively minimised.

d. Hybrid Instruments

Following the partial adoption of the EU Anti-Tax Avoidance Directive of 29 May 2017 ("ATAD II") in 2019, on 19 June 2020, the Cypriot Parliament voted into law the remaining provisions of the provisions of the EU Anti-Tax Avoidance Directive. The law will apply retroactively as of 1 January 2020 (with the exception of reverse hybrids which became effective as of 1 January 2022). Under the law, the hybrid mismatch rules apply to both Cypriot tax resident companies and foreign companies with a permanent establishment ("PE") in Cyprus.

The law follows but does not go beyond ATAD II mandatory "minimum standards" aiming to address these hybrid mismatches. In addition, Cyprus decided to opt-in for all possible exceptions provided by ATAD II.

A hybrid mismatch will be limited to situations arising : (i) between associated enterprises (as defined); (ii) between a taxpayer and an associated enterprise; (iii) between a head office and its PE; (iv) between two or more PEs of the same company; or (v) under a structured arrangement (as defined).

The definition of associated enterprises is based on a 25% direct or indirect participation (same definition as the one added for the purpose of applying the new interest limitation rules introduced by ATAD I). However, the 25% minimum participation threshold will apply only in the situation of hybrid mismatches arising from a hybrid financial instrument, while a 50% threshold will apply for all other mismatches, including mismatches resulting from the hybrid nature of entities. In addition, the concept of "acting together" is introduced, which leads to aggregating the voting rights or capital ownership that different persons hold in the same entity if they are considered to be "acting together."

The law also introduces a definition of the concept of a structured arrangement. This is an arrangement involving a hybrid mismatch where the mismatch outcome is priced into the terms of the arrangement or an arrangement that has been designed to produce a hybrid mismatch outcome unless the taxpayer or an associated enterprise could not reasonably have been expected to be aware of the hybrid mismatch and did not share in the value of the tax benefit resulting from the hybrid mismatch.



Reverse hybrid mismatch rules

From 1 January 2022, the reverse hybrid mismatch rules are effective as part of the EU Anti-tax Avoidance Directive 2017 ("ATAD 2"). A reverse hybrid is an entity that is transparent under the laws of the jurisdiction where it is established but as a separate entity (i.e. non-transparent/opaque) under the laws of the jurisdiction of the investor.

The income of a reverse hybrid therefore may not be taxable in its establishment jurisdiction (as the income is deemed to be allocated to the investor) nor would it be taxable in the residence state of the investor (where the income of the opaque entity is generally not included in the taxable income of the investor). As a result, a deduction with no inclusion mismatch may arise.

Based on the new provisions, the reverse hybrid mismatch rule will impact transparent companies registered in Cyprus (e.g. partnerships) that are viewed as taxable persons by one or more non-resident associated entities holding directly or indirectly at least 50% of the voting rights, capital ownership or profit interest in the hybrid entity. The corrective action will be for Cyprus to regard such hybrid entities as residents of Cyprus and to tax their income accordingly.

The provision does not apply to a collective investment vehicle which means "an investment fund or vehicle that is widely held, holds a diversified portfolio of securities and is subject to investor-protection regulation in Cyprus".

e. Other Instruments

Preference shares are usually considered as equity instruments and are typically used for private equity investments.

f. Earn-outs

Earn-outs are treated as part of the sales price for income tax purposes and are subject to Cypriot transfer tax. No special tax treatment is available for earn-outs. The time at which taxes on earn-outs are due to be paid depends on the case specific circumstances.

7. DIVESTITURES

a. Capital Gains Taxation of Cypriot residents

Capital Gains Tax is imposed (when the disposal is not subject to income tax) on gains from the disposal of immovable property situated in Cyprus, including shares of companies not listed on a recognised Stock Exchange which own immovable property situated in Cyprus, at a flat rate of 20%.

Further, as per the recent amendment to the relevant law, from 17 December 2015, the definition of "property" was extended so that Capital Gains Tax is also levied on the sale of shares that directly or indirectly participate in other companies that in turn hold immovable property in Cyprus, on the provision that at least 50% of the market value of the shares that are sold is derived from that immovable property in Cyprus.

Further, a favourable exemption has also been in place as from July 2015, under which gains derived from the sale of immovable property are 100% exempt from Capital Gains Tax when:

- They were acquired between the day the new law came into effect, being 16 July 2015, up to 31 December 2016 inclusively; and
- They were acquired from an independent non-related party at market value, via an ordinary purchase/purchase agreement and not through a donation or gift either by way of exchange, trade or in settlement of debt and the sale must not be related to any foreclosure agreement either.

b. Capital Gains Taxation of non-Cypriot residents

Capital gains tax in Cyprus is levied only on immovable property situated in Cyprus. In particular for the (i) sale of immovable property located in Cyprus, irrespective of whether the immovable property is owned by Cypriot tax residents or not, (ii) on the sale of shares of companies that directly own immovable property located in Cyprus and (iii) gains from the sale of shares of companies which indirectly own immovable property in Cyprus (ie through another company). No other capital gains are taxable in Cyprus.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

Cyprus applies a worldwide tax system. Any income of a resident company that arises in Cyprus or abroad is taxed in Cyprus unless there is a different provision in the double tax convention between Cyprus and the other county.

Permanent establishments of non-resident companies are subject to taxation in Cyprus, only on the income that is attributable to that permanent establishment.

It is notable to state that profits realised by Cypriot companies from operations outside Cyprus, if there is a permanent establishment, are generally exempted from tax in Cyprus, provided the active/passive test is met and that there are no CFC issues as described below.

b. CFC Regimes

A CFC is a low taxed non-Cypriot tax resident company in which the Cypriot Corporate Income Tax taxpayer, alone or together with its associated enterprises, holds a direct or indirect interest of more than 50%. A CFC is also a low-taxed foreign PE of a Cypriot tax resident company that is exempt from tax in Cyprus (exempt foreign PE).

A non-Cypriot tax resident company (or an exempt foreign PE) is considered to be low taxed if the actual foreign corporate tax paid by it on its profits is lower than 50% of the corporate income tax charge that would have been payable in Cyprus under the Cypriot Corporate Income Tax rules had it been a company tax resident in Cyprus.

Exceptions:

The CFC rule does not apply to companies which are not tax resident in Cyprus (or exempt foreign PEs):

- With accounting profits of no more than EUR750,000 and non-trading income of no more than EUR75,000; or
- Of which the accounting profits amount to no more than 10% of their operating costs for the tax period. For the purposes of this exception, operating costs do not include the cost of goods sold outside the country where the non-Cyprus tax resident company (or the exempt foreign PE) is tax resident and payments to associated enterprises.

Targeted income:

When a company which is not tax resident In Cyprus (or an exempt foreign PE) meets the definition criteria of a CFC, the Cypriot CIT taxpayer must include in its taxable profit the non-distributed income of the CFC to the extent such income arises from non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage.

The non-distributed income of the CFC is defined as the after-tax accounting profit of the CFC, which has not been distributed to the Cyprus CIT taxpayer during the Cypriot tax year in which the CFC profits are included, or within the next seven months.

Different reliefs are provided for avoidance of double taxation on CFC income.



c. Foreign branches and partnerships

In the case of a Cypriot tax resident company with operations in another country through a permanent establishment abroad, such profits of the branch are exempt from Cypriot income tax, provided that (i) the permanent establishment engages directly or indirectly more than 50% in activities which lead to investment income and (ii) the foreign tax burden is not substantially lower than the tax burden in Cyprus.

Losses of a permanent establishment may be relieved against other income, whereas losses of a foreign subsidiary cannot be utilised against the parent company's profits and profits of other group companies in Cyprus.

Profits/losses of the permanent establishment are included in the profits for deemed distribution rules purposes, whereas profits/losses of a foreign subsidiary are not included in the profits of the Cypriot parent company for deemed distribution rules purposes.

Partnerships are not regarded as separate tax entities and are subject to taxation on a transparent basis. Any of the profit or losses of the partners is divided according to the profit-sharing arrangements in the period of the account concerned. Once the partnership's profits for a period of account have been computed, they are shared between the partners using the profit-sharing ratio.

d. Cash Repatriation

Dividends distributed by a Cypriot company to non-residents are not subject to withholding tax since there is no such a provision under the domestic law in Cyprus.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Cypriot tax legislation does not provide for any rules on "real-property-rich" companies.

However, according to Cypriot Tax Legislation, a capital gains tax at the rate of 20% may be triggered by the sale of shares in companies that derive their value from real estate situated in Cyprus, unless these are first acquired between 16 July 2015 and 31 December 2016. Where capital gains tax potentially applies, the possible application of a Double Taxation Treaty ("DTT") should be considered, especially when the treaty includes favourable provisions for the taxation of capital gains. Capital gains tax will be triggered only when such shares derive their value from real estate situated in Cyprus. The capital gains tax is not extended to immovable property situated outside Cyprus. Therefore, when a Cypriot company acquires a foreign subsidiary owning real estate situated outside Cyprus and in turn, sells the shares of that subsidiary, no taxes should be triggered in Cyprus. In some cases, a DTT allows for the taxation of such gains at the level of the subsidiary. Acquisition of real estate property by non-Cypriot residents, other than those coming from EU countries, requires the approval of the Ministry of the Interior, a process which takes between one and four months. In the case of a transfer of immovable property, applicable transfer taxes are a liability of the buyer. Transfer taxes between 3% and 8% may apply (whilst certain discounts and exemptions exist). It should also be noted that as of 1 January 2017, immovable property taxes in Cyprus have been abolished.

b. CbC and Other Reporting Regimes

In Cyprus, there are country by country ("CbC") requirements. Multinational ("MNE") groups with consolidated revenue exceeding EUR750 million are required to prepare a CbC report and file it with the Cypriot Tax Authorities within 12 months of the last day of their reporting fiscal year.

Additional reporting regimes include, among others, mandatory reporting under the common reporting standard ("CRS"), mandatory automatic exchange of information on tax rulings and advance pricing agreements.

Cypriot taxpayers may also be subject to other reporting obligations which are based on tax treaty provisions dealing with exchange of information upon request or the anti-money laundering rules.

Finally, additional reporting obligations apply following the implementation of the 6th Directive on administrative cooperation ("DAC6"), which introduces a mandatory and automatic exchange of information in the field of taxation in relation to reportable cross border arrangements.

10. TRANSFER PRICING

To date, Cyprus has had no detailed transfer pricing ("TP") legislation included in its income tax law. Currently, the arm's length principle is codified in section 33 of the Cyprus Income Tax Law (L.118(I) of 2002, as amended ("CITL") with wording similar to that of Article 9 of the 2017 OECD Model on Associated Enterprises and therefore the Cypriot Tax Authorities ("CTA") follow the arm's length principle. As a result, the Cypriot TP rules require that transactions between associated persons should take place at arm's length.

On 30 June 2017, the CTA issued a circular with respect to the new rules for the taxation of intragroup financing arrangements, which apply from 1 July 2017. The new circular provides for the application of transfer pricing methodology to such activities based on the arm's length principle as advocated by the OECD. The application of the circular is limited to intragroup financing activities (the granting of loans or cash advances) that are financed by debt instruments, regardless of whether related or third parties are the source of the funding.

It should be noted that detailed TP rules are expected to be introduced in Cyprus in the next few months with possible retroactive effect as of 1 January 2022. Such rules are expected to be aligned with the 2017 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. The circular regarding intragroup financing arrangements noted above is expected to be repealed. Based on the new rules, there will be a requirement to document all types of intercompany transactions and prepare a Local and Master File in line with the OECD TP guidelines, as well as to prepare a Summary Information table. The Local File is expected to include the documentation of transactions exceeding in aggregate the amount of EUR750,000 per category. As a consequence, following the ratification of the draft TP bill all intragroup transactions must be at arm's length and taxpayers should have sufficient documentation to substantiate the arm's length nature of their transactions.



11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

Hybrid entities are not commonly used in Cyprus. The main categories of legal entities that are used in Cyprus are companies and partnerships. Further, following the implementation of the anti-hybrid rules of ATAD in Cyprus, using hybrid entities will not be an option.

b. Use of Hybrid Instruments

As with hybrid entities, hybrid instruments are not used in Cyprus. Further, following the implementation of the anti-hybrid rules of ATAD in Cyprus, using hybrid instruments will not be an option.

c. Principal/ Limited Risk Distribution or Similar Structures

Cyprus does not have specific rules on such operations and shall be treated as any other business as long as the return of the company is consistent with the arm's length principle. Notably, Cyprus is often used as an ideal gateway for business activities and investments to the region; European Union, Eastern Europe, Russia, CIS, Middle East and Africa.

d. Intellectual Property (licencing, transfers, etc.)

Cyprus has a very favourable regime for Intellectual Property ("IP") companies. In particular, it has the so called "IP Box Regime". Generally, the Cyprus IP box allows for a deductible notional expense calculated as 80% on qualifying profits from qualifying IP. The corporation tax in Cyprus is 12.5%, resulting in a rate of up to 2.5%.

The Cyprus patent box is fully in line with the recommendations of Action 5 of the Organisation for Economic Co-operation and Development ("OECD"). Under the patent box, qualifying intangible assets refer to assets that were acquired, developed or exploited by a person in the course of his business (excluding intellectual property associated with marketing) and which pertains to research and development activities for which economic ownership exists. Specifically, these assets are patents as defined in the Patents Law Computer Software.

From 1 July 2016, new rules have applied for taxpayers wishing to obtain a benefit under the so called "IP Box Regime". The rules and conditions, which are applicable for assets that are developed after 1 July 2016, are summarised below.

The Cyprus IP box regime is as follows:

- 80% of the qualifying profits earned from qualifying intangible assets are deemed to be a tax-deductible expense.
- The new IP box adopts the "nexus approach". This means that for an intangible asset to qualify for the benefits of the new regime, there must be a direct connection (i.e. nexus) between the qualifying income and the qualifying expenses contributing to that income.

Qualifying taxpayers:

- Cyprus tax resident persons.
- Cyprus permanent establishments of non-Cyprus tax resident persons.
- Overseas permanent establishments that elect to be subject to tax in Cyprus.

Qualifying intangible assets include assets which:

- Are acquired, developed or exploited for business purposes;
- Are the result of R&D activities; and
- Are either legally or economically owned.

Qualifying intangible assets include:

- Patents.
- Computer software.
- Utility models.
- IP which provides protection to plants and genetic material.
- Orphan drug destinations.
- Extensions of patent protection.
- Other non-obvious, useful and novel IP, that are certified as such by a designated authority, and from which the taxpayer's annual IP income does not exceed the EUR7.5 million (50 million in case of a group of companies), using a 5 year average.

Qualifying assets exclude:

- Trademarks, tradenames, brands.
- Image rights.
- Other marketing related IP.

Qualifying profits, effectively under the nexus approach:

- A fraction is applied to the overall IP income based on the taxpayer's R&D activity;
- The higher the amount of R&D undertaken by the taxpayer, the higher the nexus fraction;
- Profits eligible for the 80% tax deduction depending on the level of R&D expenditure carried out by the taxpayer to develop the qualifying intangible assets.

Overall IP income includes, the gross profit earned from qualifying intangible assets in a tax year (gross IP income) and includes, but is not limited to:

- Royalties and licensing income.
- Insurance or compensation received (e.g. damages awarded for IP infringement).
- Trading income from the disposal of qualifying intangible assets, excluding capital gains. This Is fully exempt from income tax.
- IP income embedded in the sale of goods, provision of services or use of any processes directly related with qualifying intangible assets.

Direct costs include:

- All expenditure incurred wholly and exclusively for the production of income.
- Amortisation of the acquisition or development costs of qualifying intangible assets over their useful lives in accordance with accepted accounting principles, up to a maximum of 20 years.
- Notional interest deduction regarding new equity used to fund the acquisition/ development of qualifying IP.
- Deemed expense granted under the corresponding transfer pricing adjustment.
- If the tax department increases a taxpayer's taxable income pursuant to the provisions of the arm's length principle, an amount equal to the deemed income is granted as a deductible expense to the other party of the transaction which gave rise to the deemed income.

Qualifying expenditure includes:

- The total R&D expenditure incurred in the tax year:
- wholly and exclusively for the development, enhancement or creation of qualifying intangible assets;
- That is directly related to such assets and includes, but is not limited to:
- Wages and salaries.
- Direct costs.
- General expenses for installations used for R&D.
- Commission costs associated with R&D.

Qualifying expenditure excludes:

- Acquisition cost for intangible assets.
- Interest.
- Acquisition.
- Costs related to R&D outsourced to related parties.
- Costs which cannot be directly connected to a specific qualifying intangible asset.
- Costs relating to R&D outsourced to non-related parties, and general expenses for R&D which cannot be allocated to specific qualifying intangible assets.
- Qualifying expenditure is included in the nexus fraction in the year in which the expenditure is incurred, irrespective of its accounting or tax treatment.

The tax benefits are as follows:

- An 80% deduction from qualifying profits is granted as a deemed deductible expense.
- Remaining 20% of qualifying profits is part of the chargeable income subject to income tax.
- A qualifying taxpayer may elect to not to claim all or part of the available 80% deduction for a particular tax year.
- If net IP is at loss then only 20% of tax loss can be utilised. It may be set off against the same year chargeable the income from other sources. Any unrelieved loss may be carried forward to be set off against chargeable income of the next 5 years.

e. Special Tax Regimes

Cyprus does not have special tax regimes and has moved away from ringfencing companies. However, as noted above, in 2015, Cyprus introduced a notional interest deduction ("NID") in its tax law. The notional interest deduction on new equity can be set against taxable income generated by a company as a result of the funds from the new equity. The NID to be deducted cannot exceed 80% of the taxable income of the company for the year before the deduction of this notional interest.

12. OECD BEPS CONSIDERATIONS

Cyprus is not a member of the OECD. However, to a large extent, Cyprus follows the guidance provided by the OECD. For example, Cyprus signed the Multilateral Convention to Implement Tax Treaty Related Measures ("MLI") to Prevent Base Erosion and Profit Shifting ("BEPS") on 7 June 2017 (Cyprus has committed to the OECD minimum standards). Subsequently, Cyprus ratified the MLI on 23 January 2020. Further, Cyprus is an early adopter of the Common Reporting Standard ("CRS") on automatic exchange of financial account information. To this end, the OECD's Global Forum has approved Cyprus peer review (second round) on Transparency and Exchange of Information for Tax Purposes, placing Cyprus as widely compliant with the international standard on transparency and exchange of information for tax purposes. On 1 November 2016, Cyprus signed the Multilateral Competent Authority Agreement on the automatic exchange of country-by-country reports in accordance with BEPS Action 13 Report.

Nevertheless, the majority of the BEPS action points have been taken on board by the EU and found themselves in EU Directives, such as ATAD1 and ATAD2, Cyprus had to adopt the EU Directives. As a result, Cyprus is adopting the majority of the OECD BEPS action points.

Following the publication of the Instrument of Ratification and the MLI in the Official Gazette of the Republic on the 22 January 2020, Cyprus deposited its instrument of approval with the Organisation for Economic Co-operation and Development ("OECD") in January 2020, which came into force on 1 May 2020.

The Cypriot Government has adopted only the minimum standards of the MLI and has chosen to apply the following articles of the MLI:

- Article 6 : introduces language to the preamble of a Covered Tax Agreement, in order to express the common intention of the contracting parties to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty this treaty shopping arrangement.
- Article 7: articulates the Principal Purpose Test ("PPT") that denies the treaty benefits when considering all relevant facts and circumstances, obtaining that benefit is one of the principal purposes for entering into a specific transaction or arrangement that resulted directly or indirectly in that benefit, unless if granting that benefit is not contrary to the object and purpose of the relevant provisions of the respective CTA.
- Article 16 : requires countries to include in their tax treaties the provisions on the mutual agreement procedure to improve dispute resolution. As a result, Cyprus follows the improved procedures as set out in the MLI.

13. ACCOUNTING CONSIDERATIONS

a. General

The fundamental concept is that the profits of a business must be calculated in accordance with generally accepted accounting principles. These profits are subject to any adjustment specifically required for income tax purposes. There is no explicit general rule in the CITL providing how the income is to be determined. However, if no tax rule provides otherwise, tax accounting follows commercial accounting based on International Accounting Standards.

Section 38 of the CITL provides that: any accounts and any computations of chargeable income produced to the Commissioner or accompanying any return of income submitted to the Commissioner may not be considered if they have not been audited by a person holding the qualifications to be appointed an auditor of a company under the Companies Law.

b. Compulsory auditing of financial statements by auditors

Section 142 (1) (a) of the Companies Law CAP. 113 provides that the directors shall cause to be made, for every company, a complete set of financial statements, as this set is prescribed by the International Accounting Standards ("IAS") and International Financial Reporting Standards ("IFRS") in force at the time, as well as related texts, which are issued under the general supervision of the International Accounting Standards Board ("IASB") and as adopted by the European Union in accordance with the provisions of Regulation (EC) No. Regulation (EC) No 1606/ 2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, as amended or replaced from time to time.

Section 152A (1) of the Companies Law CAP. 113 stipulates that, in accordance with the provisions of the Auditors and Statutory Audits of Annual and Consolidated Accounts Law, 2009, the following companies must submit their financial statements to an auditor for auditing:

- Every private limited liability company;
- Every company required by this law to prepare consolidated financial statements; and
- Every public limited liability company.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Article 169 of the Companies law states that a public company may not distribute dividends to its shareholders if its net assets (as shown in the annual accounts) are less than the sum of the issued capital and reserves. If part of the issued share capital remains unpaid, this part is not treated as an issued share capital.

Reduction of capital : Distributable equity and premium on shares are distributable reserves. Share capital is tied-up capital, which may not be distributed. Distributions other than paid-in capital will be taxable as dividends.

b. Substance Requirements for Recipients

A company is resident in Cyprus if its management and control is exercised in Cyprus. There is no definition in the Cypriot tax legislation of what the management and control requirements are and no detailed guidelines have been issued by the Cyprus Tax Authority ("CTA"). However, the CTA will ask for a directors' declaration confirming that the effective management and control is in Cyprus before issuing a tax residence certificate. It is generally accepted and in line with international tax principles that the following conditions should be considered to determine if a company qualifies as a resident for tax purposes of Cyprus:

- All strategic (and preferably also day to day) management decisions are taken in Cyprus by the directors exercising their duties from Cyprus. This is usually achieved by having meetings of the Board of Directors take place in Cyprus and signing written resolutions, contracts, agreements and other relevant company documents relating to the management, control and administrative functions of the company in Cyprus;
- The majority of the directors of the company are tax resident in Cyprus and exercise their office from Cyprus;
- An actual (administrative) office is maintained in Cyprus, where the actual management and control of the business of the company shall be exercised;
- Hard copies of commercial documentation (agreements, invoices, etc) are stored in the office facilities of the company;
- Accounting records of the company are prepared and kept in Cyprus;
- Bank accounts of the company are operated from Cyprus, even if the accounts are maintained with banks established outside Cyprus.

As a result, when Cyprus is used for holding company, financing company, IP company or property company, a sufficient level of substance is required in Cyprus in order to make sure that the general anti-abuse rule ("GAAR") of the EU Parent Subsidiary Directive, or the ATAD, or the principal purpose test or the recent "beneficial ownership" case law of the European Court of Justice will not apply.

On 21 December 2021, an amendment to the Income Tax Law was published whereby an additional corporate tax test is introduced. In accordance with the Law amendment, the definition of a "resident in the Republic" is enhanced so that the company established or registered under any applicable law in the Republic, which has its management and control exercised outside the Republic, is considered to be a resident in the Republic, unless such company is tax resident in any other jurisdiction. This means that Cyprus incorporated/registered companies, with (i) management and control exercised outside Cyprus; and (ii) not tax resident in any other jurisdiction will now be considered as Cyprus ta residents as such, taxed in Cyprus on their worldwide income.



c. Application of Regional Rules

Cyprus is a member of the European Union, and therefore is subject and has implemented into its internal law all EU Directives in tax matters (e.g. EU Parent Subsidiary Directive, Interest & Royalty Directive, EU Merger Directive, ATAD I and 2, the EU Directives on administrative cooperation in tax matters, so called "DAC" 1 to 6, etc.).

d. Tax Rulings & Clearances

The Cyprus Tax Authority ("CTA") will issue (upon application by the taxpayer or his tax advisor) written advanced tax rulings on the tax treatment of specific transactions. As a result, Cyprus provides taxpayers with the opportunity to obtain certainty in advance about their tax position. In principle, the tax authorities honour such rulings, provided the actual facts of the case are the same as the ones described in the application for the issue of the respective ruling. A number of tax circulars have been issued in the last couple of years, which describe the procedure and the conditions for issuing such tax rulings.

To obtain a tax clearance certificate, the financial statements must be filed with the relevant income tax return to the CTA, and after the CTA examines and agrees with these and any tax liability settled, a tax clearance certificate will be issued.

15. MAJOR NON-TAX CONSIDERATIONS

Mergers and acquisitions in Cyprus are stipulated in the Cyprus Companies law, Chapter 113. According to the legislation, mergers and acquisitions could take various forms. Under section 201 of Chapter 113, they could be achieved either by the acquisition of one or more companies by another company or by the dissolution of all the companies without liquidation, and the establishment of a new company or could even be achieved by division. Merger and acquisition by division arise once the company that is about to be dissolved transfers its assets and liabilities to one or more than one existing companies (the benefiting companies). Once the assets and liabilities are transferred to the benefiting companies, shares are issued in favour of the dissolved company's shareholders in the share capital of the existing benefiting companies. The shareholders who obtain the shares in those benefiting companies subsequently receive the corporate contributions resulting from the division and any offsetting amount in cash.

To be effective mergers and acquisitions need approval by the court. Once the court approves the merger plan, the acquired company's assets and liabilities are transferred to the acquiring company. Subsequently, the company's shareholders that are absorbed (the acquired company) by the other company become shareholders of the acquiring company (and or the newly established company).

Cyprus has also implemented the EU Directive 2005/ 56/ EU, which deals with cross border mergers between limited liability companies, which are established within the EU.

16. APPENDIX I – TAX TREATY RATES

Jurisdiction	Dividends % [1]	Interest % [1]	Royalties	Footnote Reference
Andorra [15]	0	0	0	[15]
Armenia	0	0	5	
Austria	0	0	0	
Bahrain	0	0	0	
Barbados	0	0	0	
Belarus	0	0	5	
Belgium	0	0	0	
Bosnia [7]	0	0	5 / 10	[7] [5]
Bulgaria	0	0	5 / 10	[5]
Canada	0	0	0 / 5 / 10	[4] [5]
China	0	0	0	[5]
Czech Republic	0	0	0	[11]
Denmark	0	0	0	
Egypt	0	0	5 / 10	[5]
Ethiopia	0	0	5	
Estonia	0	0	0	
Finland	0	0	0	
France	0	0	0/ 5	[3]
Georgia	0	0	0	
Germany	0	0	0	
Greece	0	0	0	[5]
Guernsey	0	0	0	
Hungary	0	0	0	
Iceland	0	0	5	
India	0	0	5 / 10	[5]
Iran	0	0	5 / 6	[5]
Ireland	0	0	0/ 5	[5]
Italy	0	0	0	

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Jurisdiction	Dividends % [1]	Interest % [1]	Royalties	Footnote Reference
Jersey	0	0	0	
Kuwait	0	0	5	
Kazakhstan [18]	0	0	0 / 5 / 10	[18]
Latvia	0	0	0 / 5	[12]
Lebanon	0	0	0	
Lithuania	0	0	5	
Luxembourg [14]	0	0	0	[14]
Malta	0	0	5 / 10	[5]
Mauritius [14]	0	0	5	[14]
Moldova	0	0	5	
Montenegro	0	0	5 / 10	[5]
Norway	0	0	0	
Poland	0	0	5	
Portugal	0	0	5 / 10	[5]
Qatar	0	0	5	
Romania	0	0	0 / 5	[10]
Russia	0	0	0	
San Marino [14]	0	0	0	[14]
Serbia	0	0	5 / 10	[5]
Seychelles	0	0	5	
Singapore	0	0	5 / 10	[5]
Slovakia [9]	0	0	0/ 5	[9][10]
Slovenia	0	0	5	
South Africa	0	0	0	
Spain	0	0	0	
Sweden	0	0	0	
Switzerland	0	0	0	
Syria	0	0	5 / 10	[5]
Thailand	0	0	5 / 10	[6]

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Jurisdiction	Dividends % [1]	Interest % [1]	Royalties	Footnote Reference
Ukraine [17]	0	0	5 / 10	[17][8]
United Arab Emirates	0	0	0	
United Kingdom	0	0	0	
United States of America	0	0	0	

Footnotes:	
[1]	Under Cyprus legislation, there is no WHT on dividends and interest paid to non-residents of Cyprus. Further, there is also no WHT on royalties paid to non-residents of Cyprus for rights not used within Cyprus.
[2]	Royalties earned on rights used within Cyprus are subject to WHT of 10% (except royalties relating to cinematographic films, where the WHT rate is 5%).
[3]	A WHT rate of 5% is applicable on cinematographic films, including films and videotape for television.
[4]	WHT 0% on literary, dramatic, musical, or artistic work (excluding motion picture films and works on film or videotape for use in connection with television).
[5]	The WHT rate of 5% is applicable on cinematographic film royalties.
[6]	5% WHT applies for any copyright of literary, dramatic, musical, artistic, or scientific work
[7]	Bosnia, Montenegro, and Serbia apply the Yugoslavia/ Cyprus treaty.
[8]	A 5% WHT rate will be levied on payment of royalties in respect of any copyright of scientific work, any patent, trademark, secret formula, process, or information concerning industrial, commercial, or scientific experience and cinematographic films.
[9]	The Cyprus-Czechoslovakia treaty applies with the Slovak Republic.
[10]	5% WHT rate applies for patents, trademarks, designs or models, plans, secret formulas, or processes, or any industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experience.
[11]	10% WHT rate applies for patent, trademark, design, or model, plan, secret formula or process, computer software or industrial, commercial, or scientific equipment, or for information concerning industrial commercial, or scientific experience.
[12]	0% WHT rate applies if the payer is a company that is a resident in Cyprus and the beneficial owner of the income is a company (other than partnership) that is a resident in Latvia. 5% WHT rate applies for all other cases.
[13]	The treaty came into effect as of 1 January 2019 for Cyprus.
[14]	The treaty/ amendments to the treaty is effective as of 1 January 2019.
[15]	The treaty came is effective as of 1 January 2020.
[16]	5% WHT rate applies in the cases of royalty payments for the use of, or the right to use, industrial, commercial, or scientific equipment. 8% WHT rate applies for all other cases.
[17]	New protocol to the DTT with Ukraine is effective as of 1 January 2020.
[18]	The treaty is effective as of January 2021.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

The Cyprus tax process is one of self-assessment. Following the filing of a tax return, the CTA has six years from the end of the relevant tax year to raise an enquiry (12 years in cases of established fraud or wilful default). Tax returns, notices and assessments should be reviewed back through the six year periods in which CTA have a right to raise an enquiry, unless the year was closed and finally tax assessment was issued.

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Contact administrator/ client officer manager and put in place the tax related question/ matter(s).
2	Tax Due Diligence	General	Request diagram structure of the legal entity and/ or any legal entity included in the structure, request corporate certificates (including memorandum and articles of association) of each legal entity and confirmation of ownership percentages.
3	Tax Due Diligence	General	Request the latest audited financial statements and copies of the tax provision workpapers supporting the Company's financial statements.
4	Tax Due Diligence	General	Request previous IR4 Forms (Corporation Tax).
5	Tax Due Diligence	General	Request copies of all agreements, details of any significant acquisitions and/ or dispositions accompanied with supporting documentation.
6	Tax Due Diligence	General	Request a schedule of gains, losses and liabilities.
7	Tax Due Diligence	General	Request a schedule of related party transactions including the amounts and description of each, to the extent not reflected in the financial statements Intercompany transactions shall be reported as well.
8	Tax Due Diligence	General	A summary description of any significant tax incentives or negotiated tax arrangements granted to the Company or an affiliate.
11	Tax Due Diligence	Value Added Tax	VAT returns and a schedule of jurisdictions where the Company files VAT returns. The schedule should contain specific amounts.
12	Tax Due Diligence	Value Added Tax	Schedule detailing sales by period as either taxable or not taxable for the previous year. Specific reference. Explanations for which sales are not taxable.
13	Tax Due Diligence	Value Added Tax	List all countries in which the legal entities are registered or licensed to operate.
14	Tax Due Diligence	Value Added Tax	Details regarding any amount falling under exempt income and any expenses not eligible for VAT refund.
15	Tax Due Diligence	Payroll Tax	Request the payroll list.
16	Tax Due Diligence	Payroll Tax	Details regarding the use of independent contractors, including the amount spent on independent contractors annually and the responsibilities of the Company and Independent Contractors. If applicable, the rationale for treating such workers as independent contractors instead of employees.
17	Tax Due Diligence	Payroll Tax	Request IR7 and IR59 Forms for the years in concern.
18	Tax Due Diligence	Immovable Property Tax	Request previous payments and applicable rates.

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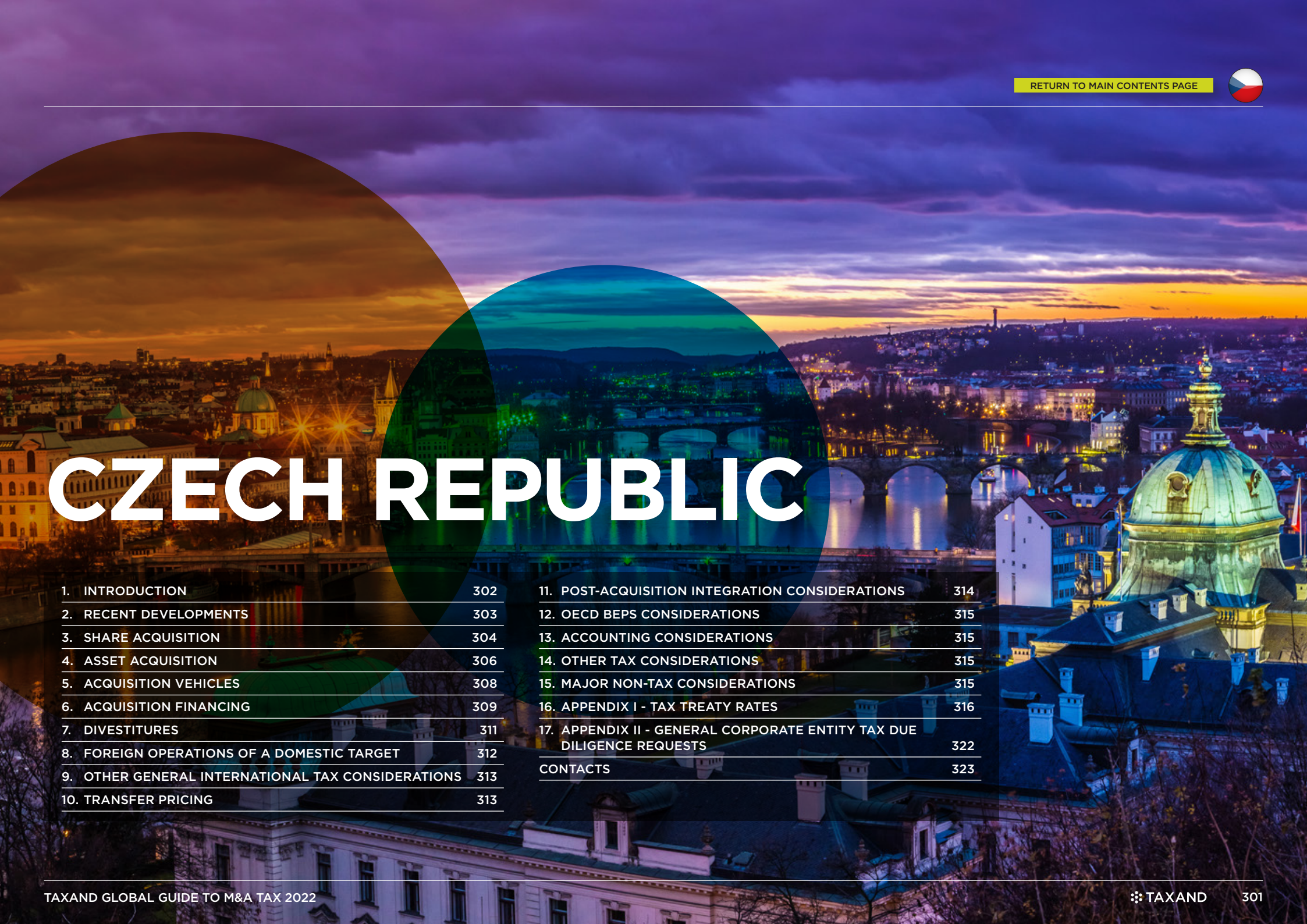
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CZECH REPUBLIC

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1. INTRODUCTION

a. Forms of Legal Entity

Business activities in the Czech Republic can be carried by the following legal entities:

- General partnership – veřejná obchodní společnost (v.o.s.)
- Limited partnership – komanditní společnost (k.s.)
- Limited liability company – společnost s ručením omezeným (s.r.o.)
- Joint stock company – akciová společnost (a.s.)

In addition, it is also possible to do business in the form of a branch of a foreign legal entity.

The main legal differences between partnerships (v.o.s. and k.s.) and corporations (s.r.o. and a.s.) are that the liability of shareholders of corporations is generally restricted to the subscribed share capital, while no limitation of liability is given for general partners of a partnership (for limited partners, liability is also limited to an amount agreed in the partnership agreement). Furthermore, corporations may be established by a single shareholder while partnerships must consist of at least two different partners.

From a tax perspective, a general partnership is considered as tax transparent entity and income is attributed directly to the partners. With regard to a limited partnership the transparency principle depends on whether the income is attributable to its general (unlimited) partners or to its limited partners. A limited partnership is considered as partly tax transparent entity. Czech corporations on the other hand are recognised as tax subjects and income is assessed at the company level.

b. Taxes, Tax Rates

Domestic and foreign legal entities are subject to corporate income tax at a flat rate of 19% regardless of whether the profit is distributed to shareholders or retained. Dividends received from abroad forming a separate tax base are subject to a tax rate of 15% or 35%, however a reduction of WHT is possible, to 0% WHT if certain conditions are met (e.g. there is an EU domiciled legal entity shareholder with substance and beneficial ownership, holding at least a 10% shareholding for a holding period of at least one year).

Further, profits of basic investment funds (including mutual funds) are subject to a special corporate income tax rate of 5%. Profits of pension funds are subject to a special corporate income tax rate of 0%.

Income tax on income of individual persons is levied based on progressive tax rates (i.e. 15% for income up to CZK 1,867,728 (approximately EUR75,000) in 2022 and 23% for an income exceeding CZK 1,867,728 in 2022 (approximately EUR75,000).



In the Czech Republic, the following VAT rates are applicable:

- 21% standard VAT rate;
- 15% first reduced VAT rate, applicable for basic foodstuffs, pharmaceuticals and social housing, etc.;
- 10% second reduced VAT rate, applicable in particular, to the supply of heat and cold, the provision of restaurant and catering services, accommodation services, etc.

c. Common divergences between income shown on tax returns and local financial statements

The basis for corporate income tax base is the accounting profit/loss as declared in the financial statements prepared in accordance with the Czech GAAP. In a second step, tax adjustments are made to the GAAP profit/loss. Most commonly these adjustments include:

- Expenses which are not deductible for tax purposes (e.g. private expenditures, penalties, expenses for representation, gifts);
- Amortisation of goodwill (goodwill/negative goodwill may not be depreciated for tax purposes except for goodwill/negative goodwill within the purchase of an enterprise or a part of an enterprise);
- Tax depreciation of assets (there are two basic methods of depreciation of tangible assets, straight line and accelerated, which may be used for tax purposes);
- Provisions/ reserves (not all provisions and reserves established in accordance with Czech GAAP are accepted for tax purposes); and
- Tax exemptions on dividends and capital gains, if certain conditions are met.

2. RECENT DEVELOPMENTS

New double tax treaties

The double tax treaty concluded with the Czech Republic and Bangladesh that entered into force in 2021 has been applied in practice from 1 January 2022. A new double tax treaty between the Czech Republic and Senegal is in the legislation process and will be valid once the ratification procedures are completed.

Expected changes in international taxation

The Czech Ministry of Finance will focus in 2022 on the changes in taxation connected with the latest developments at the EU level and OECD such as the new reporting obligations for platform operators (so called "DAC7") and the global minimum effective tax of 15%. The effective date of both initiatives has been set at 1 January 2023.

The draft wording of DAC7 rules is now in the legislation process and will be discussed during 2022. The intensive discussions regarding the minimum effective tax of 15% are expected at the level of the Czech Ministry of Finance. The Czech Republic currently applies the 19% nominal income tax rate which is above the proposed minimum rate. However, situations may arise where the effective tax will be below 15% for example as a result of applying relevant tax allowances.

In addition, the Czech Ministry of Finance will discuss the EU proposal regarding the new minimum substance rules against the misuse of shell companies for tax planning (the ATAD III Directive). Based on the proposal, the EU shell companies without the sufficient substance will be denied the benefits of double tax treaties and EU directives.



3. SHARE ACQUISITION

a. General Comments

In a share deal, the shares of a company are acquired and the ownership is transferred. Basically, all inherent rights and obligations in the corporation remain unchanged as only the shares of the legal entity are acquired. There is no step up for the buyer in relation to any premium over the accounting/tax value of the assets. The buyer inherits undisclosed liabilities including the tax liabilities.

Financing costs, including interest on loans for the acquisition of shares, are not tax deductible. Any loan taken out six months prior to the acquisition of shares is considered to be a loan for acquisition of shares, unless it is proven that this loan has been used otherwise.

Generally, all direct as well as indirect costs incurred in connection with the shareholding in the subsidiary, are not tax deductible. The indirect costs related to the shareholding amount are capped at 5% of the dividends paid by a subsidiary, unless lower indirect costs are proven to the tax authorities.

b. Tax Attributes

A tax loss can be carried forward for up to five years. Moreover, the tax losses incurred in 2020 and onwards of up to CZK30 million (EUR1.2 million) may be carried back and applied as deductible items in two preceding taxable periods. Neither the tax loss carry-forward nor the tax loss carry-back are available if there has been a substantial change in the shareholders or controlling persons of the company; as a substantial change is always considered a change concerning more than 25% of the registered capital.

Nevertheless, losses may be carried forward/back even in the case of a substantial change if it is proven to the tax authorities that there is no change in the company's business activities (i.e. a minimum of 80% of the income generated in the year in which the loss is utilized and in which the substantial change occurred was generated by the same business activities carried out in the year in which the tax loss was determined).

c. Tax Grouping

There is no corporate income tax grouping in the Czech Republic (only VAT grouping is possible)..

A general partnership is a transparent entity for tax purposes (not treated as a tax resident). This means that the income of the partnership is not attributed to the partnership but to its partners directly.

With regard to a limited partnership, a hybrid entity for tax purposes, the income of the partnership is split in two parts: income attributable to its general partners (the transparency principle applies, i.e. taxation at the level of partners); and income attributable to its limited partners (corporate taxation at the level of partnership).



d. Tax Free Reorganisations

Under the Czech Reorganisation Act ("RA"), which is based on the EC (corporate law) Merger Directive (2005/56/EC), the following types of reorganisations, both domestic or cross border, are regulated from the corporate law point of view:

- Mergers;
- Divisions;
- Conversions; and
- Cross border transfers of the registered office of a company.

A reorganisation is always legally effective as of the date of its entry into the Commercial Register. For accounting and tax purposes, the RA optionally allows reorganisations with retroactive effect (the effective date has to be within 12 months prior to the date of entry into the Commercial Register, not later than this date).

The Czech tax legislation has implemented the EC (tax law) Merger Directive (2009/133/EC) and basically provides for the following tax treatment, subject to certain conditions:

- No liquidation taxation due to the reorganisation (either on the level of the company/partnership or on the level of the shareholder/ partner);
- A tax neutral transfer of assets; and
- The transfer of losses carried forward to the receiving entity (with certain restrictions).

There is no step up in relation to the tax value of the assets and liabilities under a reorganisation. Goodwill/negative goodwill may not be depreciated for tax purposes.

Furthermore, reorganisations are not subject to value added tax.

e. Purchase Agreement

The Czech law does not provide any special rules regarding the tax warranty for share deals (i.e. the general rules apply). In a share deal, the buyer takes over the target company and all related liabilities, including tax liabilities. Therefore, it is of importance that not only the representations and warranties but also tax indemnities in case of violations of the representations and warranties are regulated in detail in the share purchase agreement.

In addition, as per the Czech tax legislation, a valuation is not required in the event of share acquisition. A valuation is generally recommended if the transaction is carried out between two related parties to support the fact that the purchase price is set at arm's length.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

There are no transfer taxes, stamp or capital duties in the Czech Republic. Administration fees are payable on certain services provided by government institutions.

No VAT should be in general applied on the sale of shares. Sale of shares in a Czech limited liability company (s.r.o.) or in a Czech joint venture (a.s.) are exempt from VAT.



g. Share Purchase Advantages

The advantages of share acquisitions are that the available tax losses carried forward in the target remain available, under certain conditions. Furthermore, participations of at least a 10% shareholding and a holding period of at least one year can be sold tax free (subject to certain restrictions).

h. Share Purchase Disadvantages

The main disadvantage of a share purchase is that no step up of the underlying asset book values is possible and the buyer inherits all liabilities including the historical tax liabilities of the target company. Interest deductibility at the level of the buyer may be restricted.

4. ASSET ACQUISITION

a. General Comments

In an asset deal, the trade and assets of a company are acquired and the ownership of the trade and assets is transferred to the buyer. The buyer has full tax basis in the purchased trade and assets and the seller is subject to tax on any gain.

From legal perspective, the sale of the trade and assets is usually considered as a sale of an enterprise or part of an enterprise which is capable of being operated as a separate business or as a sale of individual assets. The tax liabilities usually do not transfer in an asset deal.

The main characteristics of an asset deal are as follows:

- The book value of the acquired assets is stepped up subsequently.
- Goodwill can be capitalised and depreciated for tax purposes over 15 years;
- Interest on the debt financing of the acquisition of assets can be deducted (subject to restrictions such as thin capitalisation rules and excessive borrowing costs above CZK80 million or above 30% EBITDA).

b. Purchase Price Allocation

The total price for the asset deal can be set for trade and assets subject to a transfer of a going concern or apportioned between the individual trade and assets that are being transferred. As per the Czech tax legislation, the valuation is not required in the event of an asset acquisition. The valuation is generally recommended if the transaction is carried out between two related parties to support the fact that the purchase price is set at arm's length.

c. Tax Attributes

Tax losses are not transferred in an asset deal, they remain at the level of the seller.



d. Tax Free Reorganisations

Under the Czech Reorganisation Act ("RA"), which is based on the EC (corporate law) Merger Directive (2005/56/EC), the following types of reorganisations, both domestic or cross border, are regulated from the corporate law point of view:

- Mergers;
- Divisions;
- Conversions; and
- Cross border transfers of the registered office of a company.

A reorganisation is always legally effective as of the date of its entry into the Commercial Register. For accounting and tax purposes, the RA optionally allows reorganisations with retroactive effect (the effective date has to be within 12 months prior to the date of entry into the Commercial Register, not later than this date).

The Czech tax legislation has implemented the EC (tax law) Merger Directive (2009/133/EC) and basically provides for the following tax treatment, subject to certain conditions:

- No liquidation taxation due to the reorganisation (either on the level of the company/partnership or on the level of the shareholder/ partner);
- A ta -neutral transfer of assets; and
- The transfer of losses carried forward to the receiving entity (with certain restrictions).

There is no step up in relation to the tax value of the assets and liabilities in a reorganisation. Goodwill/negative goodwill may not be depreciated for tax purposes.

Furthermore, reorganisations are not subject to value added tax.

e. Purchase Agreement

In the sale of enterprise or a part of enterprise, the buyer takes over all the assets and liabilities of the seller, both disclosed and undisclosed. The tax liabilities usually do not transfer in an asset deal.

f. Depreciation and Amortisation

Generally, the buyer restarts the depreciation of the acquired assets based on the purchase price. The assets must be depreciated over their useful life for accounting purposes. From the tax perspective, two basic methods of depreciation, straight line and accelerated, may be used for tax depreciation. The tax depreciation of acquired intangible assets acquired after 1 January 2021 is equal to accounting depreciation.

It is possible to carry out a valuation of the assets acquired at the level of the buyer. In this case, a part of the purchase price not attributed to the individual assets in the valuation is treated as goodwill. Goodwill can be depreciated for tax purposes over 15 years but for five years for accounting purposes. When no valuation is carried out, any difference between the price and the pre-sale accounting book value of the assets is classified as a valuation difference. The valuation difference is depreciated for both tax and accounting purposes over 15 years. The buyer records the pre-sale accounting book values of the assets as the tax entry value of the assets.



g. Transfer Taxes, VAT

Real estate transfer tax is not applied in the Czech Republic. There are no stamp or capital duties in the Czech Republic.

The sale of assets is generally subject to Czech VAT at a standard rate of 21%. Possible VAT exemptions depend on the type of the acquired assets. In particular, the sale of some real estate is tax exempt with an option to tax (subject to further conditions). The sale of an enterprise or a part of an enterprise (transfer of a going concern) is not regarded as a supply for VAT purposes. If the transaction is VAT exempt, it could result in a clawback of input VAT that was previously claimed on the acquired assets.

h. Asset Purchase Advantages

The main advantage of an asset deal compared to a share deal is the step up in the asset values and thereby the increase in the baseline value for subsequent depreciation. Interest on borrowings is in general tax deductible.

i. Asset Purchase Disadvantages

The seller is generally taxed on any gain from the trade and asset sale. The tax losses are not transferred in an asset deal. In addition, VAT clawbacks may arise if the transaction is VAT exempt.

5. ACQUISITION VEHICLES

a. General Comments

Czech commercial and tax law do not provide a specific legal form or a concept for an acquisition vehicle or holding company. The optimal acquisition vehicle is chosen by the economic and legal requirements (e.g. liability) of the investor.

b. Domestic Acquisition Vehicle

In general, the main acquisition vehicles are the limited liability company (Czech "s.r.o.") or the joint stock company (Czech "a.s."). The reason for choosing these two legal forms is the possibility to benefit from the participation exemption from taxation of profit distribution and capital gains.

c. Foreign Acquisition Vehicle

This section is left intentionally blank.

d. Partnerships and joint ventures

Both partnerships and joint ventures are in general possible in the Czech Republic. Typically, limited liability companies (Czech "s.r.o.") are used as the main joint venture vehicle.

e. Strategic vs Private Equity Buyers

The preferred acquisition vehicle mainly depends on the investment strategy pursued by the investor as well as the industry.



6. ACQUISITION FINANCING

a. General Comments

In the Czech Republic, the acquisition transaction can be financed with debt, equity or a mix of both. The optimal acquisition financing should be chosen considering the interest deductibility restrictions (such as thin capitalisation rules etc.).

b. Foreign Acquirer

There are no differences in the type of acquisition for foreign entity or individual acquirors.

c. Debt

As a general rule, interest paid by Czech companies is tax deductible as long as the loans or credits on which the interest is paid serve the purpose of generating, securing and maintaining taxable income and unless the thin capitalisation and/or interest limitation rules apply.

Interest on a share acquisition loan (please note that any loan received within the six months preceding the acquisition is deemed to be an acquisition loan, unless proven otherwise) is not tax deductible.

i Limitations on Interest Deductions

The Czech tax legislation provides for the following interest limitations:

- Thin capitalisation rule

The Czech thin capitalisation provisions restrict the deductibility of interest on intragroup loans where the borrower has insufficient equity. Financial expenses arising from loans from related parties in excess of four times the borrower´s equity are not tax deductible. Interest on loans and credits received from unrelated parties, or those secured by a related party, are fully deductible on general principles, except for interest on back to back loans (i.e. where a related party provides a loan, credit or a deposit to an unrelated party, which then provides the funds to the borrower), which is treated as interest on related party debt.

- Excess borrowing costs

The Czech legislation further restricts the deductibility of excess borrowing costs (i.e. interest expenses and relating costs exceeding interest income). Exceeding borrowing costs are tax deductible up to the higher of CZK80 million or 30% of earnings before interest, tax, depreciation and amortisation ("EBITDA") in a taxable period. Unlike the thin capitalisation test, this rule covers also borrowings from unrelated parties (such as bank loans). In addition, the definition of borrowing costs is wider than the definition of financing costs for the purposes of thin capitalisation rules.



ii Related Party Debt

Prices between related parties should generally be set at arm´s length. However, the Czech tax legislation provides for an exception from this general rule and allows to agree between related parties an interest which is lower that the arm's length interest if the lender is a Czech tax non-resident. From the Czech tax perspective, the interest for the can be agreed within the range between 0% and arm's length interest. Nevertheless, in such cases, the DAC6 reporting obligations might arise as the lower interest rate would be regarded as a hallmark involving the unilateral safe harbour rule.

In addition, interest on related party debt is subject to thin capitalisation rules.

iii Debt Pushdown

Debt pushdown acquisition structures can be used in the Czech Republic provided that solid business reasons exist. However, the tax authorities have increased their focus on such structures and there is a risk that the tax authority might treat these structures as an abuse of the Czech tax law.

d. Hybrid Instruments

The Czech Republic has fully implemented Directive EU 2017/952 (ATAD 2) covering cross border hybrid arrangements. According to these new rules, tax discrepancies such as double deduction or deduction without inclusion, caused by hybrid arrangements must be neutralised if further criteria are fulfilled.

e. Other Instruments

The financial expenses on the loans where the interest or other revenue is derived from the borrower's profit (profit participating loans) are not tax deductible.

f. Earn-outs

The Czech tax legislation does not provide for any special tax treatment for earn-out payments. Generally, earn-out payments are regarded as a price adjustments and thus are considered from the Czech tax perspective to be an increase of the purchase price at the moment when the legal entitlement to such adjustment arises based on the agreement.



7. DIVESTITURES

a. Tax Free

Under the domestic participation exemption regime, any income from a transfer of shares of a resident corporation (s.r.o. or a.s.) from a participation in another Czech corporation is exempt from corporate income tax, provided that it holds the participation of at least 10% (in share capital) for a minimum holding period of 12 months. The domestic participation exemption does not apply to income from a transfer of shares where a Czech subsidiary goes into liquidation.

The requirements for the international participation exemption differ depending on whether a foreign subsidiary is located in the EU, Norway, Iceland or Liechtenstein or in a third country.

The most important requirements in the case of subsidiaries in the above countries are:

- An equity participation of at least 10% in the EU subsidiary for a minimum holding period of 12 months;
- Listing of the legal form of the EU subsidiary in the Annex of the EC Parent Subsidiary Directive; and
- The Czech parent company is a beneficial owner of the income.

The participation exemption does not apply to income from dividends and liquidation proceeds, where the EU subsidiary goes into liquidation. The exemption cannot be applied if the parent company or the subsidiary:

- Is exempt from corporate income (or similar) tax;
- May claim a corporate income tax exemption or corporate income tax relief, or
- Is subject to corporate income tax at a rate of 0%.

The requirements for participation exemption in respect of third country subsidiaries are:

- The Czech Republic has concluded a tax treaty with the third country;
- Comparability of the legal form of the third country subsidiary to Czech corporations (s.r.o. and a.s.) or co-operatives; and
- The subsidiary is subject to corporate income tax of at least 12% in its residence country and is not tax exempt, or may not opt for tax exemption.

Beyond the scope of the Czech tax legislation, the tax exemption can be granted by the respective double tax treaty.



b. Taxable

- Share deal

Capital gains generated by Czech resident individuals on the sale of shares in a corporation are generally taxed at a progressive rates of income tax of 15%/23% unless exempt under certain conditions (at least 10% for a minimum holding period of 12 months).

Capital gains generated by a Czech resident corporation on the sale of shares in a corporation are generally subject to 19% corporate income tax if the Czech corporation cannot benefit from the participation exemption (at least 10% for a minimum holding period of 12 months).

- Asset deal

Capital gains generated by Czech resident individuals from the alienation of assets are generally taxed at a progressive rate income tax of 15%/23% unless exempt under certain conditions.

Capital gains generated by a Czech resident corporation on the sale of assets are generally subject to 19% corporate income tax.

c. Cross Border

The capital gains of a non-resident corporation resulting from the alienation of shares in a Czech corporation (s.r.o. or a.s.) are taxable in the Czech Republic at a rate of 19% corporate income tax unless tax exempt based on participation exemption or the respective double tax treaty specifies otherwise.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Companies and other legal entities that are resident in the Czech Republic are subject to unlimited tax liability, which means the taxation of worldwide income in the Czech Republic. Companies and other legal entities are Czech tax resident if they have their legal seat or place of management in the Czech Republic.

Non-resident companies and other legal entities are subject to limited tax liability only, (i.e. only income with its source in the Czech Republic is taxable in the Czech Republic).

b. CFC Regime

The Czech Republic has fully implemented Directive EU 2016/1164 ("ATAD 1") covering CFC rules. Based on these rules, a Czech entity should include in its tax base selected income items of its CFC; a CFC means a company in whose capital the Czech company participates more than 50% directly or indirectly. Except for the condition of 50% participation, this provision is only applicable for a foreign company that does not carry out any substantial economic activities, and at the same time whose tax liability abroad is lower than one half of the tax liability that such company would have if it were taxed under Czech CIT law.

If the foreign subsidiary qualifies as a CFC under these conditions, its Czech parent company has to include its selected income (such as income from dividends, interest and royalties, etc.) in its own tax base. The Czech legislation also stipulates that the Czech parent should not lower its tax base from losses generated by the CFC, these losses could however be utilised as an offsetting item against a positive tax base of the CFC which arose in three consecutive taxable periods. The Czech parent may offset any tax paid by the subsidiary on this income abroad against its tax liability.



c. Foreign Branches and Partnerships

In respect of branches or permanent establishments of foreign entities, only income from Czech sources that is attributable to the branch/permanent establishment is subject to tax according to standard rules.

The Czech Republic generally follows the OECD recommendations regarding the profit attribution to the permanent establishment. A binding tax ruling is available in the Czech Republic in respect of the methodology of how to determine a tax base of a permanent establishment.

d. Cash Repatriation

In general, dividends and other profit distributions paid out by Czech corporations are subject to a withholding tax of 15% / 35% (unless exempted under the participation exemption or based on the respective double tax treaty). The withholding taxation is final, (i.e. the withholding tax can neither be credited nor refunded.)

Foreign sourced dividend income (including profit shares, settlement and liquidation payments) derived by a Czech resident company is subject to tax (if not exempt based on the participation exemption or based on the respective double tax treaty).

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Real Estate Transfer Tax ("RETT") has been abolished in the Czech Republic.

b. CbC and Other Reporting Regimes

In 2016, the Czech Republic implemented country by country (CbC) reporting obligations in the Czech Republic which apply to multinational enterprise groups (MNE groups) with consolidated group revenue exceeding EUR750 million and with at least one MNE group entity resident in the Czech Republic.

10. TRANSFER PRICING

Based on the Czech tax law, affiliated companies are required to follow the arm's length rules and the prices for sold goods and provided services, royalties, interest rates, rental etc. should be set at arm's length. The same applies for transactions between the head offices and their permanent establishments.

The Czech Republic generally follows the OECD recommendations in respect of transfer pricing. The transfer pricing principles setup by the OECD Guidelines were implemented into the Czech tax system via Guidance D-34 published by the Czech Ministry of Finance. Although not legally binding, the guidance is widely followed by the Czech tax authorities.

Transfer pricing documentation is not obligatory in the Czech Republic, but highly recommended. The taxpayer may be requested to prove during the tax audit how the transfer prices with the related parties were setup and if they comply with the arm's length principle.



11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

The Czech tax administration applies the tax transparency approach (a so called "look through" approach) and takes over the tax status of the foreign entity (its transparency status) for the Czech tax purposes. Except for a general partnership or a limited partnership, the Czech Republic has not introduced other hybrid entities.

b. Use of Hybrid Instruments

The Czech Republic has fully implemented Directive EU 2017/952 ("ATAD 2") covering rules relating to cross border hybrid mismatches.

c. Principal/Limited Risk Distribution or Similar Structures

The Czech Republic generally follows the OECD approach with regard to arm's length standards of inter-company distribution structures. Thus, transfer prices for distribution services can be calculated by means of the standard methods (comparable uncontrolled price method, resale price method and cost plus method). In practice, the transactional net margin method ("TNMM") is often chosen as the relevant profit indicators can be backed up by comparables from generally recognised databases.

d. Intellectual Property

The Czech Republic has not introduced any specific tax regime for intellectual property. The tax treatment of intellectual property follows the accounting treatment. The tax depreciation of acquired intangible assets acquired after 1 January 2021 is equal to accounting depreciation.

A company involved in research and development projects may deduct from its tax base an additional 100% or 110% of qualifying research and development costs, spent in the course of realising an R&D project. The R&D project must fulfill the definition of R&D according to specific regulations. That basically means that the R&D project must encompass an appreciable element of newness, or it must lead to the clarification of research or technical uncertainty.

The deduction may not be claimed in relation to royalty payments, services and intangible results of research and development acquired from other parties (with the exception of costs expended on services purchased from public universities and research organisations).

e. Special Tax Regimes

This section has been left intentionally blank.

12. OECD BEPS CONSIDERATIONS

The Czech Republic in general follows OECD guidelines and supports the OECD BEPS actions. The Czech Republic has already implemented the following BEPS related EU Directives: Directive EU 2015/2376 on automatic exchange of information on tax rulings, EU Directive 2016/881 on country by country reporting, Directive EU 2016/1164 (ATAD 1) and Directive EU 2017/952 (ATAD 2) on rules against tax avoidance practices including the interest limitation rules, CFC rules, hybrid mismatches and exit taxation and Directive EU 2018/822 on mandatory automatic exchange of information in relation to reportable cross border arrangements.

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI") entered into force in the Czech Republic on 1 September 2020. The Czech Republic has committed to the OECD minimum standard and therefore, only provisions required to meet this minimum standard should impact the covered double tax treaties entered into by the Czech Republic. The proposed anti-abuse rules are part of treaty negotiations.

13. ACCOUNTING CONSIDERATIONS

In general, transactions should be accounted for based on the Czech GAAP principles. IFRS principles are applicable for the companies whose securities are listed on a regulated market in an EU member state or for the companies who are part of the consolidation group and whose consolidated financial statements are prepared based on IFRS. Nevertheless, for tax purposes, the Czech GAAP principles should be followed.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

A dividend distribution abroad is generally subject to withholding tax at 15%/35% if not exempt based on the participation exemption (at least 10% for a minimum holding period of 12 months) or unless the double tax treaty specifies otherwise.

Repayment of capital is not subject to withholding tax under the condition that the capital was not created from the profit of the company or from the funds which were created from the profit of the company.

b. Application of Regional Rules

The Czech Republic has transposed EU Parent Subsidiary Directive, EU Interest and Royalty Directive and EU Merger Directive in tax related matters into the Czech domestic law.

c. Tax Rulings and Clearances

Binding tax rulings are available in the Czech Republic in respect of transfer pricing (the confirmation of the transfer pricing methodology or the methodology how the determine a tax base of a PE), tax loss carryforwards, R&D allowances and VAT rates. The ruling is generally valid for up to three years. The administration fee for the ruling is CZK 10 thousand (EUR 400). The ruling process takes approximately 3 to 6 months.

15. MAJOR NON-TAX CONSIDERATIONS

This section is left intentionally blank.



16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Albania	15 / 5	5	10	
Armenia	10 / 10	5 / 10	5 / 10	[5], [6]
Australia	15 / 5	10	10	[7]
Austria	10 / 0	0	0 / 5	[8]
Azerbaijan	8 / 8	5 /10	10	
Bahrain	5 / 5	0	10	
Bangladesh	15 / 10	10	0 / 10	[9], [10]
Barbados	15 / 5	0 / 5	5 / 10	
Belarus	10 / 5	5	5	
Belgium	15 / 5	0 / 10	0 / 5 / 10	[11], [12]
Bosnia and Herzegovina	5 / 5	0	10	
Botswana	5 / 5	0 / 7.5	7.5	[13]
Brazil	15 / 15	- / 10 / 15	15 / 25	
Bulgaria	10 / 10	10	10	[14], [15]
Canada	15 / 5	10	10	
Chile	15 / 15	4 / 5 / 10 / 15	5 /10	[16], [17]
China (People´s Rep.)	10 / 5	7.5	10	
Colombia	15 / 5	0 / 10	10	[18], [19]
Croatia	5 / 5	0	10	
Cyprus	5 / 0	0	0 / 10	[20], [21], [22]
Denmark	15 / 0	0	0 / 10	[23]
Egypt	15 / 5	15	15	
Estonia	15 / 5	10	10	
Ethiopia	10 / 10	10	10	
Finland	15 / 5	0	0 / 1 / 5 / 10	[24]
France	10 / 0	0	0 / 5 / 10	[25]
Georgia	10 / 5	8	0 / 5 / 10	
Germany	15 / 5	0	5	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Ghana	6 / 6	0 / 10	8	[26]
Greece	- / -	10	0 / 10	[27]
Hong Kong	5 / 5	0	10	
Hungary	15 / 5	0	10	
Iceland	15 / 5	0	10	
India	10 / 10	10	10	
Indonesia	15 / 10	12.5	12.5	
Iran	5 / 5	0 / 5	8	
Ireland	15 / 5	0	10	
Israel	15 / 5	10	5	
Italy	15 / 15	0	0 / 5	
Japan	15 / 10	10	0 / 10	
Jordan	10 / 10	10	10	
Kazakhstan	10 / 10	10	10	
Korea (Dem. People´s Rep.)	10 / 10	10	10	
Korea (Rep.)	5 / 5	0 / 5	0 / 10	
Kuwait	5 / 0 / 5	0	10	[28], [29]
Kyrgyzstan	10 / 5	0 / 5	10	[30] [31]
Latvia	15 / 5	10	10	
Lebanon	5 / 5	0	10	
Liechtenstein	15 / 0	0	0 / 10	[32], [33]
Lithuania	15 / 5	10	10	
Luxembourg	10 / 0	0	0 / 10	[34]
Macedonia	15 / 5	0	10	
Malaysia	10 / 10	12	12	
Malta	5 / 5	0	5	
Mexico	10 / 10	10	10	
Moldova	15 / 5	5	10	
Mongolia	10 / 10	10	10	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Montenegro	10 / 10	10	5 / 10	[35]
Morocco	10 / 10	10	10	
Netherlands	10 / 0	0	5	
New Zealand	15 / 15	10	10	
Nigeria	15 / 12,5	15	15	
Norway	15 / 0	0	0 / 5 / 10	
Pakistan	15 / 5	0 / 10	10	[36], [37]
Panama	10 / 10	5 / 10	10	
Philippines	15 / 10	10	10 / 15	[38]
Poland	5 / 5	0 / 5	10	
Portugal	15 / 10	10	10	
Romania	10 / 10	7	10	
Russia	10 / 10	0	10	
Saudi Arabia	5 / 5	0	10	
Serbia	10 / 10	10	5 / 10	
Singapore	5 / 5	0	0 / 5 / 10	
Slovakia	15 / 5	0	0 / 10	
Slovenia	15 / 5	5	10	
South Africa	15 / 5	0	10	
Spain	15 / 5	0	0 / 5	
Sri Lanka	15 / 15	10	0 / 10	
Sweden	10 / 0	0	0 / 5	
Switzerland	15 / 5	0	5 / 10	[39]
Syria	10 / 10	10	12	
Tajikistan	5 / 5	0 / 7	10	
Thailand	10 / 10	10	5 / 10 / 15	[40], [41]
Tunisia	15 / 10	12	5 / 15	
Turkey	10 / 10	10	10	
Turkmenistan	10 / 10	10	10	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Ukraine	15 / 5	5	10	
United Arab Emirates	5 / 0 / 5	0	10	[42]
United Kingdom	15 / 5	0	0 / 10	
United States	15 / 5	0	0 / 10	
Uzbekistan	10 / 5	0 / 5	10	
Venezuela	10 / 5	10	12	[43]
Vietnam	10 / 10	10	10	

Footnotes	
[1]	Unless otherwise indicated, the reduced treaty rates given in this column apply if the holding is at least 25% of the capital or of the voting power, as the case may be.
[2]	In the case of relations between EU Member States, dividend payments from subsidiaries to parent companies may be exempt if the conditions of the Parent Subsidiary Directive 2011/96/EU are met.
[3]	Many treaties provide for an exemption for certain types of interest, e.g. interest paid to or by the state, local authorities, the central bank, export credit institutions or in relation to sales on credit. Such exemptions are not considered in this column.
[4]	In the case of relations between EU Member States, interest and royalties payments between related companies may be exempt if the conditions of the EU Interest and Royalties Directive 2003/49/ EC are met.
[5]	The lower rate applies, inter alia, to interest on bank loans.
[6]	The lower rate applies to copyright royalties, including films etc.
[7]	A minimum holding of 20% is required.
[8]	A minimum holding of 10% is required.
[9]	Effective from 1 January 2022.
[10]	The 0% rate applies in cases when the interest is paid to the Government, including any political subdivision or local authority; or to the Central Bank; or to any institution owned or controlled by that Government if the purpose of the existence of such an institution is the promotion of export. Alternatively, it applies when the interest is paid in connection with any loan or credit guaranteed by the Government, including any political subdivision or local authority, by the Central Bank, or by any institution owned or controlled by that Government if the purpose of the existence of such an institution is the promotion of export.
[11]	The lower rate applies, inter alia, to interest on bank loans and deposits.

Footnotes	
[12]	The rate under the treaty is 10%. However, by virtue of a most favoured nation clause, the rate is reduced to 0% and 5%: • the zero rate applies to copyright royalties, including films, etc, effective from 1 January 2004. Under the Czech Republic and Slovak Republic treaty, the rate is 0% for copyright royalties, including films, etc; and • a reduced rate of 5% applies to industrial royalties and know-how, effective from 1 January 2008. Under the Austria and Czech Republic treaty, the rate is 5% for industrial royalties and know-how. The 5% rate under the Belgium and Czech Republic treaty continues to apply to equipment leasing/rental.
[13]	The 0% rate applies in cases when the interest is paid in connection with the sale on credit of any merchandise or equipment; or on any loan or credit of whatever kind granted by a bank; or to the Government, including any political subdivision or local authority; or to the Central Bank.
[14]	The domestic rate applies to interest paid by public bodies (under the treaty such interest is taxable only in the source state and there is no reduction). The 10% rate applies in respect of loans granted by banks for at least 10 years, subject to conditions.
[15]	The 25% rate applies to trademarks.
[16]	The interest rates under the treaty are 5% and 15%. The 5% rate applies to interest derived from loans or credits granted by banks or insurance companies. However, by virtue of a most favoured nation clause, under the Chile-Japan treaty the rates are reduced as follows: • from 1 January 2017, the rate for certain types of interest is reduced to 4% (restrictions may apply to back-to back loans); and • from 1 January 2019, the general rate is reduced to 10%. For further details, including the updated text of article 11, see Circular No. 22/2018 issued by the Chilean tax administration and Czech Republic-1, News 22 November 2017.
[17]	The 5% rate applies in case of royalties for the use of, or the right to use, any industrial, commercial or scientific equipment.
[18]	The zero rate applies to interest paid on loans granted by a bank for a period of not less than 3 years or in connection with loans guaranteed by the government, political subdivision or local authorities.
[19]	A most favoured nation clause may be applicable with respect to royalties.
[20]	A minimum holding of 10% for an uninterrupted period of at least 1 year is required. This rate applies if the beneficial owner (i) holds at least 10% of the capital in the paying company, or (ii) is a pension fund or an institution providing pension schemes.
[21]	The lower rate applies to copyright royalties, excluding computer software, but including films, etc.
[22]	A most favoured nation clause may be applicable with respect to royalties.
[23]	A most favoured nation clause may be applicable with respect to royalties.
[24]	The 1% rate applies to royalties paid for finance leases of equipment; the 5% rate applies to royalties paid for the use of computer software and operational leases of equipment; the 10% rate applies to industrial royalties in general.



Footnotes	
[25]	The zero rate applies to copyright royalties, excluding computer software, but including films, etc. The 5% rate applies to equipment rentals. The 10% rate applies to patents, trademarks and know-how.
[26]	The 0% rate applies in cases when the interest is paid in connection with the sale on credit of any merchandise or equipment; or on any loan or credit of whatever kind granted by a bank; or to the Government, including any political subdivision or local authority; or to the Central Bank.
[27]	The domestic rate applies; there is no reduction under the treaty.
[28]	A most favoured nation clause may be applicable with respect to dividends, interest and royalties.
[29]	No withholding tax applies to dividends received by (i) a government or a governmental institution or (ii) a company which is controlled or in which at least 25% of the capital is held by a government or a governmental institution.
[30]	The reduced treaty rate applies if the holding is at least 15% of the capital.
[31]	The 0% rate applies in cases when the interest is paid in connection with indebtedness arising as a consequence of the sale on credit of any merchandise or equipment; or paid to the Government/ local authority/the Central Bank; or paid in connection with any loan or credit guaranteed by the Government.
[32]	A minimum holding of 10% for an uninterrupted period of at least 1 year is required.
[33]	The zero rate applies for any copyright of literary, artistic or scientific work (except for computer software) including cinematograph films, and films or tapes for television or radio broadcasting.
[34]	A most favoured nation clause may be applicable with respect to royalties.
[35]	The treaty concluded between the Czech Republic and the former Serbia and Montenegro.
[36]	The zero rate applies to interest paid on loans granted by banks or other financial institutions.
[37]	The rate applies also to services fees, such as payments received as a consideration for the provision of technical, consultancy and managerial services.
[38]	The lower rate applies to copyright royalties, excluding film royalties.
[39]	The rate is 5% as long as Switzerland does not levy withholding tax on royalties under its domestic law.
[40]	The 10% rate only applies to interest received by financial institutions, including insurance companies. For other interest payments there is no limitation under the treaty; the domestic rate applies.
[41]	The 5% rate applies to copyright royalties, excluding films, etc.; the 10% rate applies to royalties for patents, trademarks, design and models, secret formulas and processes.
[42]	A most favoured nation clause may be applicable with respect to dividends, interest and royalties.
[43]	A minimum holding of 15% is required.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Financial Statements for the last three years.
2	Tax Due Diligence	General	Tax registration confirmations issued by the tax authorities.
3	Tax Due Diligence	General	Confirmation of existing tax underpayments issued by the authorities.
4	Tax Due Diligence	General	Tax audit reports for the Due Diligence period.
5	Tax Due Diligence	General	Correspondence with tax authorities (e.g. ruling, etc).
6	Tax Due Diligence	General	Documents regarding pending and closed appeals of the last five years.
7	Tax Due Diligence	General	Existing or expected significant tax issues.
8	Tax Due Diligence	General	Aggressive or unusual tax strategies.
9	Tax Due Diligence	Corporate Tax	Corporate Income Tax returns and tax assessments for the last three years.
10	Tax Due Diligence	Corporate Tax	Tax adjustments for the last three years.
11	Tax Due Diligence	Corporate Tax	Amount of tax loss carry forwards.
12	Tax Due Diligence	Transfer Pricing	Transfer pricing documentation.
13	Tax Due Diligence	VAT	Information regarding Value Added Tax.
14	Tax Due Diligence	Payroll Taxes	Information regarding employment taxes applied.
15	Tax Due Diligence	Payroll Taxes	Information regarding freelancers (including an overview of volume of services provided by freelancers in the last three years, the type of services provided and the number of freelancers).

CZECH REPUBLIC

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DENMARK

1. INTRODUCTION

a. Forms of Legal Entity

The main legal entities used in Denmark are public limited liability companies (*aktieselskab, "A/S"*), private limited liability companies (*anpartsselskab, "ApS"*), partnerships (*interessentskab, "I/S"*), limited partnerships (*kommanditselskab, "K/S"*), P/S partnerships (*Kommanditaktieselskab/partnerselskab, "P/S"*) and personal businesses/sole proprietorships (*enkeltmandsvirksomheder*).

The key difference is that companies adopted in a corporate form are considered separate legal persons. A separate legal person is characterised by the assets of the business being separate from its owners in such a way that it, in principle, independently of the owners, is possible for the corporation to acquire rights and assume obligations, be a party to litigation as a plaintiff or as a defendant, etc. As a general rule, companies adopted in a corporate form are the only type of entities that are subject to Danish corporate tax. Partnerships, limited partnerships and similar entities are generally treated as transparent for tax purposes and the tax implications therefore directly attach to the owners.

The key forms of non-transparent entities in Denmark are:

- Public limited companies (*aktieselskab, "A/S"*); and
- Private limited companies (*anpartsselskab, "ApS"*).

b. Taxes, Tax Rates

i Corporate tax

Danish-incorporated businesses are subject to the Danish corporate tax on the taxable income at a rate of 22%.

However, shipping companies may opt-in for an advantageous tax scheme, the so called tonnage tax scheme, rather than paying standard corporation tax. Additionally, Danish upstream oil and gas activities are not covered by the ordinary corporate income tax regime but are instead covered by special rules set out in the Danish Hydrocarbon Tax Act.

Lastly, some special types of corporate entities are completely tax exempt or subject to a lower tax rate.

According to a recently published legislative proposal, an increased corporation tax may apply to financial companies as of 1 January 2023. The tax rate will remain 22%, but the taxable income is proposed to be multiplied by a factor, which de facto increases the taxation to 25.2% in 2023 and 26% in 2024 and future income years. The proposal is currently under consideration by the Danish Parliament's tax committee. See section 2 for more details.

ii Value added tax ("VAT")

Supplies of services or goods are subject to a 25% value added tax (VAT) on the invoiced amount. In connection with the supply of services or goods, the seller will be required to impose a 25% VAT on the invoiced amount. The buyer will be entitled to claim a reimbursement of the VAT provided that the buyer itself is operating a business. Most Danish services and goods are subject to the VAT, however, the supply of real estate (with the exception of newly constructed real estate and building plots) and the supply of financial services and products are generally not subject to VAT.

The VAT is paid on an annual, biannual, quarterly, or monthly basis depending on the service or goods provider's annual turnover.



c. Common divergences between income shown on tax returns and local financial statements

Danish corporations' taxable profits are calculated in accordance with the general Danish rules on taxation, in so far as they can be applied to the corporation in question. Danish taxation is based on a net income principle, where it is the gross income minus the expenses incurred to "secure and maintain" the income that is to be taxed.

When calculating the taxable income, the general approach is to start with the accounting result, adjusting for income that is not taxed (in full), income that cannot be deducted (in full), as well as accounting depreciations and write-downs and other adjustments that are not considered in the same way for tax purposes as for accounting purposes.

The following points will commonly lead to a divergence between financial results and the taxable income:

- As for assets subject to depreciation, any difference between the tax value and the carrying value (book value) of the assets;
- Specific deduction rules on e.g. entertainment expenses, travel expenses etc.;
- Limitations on deductions of financing costs (e.g. the Danish interest-ceiling rule) or hybrid mismatches;
- Transactions between controlled parties may result in the tax authorities' correction of the tax returns, if the transactions do not reflect the arm's length principle;
- Intra-group dividends are generally tax exempt, and losses are non-deductible;
- Other specific deduction rules may limit deductions on e.g. entertainment expenses; and
- Tax losses carried forward from previous income years.

Certain entities are covered by special rules on calculation of taxable profits which take the specificities of the entities concerned into account (e.g. cooperatives, certain banks, certain insurance companies, mutual insurance associations).

2. RECENT DEVELOPMENTS

There are various developments in Danish tax law that are relevant to M&A matters.

As a member of the EU and an active participant in the negotiations at OECD, the Danish tax system is generally becoming increasingly aligned with international standards. The current Danish Government has a strong focus on preventing tax avoidance and tax abuse which is reflected in its initiatives both in international negotiations and through domestic legislation.

Additionally, financing of the Danish welfare system through taxes is also highly prioritised by the current government which is reflected in new proposals for increasing taxation.

a. OECD BEPS 2.0 The Two Pillar Solution

Denmark has agreed to the OECD Two Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy of October 2021. No proposals or amendments of Danish law regarding the taxation of digital economy businesses have currently been made. It is expected that the agreement will be implemented in co-ordination with the other EU countries (through EU directives). The Danish Government has expressed a wish for quick implementation.

Pillar One essentially involves allocation of profits to the market country for taxation purposes, while Pillar Two involves a global minimum tax rate for larger companies. Denmark does not currently have a specific digital services tax, and the introduction of such will therefore involve amendments of law.

The Danish Government has previously stated that Pillar One potentially could lead to a loss of Danish corporate tax revenue, while Pillar Two is expected to have a significant positive effect on Danish corporate tax revenue due to expected reduction of profit shifting out of Denmark and repatriation of Danish activity and thus tax base. Despite all, the Danish Government has expressed that the OECD, including the BEPS (Base Erosion and Profit Shifting) 2.0 project, is still considered the best option for a sustainable and long-term solution to this global issue. The issue of taxation in a digital economy business is expected to be an ongoing political discussion, both locally and on an international basis.

b. Prevention of the use of shell entities

The EU Commission has put forward a proposal for a council directive putting down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU (COM/2021/565 final).

The purpose of the proposal is to discourage the use of entities and legal arrangements with no, or only minimal, business and economic activity which are primarily used for tax purposes.

The proposal builds on the existing framework and systems for the automatic exchange of information using a Central Directory for advance cross border rulings ("DAC3") and reportable cross border tax arrangements ("DAC6"), which have already been implemented in Danish law.

On 10 March 2022 the Ministry of Taxation completed an external consultation of the proposal with relevant stakeholders. The contents of the final directive and its eventual adoption, will depend on the negotiations at EU level, which are currently ongoing.

c. Status of anti-avoidance and beneficial ownership cases

A general trend in Danish tax law is the prevention of tax avoidance and abuse which in recent years has led to stricter anti-avoidance rules and the introduction of a general anti-avoidance rules ("GAAR"). The GAAR includes both a general anti-avoidance provision (implementation of the EU Anti-Avoidance Directive (2016/1164) Article 6) and a specific provision on the abuse of double taxation treaties.

Denmark generally applies a very strict beneficial ownership test looking at the actual funds' flow. In recent years, the Danish Tax Authorities ("DTA") have had a significant focus on the issue of beneficial ownership and several cases are currently pending at the Danish courts with respect to how the term "beneficial ownership" should be determined and furthermore, judgments by the Danish courts have recently been rendered on the issue.

In addition, with respect to the term "beneficial ownership", it is important to note that the DTA are not only focusing on substance but are also focusing on (deemed) flows of funds. Thus, irrespective of substance at the level of an intermediary non-Danish holding company, the DTA have in some cases viewed entities with significant substance as conduit entities for Danish tax purposes.

Upon an audit by the DTA, it is likely that in order to assess the beneficial ownership, the DTA will put emphasis on whether the dividends received by an intermediary holding company from a Danish company have in fact been re-routed up the ownership chain as e.g. dividends, interest or other contributions or considerations (i.e. the character of the funds flow is not of importance).

A factor which is usually given significant importance by the DTA is whether an intermediary holding company has the authority to control the received dividend (as opposed to a recipient which immediately repays the funds to a company further up in the structure in a back to back kind of arrangement).

In 2021, the Danish High Courts have mostly ruled in favour of the tax authorities. The decisions have been appealed to the Danish Supreme Court.

d. Transfer Pricing ("TP") documentation

The rules on TP documentation (transfer pricing documentation) have undergone some changes in recent years, largely due to the increased focus and scrutiny by the Danish Tax Authorities on controlled transactions and restructurings.

As for income years beginning on or after 1 January 2021, submission of TP documentation (master and local file) is mandatory and must be filed no later than 60 days after the deadline for submitting the tax return. Failure to provide accurate TP documentation will result in penalties as well as a right for the tax authorities to make a discretionary assessment of the taxable income. Prior to this amendment, the TP documentation was only submitted to the DTA upon request.

The obligation to file TP documentation generally only applies to larger groups or certain transactions. However, all pure Danish transactions (i.e. transactions involving only Danish entities) have with the new legislation become exempt from this submission requirement.

A company is always obliged to inform the DTA about all intragroup transactions in its tax return.



e. Financing of a new right to early retirement: expected from 2023

In October 2020, a majority in the Danish Parliament made a political agreement on "A new right to early retirement", which aside from making it possible for certain employment groups to retire earlier, also includes several measures to finance the agreement. The following points will describe the measures relevant for tax purposes.

Increased taxation of financial companies and cap on deduction of wages

According to a recently published legislative proposal, an increased corporate tax may apply to financial companies as of 1 January 2023. The tax rate will remain 22%, but the taxable income is proposed to be multiplied by a factor, which de facto increases the taxation to 25.2% in 2023 and 26% in 2024 and future income years. The rules will apply to Danish companies and companies with a permanent establishment in Denmark that is considered a "financial company" as defined in the proposal. The proposal entails that both income from financial activity and non-financial activity will be included.

The proposal is currently under consideration by the Danish Parliament's tax committee.

Limited deduction of wage costs

The proposal on financial corporate taxation (described above) also includes a proposed cap on deductions for companies with highly paid employees (such as executives and CEO's). This means that wage costs exceeding a certain threshold will not be deductible for the employing company. The threshold is expected to be a yearly gross pay of more than DKK7.5 million, (i.e. approximately EUR1 million in 2022 and therefore subject to adjustment by 2023).

Mark to market taxation on Real Estate

As of spring 2022, a proposal is awaited from the Danish Ministry of Taxation on a mark to market taxation of real estate.

Currently, capital gains on real estate are taxed after the realisation principle, (i.e. any increase in the value of a property is not taxed when it occurs), but instead when the property is sold or otherwise disposed of. A mark to market taxation would entail that value increase and decrease is included in the company's taxable income and covered by the general corporate tax rules (corporate tax rate of 22%).

The new rules are expected to cover Danish and foreign companies subject to Danish corporate tax. It will not apply to sole proprietorships or tax exempt entities. As for transparent entities for tax purposes (e.g. Danish *interessentskab, kommanditselskab* or *partnerselskab*), the participant will be taxed on their own merits (whether that be a person or a legal entity). Funds are expected to be covered by the rules.

The purpose of these new rules, aside from making it possible for certain employment groups to retire earlier, is that the Danish Government finds that a so called tax gap exists for investments in real estate. Foreign investment funds are believed to have benefitted from the possibility of transferring properties in the form of companies (i.e. as share acquisitions) and not as an ordinary asset trading and have thereby avoided paying tax on the capital gains from real estate.



3. SHARE ACQUISITION

a. General Comments

Generally, many deals (for example acquisitions of real estate) are carried out as a sale of shares instead of an actual asset sale. A share acquisition of all shares means that the buyer acquires the entire company.

An acquisition of shares is not a taxable event for the target company, (i.e. there is no taxation of the target's underlying assets). Sales of shares are not subject to any stamp duties or transfer taxes.

There are no immediate Danish tax consequences for a foreign company that acquires the shares of a Danish company.

In general, the tax position of the acquired Danish target company remains unchanged (apart from the restriction on carry forward of losses, which on a change of ownership may become restricted, see section 3.b. below).

For the seller, acquisitions of shares are covered by the rules on taxation of capital gains from sale of shares (the Danish Act on Taxation of Capital Gains on Sale of Shares). This is the case when partially selling some of the shares and in the case of a sale of all shares in a company.

The Danish Tax Authorities may choose to reassess tax returns both for the purpose of increasing or decreasing the target's taxes under the ordinary deadline until 1 May in the fourth year after the relevant income year (additional two years for controlled transactions).

From a buyer's perspective:

- In general, acquisitions of shares are considered less buyer friendly than acquisitions of assets.
- The buyer acquires, among other things, target's tax assets and liabilities (deferred taxes etc.). The buyer should therefore be aware of any possible historical tax risks, that the buyer may acquire along with the shares.

From a seller's perspective:

- As opposed to the buyer, the seller should be aware that any possible tax assets are transferred to the buyer in the acquisition and will therefore not benefit the seller, e.g. if the target's tax return from a previous income year is reassessed after the acquisition and it turns out that target is entitled to a tax refund.
- Acquiring shares are covered by the rules on capital gains from the sale of shares meaning that gains are taxable, and losses are deductible for the seller. However, aside from commercial shares, the capital gains from the seller's own shares, group shares, subsidiary shares or from tax exempt portfolio shares exempt from tax. Thus, an acquisition of shares within a group should not have any adverse tax consequences for the seller.
- The seller should however be aware that different anti-avoidance rules may lead to a requalification of tax exempt capital gains to taxable dividends (especially if foreign shareholders are involved).



b. Tax Attributes

Tax losses carried forward

In general, losses may be carried forward indefinitely to reduce future taxable income, both income from operations and capital gains (however, certain capital losses may only be used against capital gains from the same source).

Losses can be carried forward and can offset future taxable income by a basic amount (in 2022: DKK8,872,500). A remaining loss exceeding the basic amount may reduce the remaining taxable income by 60%. Any loss that cannot be utilised may be carried forward.

On a change of ownership, a tax loss carried forward may become restricted.

Loss carry back

Denmark does not have any carry back rules in the ordinary corporate tax regime.

Depreciation

As for depreciable assets (such as real estate), they may involve a deferred tax liability for Target. If the tax value of the asset (i.e. the assets value after depreciations in accordance with the Danish tax law) is lower than the asset's actual value reflected in the financial statements (i.e. the carrying amount), then the asset will have a deferred tax liability.

c. Tax Grouping

All Danish corporations within a group are subject to mandatory joint taxation. Any permanent establishments and Danish real estate held by foreign controlled corporations are also subject to mandatory joint taxation.

Voluntary (international) joint taxation is also an option for foreign corporations, etc, who are part of a group with Danish corporations.

Where a target company is part of a tax group with the seller, the company will exit the seller's joint taxation when the control of the company is transferred to the buyer. In a sales transaction, the company is subject to mandatory joint taxation with the seller until closing, and the joint taxation between the company and the seller ceases as per closing.

No later than one month after closing (i.e. the exit from the seller's joint taxation), the seller must ensure that the seller's administration company through the Danish Tax Agency's online self-service facility (the E-tax corporate income tax portal) notifies the Danish Tax Agency and documents i) the date of the company's exit from the seller's joint taxation, ii) the period in which the company's income is to be included in the seller's joint taxation income, and iii) the reason for leaving the seller's joint taxation.

If, as a result of the transaction, the company enters a Danish joint tax group with the buyer, the administration company of the buyer must similarly notify the Danish Tax Agency no later than one month after closing of the above mentioned details, and the seller's administration company must confirm and approve the notified change.



d. Tax Free Reorganisations

Generally, acquiring shares are covered by the rules on capital gains from the sale of shares meaning that gains are taxable, and losses are deductible for the seller. However, aside from commercial shares, the capital gains from the sale of own shares, group shares, subsidiary shares and from tax exempt portfolio shares are exempt from taxes.

Depending on the reorganisation framework and whether pre-approval from the Danish Tax Authorities is obtained, the conditions and impact of the reorganisation may vary (e.g. ability to carry forward tax losses, re-actualisation of tax liability on future sales, etc.). Additionally, anti-avoidance rules (including the Danish GAAR) may restrict the possibility for tax free reorganisations.

Types of tax neutral reorganisations (and the basic conditions):

i Tax free merger:

- A merger may be tax free if all assets and liabilities of the company are transferred to the receiving company. The remuneration to the shareholders must consists of shares in the continuing company.
- A merger must take effect from the beginning of the receiving company's fiscal year (may therefore become effective retroactively).
- Following a tax exempt merger, any tax losses from before the merger date may not be carried forward to the receiving company. However, in the event of mergers between jointly taxed companies, the losses incurred while the companies were jointly taxed may be deducted.
- A tax free merger must be reported to the Danish Tax Authorities and a final income statement from the terminated company must be submitted as well.

ii Tax free demerger

- In a demerger, a company transfers part or all its assets and liabilities to one or more companies. The shareholder of the company will receive newly issued shares in the receiving company/companies and possibly a cash compensation amount.
- A demerger may be completed as either a demerger with termination, whereby the contributing company ceases to exist and at least two new companies arise, or as a branch demerger, where part or all the business of the contributing company is transferred to a new company. As for branch demergers, the assets and liabilities that are split into one or more receiving companies must each form a branch of the demerging company (also known as "the branch requirement").
- The reorganisation may be carried out with or without the DTA's permission, in the latter case a three year holding requirement apply, whereby the transferred shares may not be sold or otherwise divested within three years of the demerger.
- Additional conditions apply, including special rules for cross border demergers.
- The demerger must be registered through the DTA's online self-service platform.



iii Tax free contribution of assets:

- In the case of a tax free contribution transfer of assets, a company transfers all or a branch of its assets and liabilities to another company in exchange for shares in the receiving company.
- The reorganisation may be carried out with or without the DTA's permission, in the latter case a three year holding requirement apply (see above for further details).
- The contribution must be registered through the Danish Tax Agency's online self-service platform.

iv Tax free exchange of shares:

- An exchange of shares involves a shareholder exchanging their shares in one company for shares in another company.
- The reorganisation may be carried out with or without the DTA's permission.
- As for exchanges without prior approval, it is a condition that the shares are exchanged at market value, and that the shares in the acquiring company are considered to have been acquired at the same time and for the same price as the exchanged shares. Additionally, the exchanged shares may not be sold or otherwise divested within three years of the exchange.
- The exchange must be registered through the Danish Tax Agency's online self-service platform.

e. Purchase Agreement

The share purchase agreement ("SPA") should generally include a description of the shares sold (either all of target's shares or specific description of the shares).

The SPA should also specify, whether dividends that have been distributed but are not yet due for payment (i.e. pending dividends) should be paid to the buyer or the seller.

If the target company is part of a joint taxation group, the SPA (or an attached schedule) should regulate the termination of joint taxation, including joint taxation contributions.

The buyer usually requires more extensive indemnities and/or warranties about any undisclosed tax liabilities of the target company. The extent of the indemnities or warranties is a matter for negotiation and should reflect the findings from the tax due diligence review of the target company.

Previous income years are open for reassessment until 1 May in the fourth year after the relevant income year (additional two years for controlled transactions). In exceptional cases (e.g. gross negligence or intent to evade tax) the tax authorities may investigate and resume completed income years. In this case, an ultimate statute of limitation period of 10 years applies. The SPA should therefore include a general warranty that all taxes (including joint taxation contributions), VAT and other charges have been calculated correctly, as well as reported and paid on time.



f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

No stamp duty or transfer taxes are payable on a transfer of shares.

g. Share Purchase Advantages

A purchase of shares is simpler in concept than a purchase of assets since the buyer acquires the target company "as it finds it", including both assets and liabilities. Therefore, a purchase of shares is likely to be more attractive to the seller.

Other advantages of a purchase of shares are that the buyer purchases the net assets only. The buyer may also benefit from tax losses of the target company and avoids paying transfer taxes e.g. property registration fee.

Lastly, the buyer may benefit of existing supply, employment, and technology contracts.

h. Share Purchase Disadvantages

One of the disadvantages of a purchase of shares is that the buyer acquires all assets and liabilities and therefore also acquires deferred tax liability for depreciation recovery on the difference between the tax value and the carrying value (book value) of the assets.

When purchasing the shares of a target company, the buyer also adopts the cost basis of the assets and therefore does not benefit from a step up in value on the assets. There is also no deduction for the purchase price or for transferred goodwill.

Losses incurred by any companies in the buyer's group in years prior to the acquisition of the target cannot be offset against any profits made by the target company.



4. ASSET ACQUISITION

a. General Comments

When acquiring assets or activities, the related liabilities are typically also transferred. For tax purposes, a purchase price allocation must be made between the depreciable assets (please also see section 4.b. Purchase Price Allocation).

As for seller's historical tax liabilities, these will remain with the seller, as only the assets/activities (and their respective possible liabilities) are transferred. Even though the historical tax liabilities remain with the seller, a buyer may still wish to carry out some due diligence before purchasing the assets. This could be done to reveal any non-compliance practice or procedures in relation to the assets or the nature and tax depreciation profile of the assets for valuation purposes, etc.

From a buyer's perspective:

- The assets are acquired at market value at the time of purchase, which normally involves an increase compared to the seller's tax value of their assets. The buyer will then receive a higher basis for depreciation on depreciable assets (a "step up").
- When acquiring assets, the buyer has the possibility of depreciation on the acquired goodwill.

From a seller's perspective:

- In general, asset acquisitions are considered less seller friendly than share acquisitions.
- The seller is taxed on the realised capital gains/losses computed as the difference between the sales price (i.e. the market value) and the seller's tax values of the assets.

b. Purchase Price Allocation

Purchase price allocation is necessary in connection an acquisition of assets.

When selling depreciable assets and real estate in general, Danish law requires a distribution of the purchase price on the individual assets. The agreed allocation serves as the basis for capital gains taxation of the seller and as the depreciation basis/acquisition price for the buyer.

The Danish Tax Authorities may challenge either the total cash value or the allocation between the depreciable assets. Where no allocation is made, the tax authorities may assess an appropriate allocation and both the seller and buyer are obliged to apply the assessed values.

In a transaction between independent parties, the DTA will generally accept the allocation agreed between the parties in relation to both the buyer and seller's tax, but it is not required to do so.



c. Tax Attributes

Tax losses of the target are not transferred to the buyer in an asset acquisition. They remain with the company or are normally used at the time of the transaction.

d. Tax Free Reorganisations

It is possible to complete tax exempt demergers of assets and contributions in form of assets. See further detail under section 3.d.

e. Purchase Agreement

The description of the purchased assets in an asset acquisition is generally more difficult than in share acquisitions. Therefore, in general, where a business is transferred by way of an asset deal, the following items is recommended to be included in a purchase agreement:

- A precise description of the overall business transferred;
- A specific description of the assets and liabilities that the business consists of, and which of these are included in the purchase. A practical solution when transferring a larger business is to only list the assets that are not transferred. This may be combined with a 'going concern' guarantee for the buyer, whereby the buyer is guaranteed to have all the assets necessary to continue the operation of the acquired business area;
- If the buyer assumes debts or other obligations, this should be specified;
- A description of how the assets and liabilities are intended to be transferred to the buyer;
- A provision as to when the buyer must incur expenses and receive income from the business (usually the acquisition date).

Additionally, the purchase agreement should carefully consider the purchase price allocation to each individual asset, as the depreciation profile for the various categories varies. A balance sheet/transfer sheet is therefore recommended.

As for assets with varying values (e.g. inventories, receivables and other), the agreement would normally include a principle for calculating their actual value on the acquisition date.

f. Depreciation and Amortisation

- **Depreciation**

When acquiring assets, the basis for the buyer's depreciation of assets is based on the purchase price (market value), which normally involves a step up in value of the assets compared to the seller's tax value of the assets. The buyer will then receive a higher basis for depreciation on depreciable assets.

The various categories of assets have different depreciation profiles. Consequently, the purchase price allocation in an asset deal is of great importance for the estimation of future cash flow.

Most operating assets, such as plant, machinery, equipment and motor vehicles, may be depreciated by up to 25% per year in accordance with the declining balance method. The depreciation rate can vary from year to year at the taxpayer's discretion. The price of minor assets, software and certain equipment or R&D may be written off in the year of acquisition, whereas certain heavy fixed assets and infrastructural facilities are subject to a reduced depreciation rate.



Generally, buildings are depreciated individually using the straight line method with a depreciation rate of up to 4% a year. The following building types are in general not depreciable, unless integrated with or closely related to a manufacturing or depreciable building:

- Office buildings,
- Banks, credit institutions etc.,
- Businesses operating postal services,
- Accommodations (apart from hotels and camping cabins),
- Some apartment hotels and nursing homes, and
- Hospitals, dentists, doctors' offices, etc.

Intangibles (including goodwill) acquired by a Danish company are generally depreciable by up to one-seventh annually. Knowhow and patents are subject to favourable rules that allow immediate write-off of the purchase price in the acquisition year.

Generally, the annual depreciation charge for tangible and intangible assets is computed on the cash equivalent of the cost price. The cash equivalent price is the actual cost price less the excess of the nominal value of loans (taken over from the seller) over market value.

Amortisation

The purchase price (or a proportion) can be depreciated or amortised for tax purposes.

g. Transfer Taxes, VAT

VAT

The Danish VAT rate is currently 25% and applies to most supplies of goods and services by VAT taxable entities.

The transfer of a business (or part of a business) as a going concern ("TOGC") is outside the scope of VAT and no VAT is charged on such transfer. The transfer of assets qualifies as a TOGC when the following conditions are met:

- The transferred assets constitute the entire or an independent part of the business. Generally, all goods and services that are necessary for the continuation of the business or part of it must be transferred to the buyer;
- The buyer continues the transferred business;
- The seller ceases to operate the transferred business; and
- The buyer is registered for VAT to the extent that this is necessary to continue the transferred business.

A TOGC must be notified to the Danish Tax Authorities by the seller within eight days of the transfer.



A TOGC triggers an obligation for the seller to settle any VAT adjustment liability under the capital goods scheme with the DTA. A VAT adjustment liability may exist when certain investment goods are included in the transfer. The VAT adjustment liability may be transferred to the buyer, provided that the buyer accepts to succeed in such liability.

Where receivables from VATable supplies are transferred as part of the business transfer, there is a risk that the buyer would not be entitled to adjust the output VAT if the receivables gets in an irrecoverable debt. Local advice should be sought to ensure that the output VAT can be adjusted for such irrecoverable debt by the buyer.

In general, where the transfer does not qualify as a TOGC for VAT purposes, then the transfer is treated as a sale of assets subject to Danish VAT. Certain exceptions may apply, e.g. if the seller and the buyer form part of the same VAT group, or if the assets have solely been used for VAT exempt purposes, e.g. VAT-exempt leasing of real property, or if the assets are comprised by the statutory VAT exemptions in the Danish VAT Act, e.g. sale of real property with old buildings.

The seller's right to deduct VAT from the incurred sales costs (e.g. financial advisers, auditors, lawyers, etc.) depends on whether the transferred business was VAT taxable (full deduction of VAT), VAT exempt (no deduction), or partly VAT taxable (partial deduction). The buyer's right to deduct VAT from the incurred costs (e.g. financial advisers, auditors, lawyers, etc.) depends on whether the acquired business will be used for VAT taxable purposes (full deduction of VAT), VAT exempt purposes (no deduction), or partly VAT taxable purposes (partial deduction).

Stamp duty

No stamp duty is in general payable on a transfer of assets.

However, registration of a change of ownership of land and buildings is subject to a duty of DKK1,750 plus 0.6% (in 2022) of the fair market value.

Mortgage instruments are subject to a duty of DKK1,730 plus 1.5% (in 2022) of the principal amount when the loan is raised or re-financed.

Other registrations (including burdens, easements, marriage agreements etc.) are subject to a fixed DKK1,730 fee.



h. Asset Purchase Advantages

- The purchase price (or a proportion) can be depreciated or amortised for tax purposes.
- A step up in the cost base for tax purposes is obtained.
- No previous liabilities of the company are inherited.
- No acquisition of a tax liability on retained earnings.
- Possible to acquire only part of a business.
- Greater flexibility in funding options.
- Profitable operations can be absorbed by loss making companies in the buyer's group, thereby effectively gaining the possibility to use the losses.

i. Asset Purchase Disadvantages

- The investment cost is typically higher, as the buyer is paying for the assets at market value and not just the net value of the assets. Furthermore, the seller's tax cost is usually higher when selling assets, which is typically reflected in the purchase price;
- The buyer may need to renegotiate supply, employment, or technology contracts;
- A higher capital outlay is usually involved (unless the debts of the business are also assumed);
- accounting profits may be affected by the creation of acquisition goodwill;
- The buyer cannot benefit from any losses incurred by the target company, since such losses remains with the seller;
- The seller might still need to sell any assets not purchased and liquidate the company, which may be unattractive for the seller and thereby increasing the purchase price; and
- The asset acquisition may in general be unattractive to the seller and thereby increasing the purchase price for the buyer.



5. ACQUISITION VEHICLES

a. General Comments

The structuring of investments in Denmark may be achieved by using local and foreign companies, trusts, and mutual funds. Acquisitions will often involve a SPV (single or special purpose vehicle) set up for the transaction.

Where SPVs are used, it may be important for the seller to ensure that the underlying investors also accept the purchase agreement as security for the fulfilment of the buyer's obligations.

b. Domestic Acquisition Vehicle

- Danish holding company

A Danish limited liability company as a holding company is often used as the acquisition vehicle where the foreign buyer wishes to benefit from the Danish rules on tax consolidation and offset tax losses (due to financing costs) of the acquisition vehicle against taxable profits of other companies in the Danish tax group. Generally, it is advisable that the Danish rules restricting interest tax deductions are analysed to ensure that financing costs will be deductible for tax purposes and thus can reduce taxable profits in any other operating companies.

- Local branch

Rather than a direct acquisition of the shares or assets of a target, a foreign buyer may wish to use a Danish branch of a foreign company as the acquisition vehicle. Shares may be allocated to a Danish permanent establishment (PE) where the return relates to the Danish branch.

The buyer should ensure that the Danish branch has sufficient operating activity to constitute a PE for Danish tax purposes.

A Danish branch of a foreign company is not a commonly used as an acquisition vehicle.

c. Foreign Acquisition Vehicle

- Foreign buyer or foreign holding company

A foreign buyer may choose to purchase the target directly instead of using an acquisition vehicle where the tax value of the interest deductions is higher in the jurisdiction of the buyer.

The use of a Danish holding company/SPV/BidCo is very commonly used by foreign buyers.



d. Partnerships and joint ventures

Joint ventures

Basically, there are three types of joint ventures:

- Corporate joint venture, where the joint venture partners hold shares in a Danish company;
- Unincorporated joint venture, where, for example, the joint venture partners enter into a partnership;
- Strategic joint venture, where the joint venture partners cooperate on specific strategic objectives.

A corporate joint venture is treated as a corporate entity for Danish tax purposes, while unincorporated and strategic joint ventures are treated as transparent entities for Danish tax purposes.

The choice of joint venture primarily depends on the most beneficial tax positions on e.g. the offset of losses or interest expenses against profits subject to corporate or personal income tax.

Partnerships and limited partnerships

Partnerships are also used as acquisition vehicles, as the structure is very simple. Partnerships are transparent for tax purposes, and each partner therefore has unlimited liability, but may also deduct any losses from the partnership.

Foreign companies etc., including foreign investors and partners, may be subject to limited tax liability on the Danish sourced income, if the entity is considered to have a permanent establishment in Denmark. As for passive investors, a provision in the Danish Corporate Tax Act specifies that a company with an investment in shares and with an acquisition of receivables, debts and financial contracts will, in general, only be regarded as having a permanent establishment in Denmark, if there is also a business activity, cf. the Danish Corporate Tax Act, Article 2(6).

Alternatively, a limited partnership is also an option.

e. Strategic vs Private Equity Buyers

This section is left intentionally blank.

6. ACQUISITION FINANCING

a. General Comments

The choice of financing model is generally governed by business/financial and legal matters. The most suitable financing model therefore depends on the case by case analysis.

Financing can basically be divided into two main categories, namely equity financing and debt financing.

Equity

A public limited company must have a minimum share capital equal to DKK400,000, and a private limited company must have a minimum share capital equal to DKK40,000.

A buyer may use equity to fund its acquisition or to capitalise the target post acquisition. There is no capital duty on the introduction of new capital into a Danish company or branch (or to a Danish-registered Societas Europaea), regardless of the nature of the contribution to equity. Any dividend distributions from a Danish corporation to a foreign parent company should not be subject to Danish withholding tax (''WHT'') provided that the foreign parent company is the beneficial owner of the dividend.

If the foreign parent company cannot be deemed the beneficial owner of the dividend, Danish WHT should generally be withheld at source with a rate of 27% unless it can be documented that i) the ultimate beneficial owners (''UBOs'') are EU and/or double tax treaty residents, ii) that these UBOs have ultimately received the payments and iii) that the respective UBOs are entitled to treaty benefits under the relevant double tax treaty (or are comprised by the EU Parent Subsidiary Directive).

If this cannot be documented, the UBOs may be able to reclaim any Danish WHT fully or partly depending on the specific tax status of the investors.

The use of equity may be more appropriate than debt in certain circumstances, for example i) where the target is loss making, it may not be possible to obtain immediate tax relief for interest payments, ii) a number of restrictions on Danish tax relief for interest may eliminate the principal advantage of using debt, iii) there may be non-tax reasons for preferring equity. For example, it may be desirable for a company to have a low debt-to-equity ratio for commercial reasons

Debt

The principal advantage of debt is the potential tax deductibility of interest as the payment of dividends does not result in a tax deduction.

Where it is decided to use debt, a further decision must be made as to which company should borrow and how the acquisition should be structured. Tax losses incurred by a Danish acquisition vehicle as a result of tax deductible financing costs may offset the positive taxable income in the Danish target group, as described in the section on group relief/consolidation.

Tax losses incurred by the acquisition vehicle prior to closing are either entity specific or only available for offset against any taxable income from companies participating in the buyer's tax group prior to closing. Thus, the timing of income and expenses should be considered.

As a main rule, any net financing costs incurred by Danish companies should be deductible for Danish corporate tax purposes. However, the Danish tax system includes a number of rules that may limit the tax deductibility of interest and other financial expenses (see further below).

b. Foreign Acquirer

From a Danish tax perspective there is no difference in the type of vehicle foreign investors may invest in compared to Danish investors.

However, special Danish rules on hybrids may apply.

c. Debt

The general limitations on the deductibility of interest expenses (described below) apply to share and asset acquisitions.

i Limitations on Interest Deductions

The Danish interest limitation rules relate to the following sets of rules: i) the thin capitalisation rule, ii) the interest ceiling rule and iii) the EBITDA-rule. The rules are applied in the above order.

Thin Capitalisation

The Danish thin capitalisation rule generally applies where a company's related party debt (which should include third party debt where such debt is guaranteed or otherwise secured by a related party) exceeds DKK10 million and its debt to equity ratio exceeds the 4:1 safe harbor (measured at year end).

Debt and equity should be calculated based on fair market values rather than book values.

The thin capitalisation safe harbor debt to equity ratio of 4:1 may be exceeded where it can be documented that similar financing could be obtained from an unrelated party and the interests payable represent an arm's length amount (i.e. both the quantum of debt and the interest rate applicable are arm's length).

Should a restriction be triggered under the thin capitalisation rule, excess debt should be requalified as equity until the 4:1 debt to equity ratio is met, and the related interest expenses should be disallowed for deduction purposes.

According to the thin capitalisation rule, the safe harbour should generally be calculated on a consolidated basis for Danish companies within the same group. However, this requirement only applies if the respective Danish companies would also be deemed to be group related in case, they were not controlled by a non-Danish holding company or an ultimate Danish holding company.

Interest ceiling rule

Under the interest ceiling rule, net financial expenses of DKK21.3 million should always be deductible. Please note that the term "financial expenses" comprise other expenses than strict interest payments.

If net financial expenses exceed the de minimis threshold of DKK21.3 million (following the application of the thin capitalisation rule), net financial expenses should be deductible to the extent that they do not exceed the interest ceiling. The interest ceiling should be calculated as the tax value of the Danish tax group's qualifying assets multiplied by a standard interest rate which is adjusted and published each year. The standard interest rate for 2022 is 2.2%.

In general, an interest disallowance under the interest ceiling rule should be permanent (i.e. the disallowed amount should not be carried forward to later periods for offset against taxable income).



EBITDA Rule

Under the EBITDA rule, the deductibility of net financial expenses (following the application of the thin capitalisation and interest ceiling rules) should be limited to 30% of the EBITDA. The 30% ratio may be replaced by the actual EBITDA ratio of the consolidated Danish tax group if more favourable.

A DKK22.3 million de minimis threshold should apply with respect to the EBITDA rule (i.e. where the group's interest capacity is less than DKK22.3 million, financial expenses of up to DKK22.3 million should be deductible irrespective of the EBITDA rule).

Disallowed interest under the EBITDA rule may be carried forward indefinitely and re-activated in future years while unused interest capacity may be carried forward for a maximum of five years

ii Related Party Debt

Generally, all Danish resident companies are subject to the Danish transfer pricing rules. These rules prescribe that all transactions between a Danish company and related companies must satisfy the arm's length principle (i.e. the prices and terms must reflect those that could be applied in a transaction with a third party). In most cases, the company must prepare documentation that supports the basis for the pricing.

The transfer pricing rules are relevant in relation to many aspects of a transaction, such as shareholder loans, intercompany guarantees, cash pool arrangements and transfer of goods, services and assets. The practice of the tax authorities is somewhat unclear, and each case must be examined on its specific facts and circumstances. Caution is advisable when determining the basis of the prices, especially where large amounts are involved.

iii Debt Pushdown

It is possible to introduce or increase leverage in a Danish company after the transaction (debt pushdown). There are various ways to complete the debt pushdown, and the Danish interest limitation rules should be considered. As these rules are complex, local advice should be sought to ensure that a debt pushdown will be effective.

d. Hybrid Instruments

Generally, amounts registered with the Danish Register of Companies are classified as equity. If an amount is not registered as equity, it is generally characterised as a loan even when it carries a right to participate in profits. Conversely, registered preference shareholders are always considered equity investors even where they are not entitled to participate in excess liquidation proceeds.

A subordinated debt is not regarded as share capital. Convertible notes are always regarded as loans until conversion. As a general rule, payments made before conversion are taxed as interest. After the conversion, the yield is taxed as a dividend.

Denmark has special anti-avoidance rules which applies to hybrid instruments, preventing double non-taxation.

e. Other Instruments

This section is left intentionally blank.



f. Earn-outs

Earn-outs are generally used in transactions where the parties of the transaction cannot agree on a value or where it is desirable to keep the old management/old shareholders involved with the company for a certain period following closing.

A payment is generally qualified as an earn-out for Danish tax purposes according to the Danish Tax Assesment Act art. 12 B if there is uncertainty of the total amount of the earn-out or if there is uncertainty about the duration of the earn-out.

An earn-out is taxed in accordance with art. 12 B if the earn-out is paid by one payment on closing and by several yearly payments after closing. If the earn-out is paid by one payment on closing and only one payment after closing the earn-out is not considered a periodic payment covered by art. 12 B.

The parties to a transaction must capitalise the value of the earn-out on closing and keep account of the capitalised value during the lifetime of the earn-out. The capitalised (the net present) value of the earn-out payment will be included in the sales prices of the underlying asset. Hence, if the underlying asset is shares, this means that the earn-out is to be treated as capital gains on the sale of the shares. If the payments under the earn out exceed the capitalised value, the seller will be taxed on the excess amount as ordinary taxable income and the buyer will receive a corresponding deduction in the taxable income.

As a main rule, an agreement between non-related parties should be recognised for Danish tax purposes by the Danish Tax Authorities.

According to Danish case law, an earn-out payment from the buyer to the seller of a company may be (fully or partly) requalified from a (tax exempt) capital gains event to salary if the earn-out payment(s) are primarily conditioned on the continued employment of the seller in a period after the sale. Local advice should be sought.



7. DIVESTITURES

a. Tax Free

As a main rule a sale of shares is a taxable event. However, a sale of shares in a company by a corporate shareholder holding more than 10% of the shares (if the shares are listed; for unlisted shares, the minimum holding requirement does not apply) is tax exempt for Danish tax purposes following section 4 A and section 9 of the Danish Act on Taxation of Capital Gains on shares.

Where the transaction is structured as a share exchange in which the seller receives shares in the purchasing company in exchange for shares in the target company, the seller may rollover the capital gain on the shares in the target company to the new shares. The rollover may be carried out either with or without pre-approval from the tax authorities. Various conditions must be met, depending on whether pre-approval is obtained, and local advice should be sought.

No pre-approval is required where the transaction is structured as a tax exempt merger, but special conditions must be met to obtain the rollover of capital gain for the seller and the tax values for the merging companies.

The Danish rules also allow for tax exempt demergers and contributions in kind of assets. The reorganisations may be carried out without pre-approval from the tax authorities in certain circumstances; however, a number of conditions must be satisfied and the shares received in the transaction generally cannot be sold for a period of three years. It is recommended to seek local advice to avoid adverse tax consequences of such transactions.

With the introduction of the Danish GAAR, no exemption is granted for tax exempt cross border mergers, demergers, share exchanges and contributions in kind if an arrangement or series of arrangements have been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that is not in accordance with the object or purpose of the EU Parent Subsidiary Directive, which is not genuine having regard to all relevant facts and circumstances. Furthermore, arrangements or series of arrangements shall be regarded as not genuine to the extent that they are not put into place for valid commercial reasons that reflect the economic reality.

b. Taxable

Generally, a planned exit to third parties would normally be made as either a sale of shares or a sale of assets (i.e. by way of an asset deal or a liquidation).

However, a sale of shares is generally the preferred exit alternative as a sale of shares to third parties should not be subject to Danish capital gains tax, WHT or stamp duties/transfer taxes.

A sale of assets is generally subject to Danish corporate income tax and stamp duties/transfer taxes may apply.

Sale of Shares

As a main rule, Denmark does not apply limited tax liability to gains on the sale of shares to third parties. Thus, a non-Danish company selling its shares of a Danish subsidiary should not be subject to Danish capital gains tax or WHT on the sale. However, if the sale of shares is combined with a reinvestment, a special anti-avoidance rule could potentially apply. However, for a transaction like this a re-investment should not be relevant.

There are no stamp duties or transfer taxes on the transfer or registration of shares in a Danish company.



Sale of Assets

Any gain on the sale of assets is generally subject to corporate income tax based on the realisation principle.

The Danish corporate income tax rate is 22%.

When selling depreciable assets, the buyer and seller must allocate the total cash value of the transfer to each category of depreciable assets included in the sale. The agreed allocation serves as the basis for capital gains taxation of the seller and as the depreciation basis/acquisition price for the buyer.

The Danish tax authorities may challenge either the total cash value or the allocation between depreciable assets. Where no allocation is made, the tax authorities may assess an appropriate allocation and both the seller and buyer are obliged to apply the assessed values.

The transfer agreement should carefully consider the purchase price allocation between the categories of assets because the depreciation profile for the various categories varies.

c. Cross Border

Generally, a sale of shares is a taxable event. However, a sale of shares can be exempt from taxes in certain cases, (i.e. if the shareholder holds more than 10% of the shares, if the shares are listed; for unlisted shares, the minimum holding requirement does not apply) and for some demergers and acquisitions if specific requirements are fulfilled.

Please also refer to section 7.a.



8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Resident companies are subject to taxation in Denmark on their worldwide income, according to the Danish Corporation Tax Act art. 8.

Branches and permanent establishments (of non-resident companies) are subject to taxation in Denmark only on their Danish source income.

b. CFC Regime

Denmark has two sets of Controlled Foreign Corporation ("CFC") rules: one regime for CFCs owned by Danish resident individuals, and one regime for CFCs held by Danish resident companies or non-transparent entities.

For individuals, CFC taxation will only be imposed if the resident individual controls the foreign company. The Danish individual will be taxed with a flat rate of 22% on any CFC income. Note that dividends to pay the CFC income tax may be distributed without tax.

The CFC regime for Danish corporate holders (including all limited liability entities) applies to both Danish and foreign financial companies. The Danish company or legal entity must be a "parent company" of the foreign entity in order for the income of the foreign entity to be CFC taxed. The foreign company or legal entity must have a CFC income exceeding more than 33.33% of its aggregate income.

c. Foreign Branches and Partnerships

As a main rule, income attributed to a permanent establishment in a foreign country should not be included in the taxable income of the company provided the Danish tax authorities agree that a permanent establishment exists, which will have a decreasing effect on the Danish taxes all things being equal.

The corporate income tax rates may differ between Denmark and the "permanent establishment country" leading to a different tax levied on the income attributed to the permanent establishment(s).



d. Cash Repatriation

Cash can be repatriated through e.g. dividend distributions or interest payments.

The domestic Danish dividend WHT rate is 27% on dividend payments to non-Danish corporate investors. However, the 27% WHT rate may be reduced to 0% at source provided that the following conditions are met:

- The recipient of the dividend holds at least 10% of the share capital of the dividend distributing Danish company,
- The recipient is a corporate entity/pension fund and the beneficial owner of the dividend; and
- The recipient qualifies for protection under 1) the EU Parent Subsidiary Directive (90/435/EC); or 2) a jurisdiction with which Denmark has entered into a DTT that provides for a reduced rate of dividend WHT (i.e. the DTT provides for a dividend WHT rate of less than 27%).

Additionally, the WHT may be lowered for corporate investors following application to the Danish Tax Authorities to 22% or 15% depending on where the investor is located, and the WHT may be lowered following a double tax treaty.

Dividends may only be distributed out of the distributable reserves.

For a Danish corporation as investor with a shareholding of at least 10%, the dividend is exempt for CIT purposes.

Interest payments from a Danish company to a foreign company should not be subject to Danish interest WHT provided that the foreign company can be deemed the beneficial owner of the interest.

If the foreign company cannot be deemed the beneficial owner of the interest, Danish WHT should be withheld at source with a rate of 22% unless it can be documented that

- The UBOs are EU and/or double tax treaty residents,
- that these UBOs have ultimately received the funds; and
- the respective UBOs are entitled to treaty benefits under the relevant double tax treaty (or are comprised by the EU Interest-Royalty Directive). If this cannot be documented, the UBOs may be able to reclaim any Danish WHT fully or partly depending on the specific tax status of the investors.



9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Registration of a change of ownership of land and buildings is subject to a duty of DKK1,750 plus 0.6% (in 2022) of the fair market value.

However, there are no transfer taxes or stamp duties (in Danish "Tinglysningsafgift") when transferring property though the use of property companies.

For Danish business properties, two types of property charges may be levied.

Firstly, a land tax (in Danish: "Grundskyld").

Secondly, some municipalities levy a business property tax (in Danish: "Dækningsafgift").

Effective from 1 January 2022 the business property tax shall, as well as the land tax, be computed upon the public value of the land. In addition, the method for determining the public value of land for non-residential properties has been changed. The new public values will be introduced gradually.

It should be noted that in Denmark capital gains and losses on real estate are taxable after a realization principle. However, there is currently a political agreement implying that real estate with a total value off more than DKK100 million from 2023 will be taxable after mark to market taxation (of capital gains). The mark to market taxation will lead to increased cash tax liabilities, which may result in additional strain on the company's liquidity and negatively impact financial results.

As of the date of this report, no draft proposal has been presented on the matter in the parliament.

b. CbC and Other Reporting Regimes

As Denmark signed the international agreement on automatic exchange of country by country reports ("CbC reports"), Danish businesses that are either the ultimate parent company or the surrogate parent entity of a group subject to CbC reporting should submit a CbC report to the Danish Tax Agency.

The Danish rules on CbC is in accordance with the standards settled in the OECD TP Guidelines.

A domestic company is required to prepare and submit a CbC report og the group for the financial year following the end of that year, if i) the consolidated financial statements include at least on foreign entity or a foreign permanent establishment, and ii) the consolidated revenue recognised in the consolidated financial statements for the preceding financial year is at least DKK5.6 billion (approximately EUR750 million).

If the domestic company is included in the consolidated financial statements of another country, this obligation does not exist.

The CbC Report must be submitted no later than one year after the end of the financial year concerned.



10. TRANSFER PRICING

Generally, Danish resident companies are subject to the Danish transfer pricing rules. These rules prescribe that all transactions between a Danish company and related companies must satisfy the arm's length principle (i.e. the prices and terms must reflect those that could be applied in a transaction with a third party). In most cases, the company must prepare documentation that supports the basis for the pricing.

Denmark's TP documentation requirements are generally based on OECD TP Guidelines. Denmark has issued a statutory order on documentation of the pricing of controlled transactions and Danish TP documentation guidelines, which generally comply with the OECD TP Guidelines. However, additional requirements may apply in certain instances. A company is also obligated to inform the Danish Tax Authorities about all intragroup transactions in their tax return.

The transfer pricing rules are relevant in relation to many aspects of a transaction, such as shareholder loans, intercompany guarantees, cash pool arrangements and transfer of goods, services and assets. The practice of the tax authorities is somewhat unclear, and each case must be examined on its specific facts and circumstances. Caution is advisable when determining the basis of the prices, especially when large amounts are involved.

The Danish transfer pricing rules generally require companies to prepare TP documentation on an onoing basis and the documentation must have been finalised no later than at the time for submission of the corporate tax return for the relevant year. Corporate tax returns are generally due to be filed within six months of the end of the applicable fiscal year.

Furthermore, effective for fiscal years starting 1 January 2021, a master file and a local file must be submitted to the Danish tax authorities within 60 days after the deadline for filing the tax return for the relevant year.

Please note that as a main rule the TP documentation requirements do not apply for minor groups. Groups with less than 250 employees which either have a balance sheet total of less than DKK125 million or an annual turnover of less than DKK250 million are generally not obligated to prepare TP documentation. However, TP documentation must always be prepared for certain transactions with companies, permanent establishments, etc. domiciled in a country outside the EU or in a country with no tax treaty with Denmark.



11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

Hybrid entities must be classified based on Danish law. Hybrid entities are rarely used.

b. Use of Hybrid Instruments

Hybrid instruments must be classified based on Danish law. Hybrid instruments are rarely used.

c. Principal/Limited Risk Distribution or Similar Structures

Denmark generally follows the OECD methodology. However, local requirements may apply.

d. Intellectual Property

Goodwill or other intellectual property rights acquired by a Danish company may be amortised by up to one-seventh annually. Know-how and patents may also be depreciated fully in the income year it is acquired

Profit or loss incurred as a result of a sale of acquired Goodwill or other intellectual property rights is taxable.

e. Special Tax Regimes

i Tonnage Tax regime

Shipping companies which are strategically and commercially managed within the EU/EEA may apply the Danish tonnage tax regime on income from vessels with a gross tonnage of minimum 20 tonnes that are providing transport of passengers or goods between different positions/locations, as well as income from certain special vessels without consideration to the requirement of transportation between different destinations.

For tonnage taxed activities, the taxes are imposed on synthetic income calculated as certain fixed monetary amounts on the net tonnage of each vessel subject to the Tonnage Tax Regime.

Consequently, the shipping companies are not taxed on their profits and are consequently generally not able to deduct their expenses.



ii Research and Development Costs ("R&D")

According to the Danish Assessment Act art. 8 B, R&D costs can be treated as tax deductible up to 130% (2022). The tax value of R&D costs may alternatively, according to the Danish Assessment Act art. 8 X, within certain categories be refunded upon application to the Danish tax authorities.

To utilise the R&D scheme, the development costs must fulfill specific conditions described in the preparatory work and established by the DTA. One of the central requirements is that the costs relate to creation of new knowledge that can significantly improve materials, mechanisms and products, process systems and services.

However, please note that the DTA's recent interpretation of the rule is very restrictive, especially regarding software development activities.

The R&D tax credit scheme can be used upon application to the DTA. The DTA will pre-accept the application and refund the amount, whereafter the DTA will make an assessment of the categorisation of the costs. Hence, if the DTA finds that the costs do not meet the conditions as defined above, the tax credit will have to be reversed.

12. OECD BEPS CONSIDERATIONS

Denmark generally supports the BEPS actions and has implemented several BEPS Action Points in Danish law. As a member of the EU and an active participant in the negotiations at OECD, the Danish tax system is generally becoming increasingly aligned with international standards. The current Danish government has a strong focus on preventing tax avoidance and tax abuse which is reflected in its initiatives both in international negotiations and through domestic legislation.

See also section 2 above.

13. ACCOUNTING CONSIDERATIONS

A business combination is defined under International Financial Reporting Standards ("IFRS") as a transaction or event in which an acquire obtains control of one or more businesses.

In Denmark, non-listed companies can freely choose to adopt either the Danish Accounting Act or IFRS when preparing their accounts. According to Danish generally accepted accounting principles (GAAP), most business combinations are to be accounted for as acquisitions. According to the IFRS, the acquisition method is used for all business combinations.

Merger accounting is restricted in the Danish Accounting Act to a small number of genuine mergers. One major requirement for a genuine merger is that the fair values of the entities are not significantly different. Further detailed conditions must be met. Merger accounting can always be used for intercompany combinations.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Only unrestricted distributable reserves stated in the annual report can be used for ordinary dividend distributions.

Reference is made to section 8.d regarding withholding taxes on dividend payments.

b. Application of Regional Rules

See section 11.e.

c. Tax Rulings and Clearances

It is possible to apply for a binding ruling from the Danish tax Authorities in order to get a confirmation regarding the tax consequences of an action that a taxpayer has made or intends to make. Such a ruling can normally be obtained within a period of four to six months. A fee of DKK400 is payable when filing the application.

15. MAJOR NON-TAX CONSIDERATIONS

This section is left intentionally blank.



16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Albania	No tax treaty	No tax treaty	No tax treaty	
Argentina	15 / 10	12	3 / 5 / 10 / 15	[1], [2], [3]
Armenia	15 / 5 / 0	5 / 0	10 / 5	[4], [5], [6]
Australia	15	10	10	
Austria	15 / 0	N/A	N/A	[7], [72], [73]
Azerbaijan	15 / 5	8 / 0	10 / 5	[8], [9], [10]
Bangladesh	15 / 10	10 / 0	0	[11], [12]
Barbados	No tax treaty	No tax treaty	No tax treaty	
Belarus	15	-	-	[72], [73]
Belgium	15 / 0	10	N/A	[13], [73]
Bolivia	No tax treaty	No tax treaty	No tax treaty	
Bosnia and Herzegovina	No tax treaty	No tax treaty	No tax treaty	
Botswana	No tax treaty	No tax treaty	No tax treaty	
Brazil	25	15 / 10	25 / 15	[14], [15]
Bulgaria	15 / 5	N/A	N/A	[16], [72], [73]
Canada	15 / 10 / 5	10 / 0	10 / 0	[17], [18], [19]
Chile	15 / 10	10 / 5 / 4	10 / 2	[16], [20], [21]
China	10 / 5	10 / 0	10 / 7	[16], [22], [23]
Croatia	10 / 5 / 5	5	10	[16], [24]
Cyprus	15 / 0 / 0 / 0	N/A	N/A	[25], [72], [73]
Czech Republic	15 / 0 / 0	N/A	10	[26], [72]
Denmark	-	-	-	[7]
Egypt	20 / 15	15	20	[27]
Estonia	15 / 5	10 / 0	10 / 5	[16], [28], [29]
Faroe Islands	15 / 0	N/A	N/A	[72], [73]
Finland	15 / 0	N/A	N/A	[7], [72], [73]
France	No tax treaty	No tax treaty	No tax treaty	[70]
Gambia	No tax treaty	No tax treaty	No tax treaty	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Georgia	10 / 5 / 0 / 0	N/A	N/A	[4], [72], [73]
Germany	15 / 5	N/A	N/A	[30], [72], [73]
Greece	18	8	5	
Hungary	15 / 0 / 0	N/A	N/A	[7], [31], [72], [73]
Iceland	15 / 0	N/A	N/A	[7], [72], [73]
India	25 / 15	15 / 10 / 0	20	[27], [32]
Indonesia	20 / 10	10 / 0	15	[1], [33]
Ireland	15 / 0	N/A	N/A	[13], [72], [73]
Israel	10 / 0 / 0 / 0	5 / 0	N/A	[7], [34], [35], [72], [73]
Italy	15 / 0	10 / 0 / 0 / 0	5 / 0	[36], [37], [38]
Jamaica	15 / 10	12.5 / 0	10	[39], [40]
Japan	15 / 0	10 / 0	0	[41], [42]
Kazakhstan	No tax treaty	No tax treaty	No tax treaty	
Kenya	30 / 20	20 / 0	20	[43], [44]
Korea, Republic of	15	15 / 0	15 / 10	[45], [46]
Latvia	15 / 5	10	10 / 5	[16], [47]
Lithuania	15 / 5	10	10 / 5	[16], [47]
Luxembourg	15 / 5	N/A	N/A	[16], [72], [73]
Macedonia	15 / 5 / 0	N/A	10	[16], [31], [72]
Malaysia	0	N/A	10	[72]
Malta	15 / 0	N/A	N/A	[36], [72], [73]
Mauritius	No tax treaty	No tax treaty	No tax treaty	
Mexico	15 / 0	15 / 5	10	[13], [48]
Montenegro	15 / 5	N/A	10	[16], [72]
Namibia	No tax treaty	No tax treaty	No tax treaty	
Netherlands	15 / 0	N/A	N/A	[7], [72], [73]
New Zealand	15	10	10	
Nigeria	No tax treaty	No tax treaty	No tax treaty	
Norway	15 / 0	N/A	N/A	[7], [72], [73]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Pakistan	15	15 / 0	12	[71]
Philippines	15 / 10	10 / 0	15	[39], [49]
Poland	15 / 5 / 0	5 / 0	5	[16], [24]
Portugal	10	10 / 0	10	[50]
Romania	15 / 10	10 / 0	10	[39], [51]
Russia	10	N/A	N/A	[72], [73]
Saudi Arabia	No tax treaty	No tax treaty	No tax treaty	
Serbia	15 / 5	10 / 0	10	[16], [52]
Singapore	10 / 5 / 0	10 / 0	10	[13], [53]
Slovakia	15	N/A	5 / 0	[54], [72]
Slovenia	15 / 5	5	5	[16], [24]
South Africa	15 / 5	N/A	N/A	[16], [72], [73]
Spain	No tax treaty	No tax treaty	No tax treaty	
Sri Lanka	15	10 / 0	10	[55]
Switzerland	15 / 0	N/A	N/A	[26], [72], [73]
Taiwan	10	10 / 0	10	[56]
Tanzania	15	12,5	20	
Thailand	10	15 / 10 / 0	15 / 5	[57], [58]
Trinidad and Tobago	No tax treaty	No tax treaty	No tax treaty	
Tunisia	15	12	15	
Turkey	20 / 15	15 / 0	10	[27], [59]
Ukraine	15 / 5	10 / 0	10 / 0	[16], [60], [61]
United Kingdom	15 / 0	N/A	N/A	[13]
United States	15 / 5 / 0	15	N/A	[62], [30], [73]
Venezuela	15 / 5	5 / 0	10 / 5	[63], [64], [65]
Vietnam	15 / 10 / 5	10 / 0	15 / 5	[66], [39], [67], [68]
Zambia	15	10 / 0	15	[69]
Zimbabwe	No tax treaty	No tax treaty	No tax treaty	



Footnotes	
[1]	If the receiving company directly owns at least 25% of the total capital of the paying company, which is considered resident in the country of source, and the receiving company is considered the rightful owner of the dividend, the country of source will only be able to impose 10% tax on dividend.
[2]	Article 10 does not apply to situations in which the rightful owner carries on a trade in that state in which the paying company is resident through a permanent operating point or carries out free trade.
[3]	The country of source is (in general) able to apply tax up to 3% regarding news, 5% regarding copyright on artistic work in general, 10% regarding patent and trademarks and 15% regarding everything else
[4]	0% tax rate for corporate shareholders holding a certain capital participation of at least 50% and a combined investment of at least EUR2 million. 0% tax rate to the Georgian National Bank and to government entities. 5% tax rate to corporate shareholdings holding a capital participation of at least 10% and a combined investment of at least EUR100,000.
[5]	Interest paid to the Armenian National Bank or any government institution is free of withholding tax.
[6]	The tax can be raised to 10 % in certain cases.
[7]	0% tax rate to corporate shareholders holding a capital participation of at least 10%.
[8]	5% tax rate to corporate shareholders holding a capital participation of at least 20% and provided that an investment of at least EUR1 million has been made.
[9]	Interest is free of withholding tax if it is paid by or to either country's government or an administrative-territorial subdivision or a local authority or Central Bank thereof; or if the beneficial owner of the interest is either the State Oil Fund in Azerbaijan or the Investment Fund for Developing Countries in Denmark.
[10]	5% regarding royalties on patent or trademark.
[11]	10% tax rate for corporate shareholders holding a capital participation of at least 10%.
[12]	Interest paid to the Bangladeshi National Bank, the Bangladesh Government and interest paid in connection with a loan provided or guaranteed by the Bangladeshi National Bank, government or any governmental institution are free of withholding tax.
[13]	0% tax rate to corporate shareholders holding a capital participation of at least 25%.
[14]	Interest paid to the Brazilian Government, or a political subdivision thereof is free of withholding tax.
[15]	25% tax rate on trademarks.
[16]	5% tax rate to corporate shareholders holding a capital participation of at least 25%.
[17]	5% tax rate to corporate shareholders holding a capital participation of at least 25%. 10% of the gross amount of the dividends if paid by a non-resident owned investment corporation which is resident in Canada to a beneficial owner which is resident in Denmark, who holds at least 25% of the capital of the company paying the dividends.
[18]	Default interest, interest paid to the Canadian National Bank, interest paid in connection with a credit purchase of goods or services between independent parties, interest paid to certain pension funds, interest deriving from government stocks and interest from export loans provided or guaranteed by The Export Development Corporation are free of withholding tax.



Footnotes	
[19]	Royalties for literary or artistic work (excluding movie rights), and royalties for the use of computer software or any patent or royalties for the use of information concerning industrial, commercial or scientific experience are free of withholding tax.
[20]	4% tax rate for primary financial companies and when the interest pertains to sales of machinery or equipment. 5% tax rate on interest derived from bonds and securities that are traded on a recognised securities market.
[21]	2% tax rate for the use of scientific, commercial or industrial use.
[22]	Interest paid to the Chinese National Bank or the Chinese Government, and interest paid in connection with a loan provided or guaranteed by the Chinese National Bank, government or any governmental institution is free of withholding tax.
[23]	10% tax rate for literary work or artwork. 7% for industrial, commercial or industrial use.
[24]	5% tax rate to pension providers investing.
[25]	0% tax rate to corporate shareholders holding a capital participation of at least 10%, to pension providers investing and to government entities.
[26]	0% tax rate to corporate shareholders holding a capital participation of at least 10% and to pension providers investing.
[27]	15% tax rate to corporate shareholders holding a capital participation of at least 25%.
[28]	Interest paid to the Estonian National Bank, or the Estonian Government and interest paid in connection with a loan provided or guaranteed by the Estonian National Bank, government or any governmental institution are free of withholding tax.
[29]	5% for industrial or commercial use.
[30]	5% tax rate to corporate shareholders holding a capital participation of at least 10%.
[31]	0% tax rate to pension providers investing.
[32]	Interest paid to the Indian National Bank, or any government institution is free of withholding tax. 10% tax rate to interest paid to a bank.
[33]	Interest paid to the Indonesian Government and to certain government institutions is free of withholding tax.
[34]	0% to pension providers investing and to government entities. 0% to pension providers investing and to government entities.
[35]	Interest paid: to pension providers; in connection with corporate bonds; to the government; and to certain government institutions is free of withholding tax.
[36]	0% tax rate to corporate shareholders holding a capital participation of at least 25% for at least 12 months.
[37]	Interest paid in connection with a credit purchase of industrial, commercial or scientific equipment, and interest paid by the Danish Government or a government institution, and interest paid on a loan provided or secured by the Italian government or a subdivision thereof are free of withholding tax.
[38]	Royalties from literary work, artwork and scientific work (excluding IT-programming and movie rights) are free of withholding tax.
[39]	10% tax rate to corporate shareholders holding a capital participation of at least 25%.
[40]	Interest paid to the Jamaican Government, or a subdivision thereof is free of withholding tax.
[41]	0% withholding tax if the recipient of the dividend has owned directly for a period of six months at least 10% of: in the case that the dividend paying company is a resident of Japan, the voting power of that company; and in the case that the company paying dividends is a resident of Denmark, the capital of that company; or a pension fund under certain conditions.



Footnotes	
[42]	Certain interest - when based on the income, sales, profit or other forms of cashflow of the borrower or an associated entity of the borrower, or if the interest is based on the value of certain assets of the borrower or an associated entity of the borrower, or finally if the interest is based on payments of dividend of other such forms of payment made by the borrower or an associated entity of the borrower - may be taxed in the contracting state in which the interest arises. The tax rate cannot exceed 10% if the beneficial owner of the interest is a resident in the other contracting state.
[43]	20% tax rate to corporate shareholders holding a capital participation of at least 25% for at least six months.
[44]	Interest paid to the Kenyan National Bank, or the Kenyan Government is free of withholding tax.
[45]	Interest paid to the government, or a subdivision thereof is free of withholding tax.
[46]	10 % tax rate on industrial investments.
[47]	5% for industrial, commercial or scientific use.
[48]	5% tax rate for interest paid to banks.
[49]	Interest paid in connection with a loan provided by the Philippine state or an institution controlled by the Philippine state is free of withholding tax.
[50]	Interest paid to the Portuguese state or any subdivision thereof and interest paid to the Portuguese National Bank is free of withholding tax.
[51]	Interest paid to the Romanian state and interest paid in connection with a loan guaranteed or indirectly financed by the Romanian state is free of withholding tax.
[52]	Interest paid to the Serbian state or any subdivision thereof and interest paid to the Serbian National Bank is free of withholding tax.
[53]	Interest paid to the Singaporean Government is free of withholding tax.
[54]	Royalties from cultural activities are free of withholding tax.
[55]	Interest paid to the state of Sri Lanka, any subdivision thereof or any financial institution owned by the state of Sri Lanka is free of withholding tax.
[56]	Interest paid to the state of Taiwan, any subdivision thereof or any financial institution owned or controlled by the state of Taiwan is free of withholding tax.
[57]	10% tax rate for interest paid to financial institutions. Interest paid to the state of Thailand, any subdivision thereof or any financial institution owned or controlled by the state of Thailand is free of withholding tax.
[58]	5% tax rate for literary work, artwork and scientific work.
[59]	Interest paid to the Turkish Government or to Türkiske Cumhuriyet Merkez Bankasi is free of withholding tax.
[60]	Interest paid to the state of Ukraine in connection with a loan provided or guaranteed by a financial institution owned or controlled by the state of Ukraine and interest relating to a credit purchase of industrial, commercial or scientific equipment is free of withholding tax.
[61]	Royalties from know-how on industrial, commercial and scientific experience are free from withholding tax.
[62]	0% tax rate to corporate shareholders holding a capital participation of at least 80% for at least 12 months, certain public institutions and pension funds.



Footnotes	
[63]	5% tax rate to corporate shareholders holding a capital participation of at least 25% for at least 12 months.
[64]	Interest paid to the Venezuelan Government, or any subdivision thereof, including the Venezuelan National Bank, and interest paid on loans provided or guaranteed by any of the abovementioned institutions with the purpose of promoting export and development is free of withholding tax.
[65]	5% tax rate for technical assistance.
[66]	5% tax rate to corporate shareholders holding a capital participation of at least 70% or an investment of at least USD12 million.
[67]	Interest paid to the Vietnamese Government, or any subdivision thereof, including the Vietnamese National Bank is free of withholding tax.
[68]	5% for commercial or industrial use.
[69]	Interest paid to the government of Zambia, or any subdivision thereof, is free of withholding tax.
[70]	Currently no tax treaty, however in progress.
[71]	Interest paid to the Pakistani Government, or the Pakistani National Bank is free of withholding tax.
[72]	Interest is exempt from taxation, unless the rightful owner carries on business in the other contracting state trough a permanent establishment situated therein, or unless the rightful owner performs independent personal services from a fixed place situated therein, and the debt-claim from which the interest is paid is effectively connected with the permanent establishment / fixed place. If the interest amount surpasses market value due to a special connection between the rightful owner and the payer, the surplus amount is taxable by both states. Or Interest is exempt from taxation unless the rightful owner carries on business or performs independent personal services from respectively a permanent establishment or fixed place in that state in which the debt-claim is effectively connected to. If the interest amount surpasses market value due to a special connection between the rightful owner and the payer, the surplus amount is taxable by both states.
[73]	Royalties are exempt from taxation, unless the rightful owner carries on business in the other contracting state trough a permanent establishment situated therein, or unless the rightful owner performs independent personal services from a fixed place situated therein, and the right or property from which the royalties arise is effectively connected with the permanent establishment/fixed place. If the royalty amount surpasses market value due to a special connection between the rightful owner and the payer, the surplus amount is taxable by both states. Or Royalties are exempt from taxation unless the rightful owner carries on business or performs independent personal services from respectively a permanent establishment or fixed place in the other contracting state, and the right or property from which the royalties arise is effectively connected to the other contracting state. If the royalty amount surpasses market value due to a special connection between the rightful owner and the payer, the surplus amount is taxable by both states.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

As a main rule, the statute of limitations ("SoL") in Denmark is 1 May in the fourth calendar year following the end of the relevant income year.

On this basis the 2022 income tax year will remain open to potential tax authority audit until 1 May 2026.

The SoL may be extended by two years under certain circumstances including with respect to intercompany transactions and certain tax exempt restructurings.

It should be noted, however, under extraordinary circumstances (e.g. gross negligence, fraud etc.) the tax authorities can investigate and reopen closed income years. In those situations, an absolute SoL of 10 years applies.

On this basis, unless otherwise stated below, documents are requested for the past five years.

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	Tax	Confirmation that all tax and VAT filings have been made in due time and been settled in due time, and whether you consider these to be correct and in accordance with applicable law.
2	Tax Due Diligence	Tax	Information on whether any aggressive tax positions have been taken by the Target Companies
3	Tax Due Diligence	Tax	Description of the Target Companies' internal business procedures in relation to corporate taxes, e.g. - who has the overall responsibility and the day to day responsibility for corporate taxes, - who handles communication with the tax authorities regarding corporate taxes and to what extent have the Target Companies had correspondence with the tax authorities, and are any external advisers employed in this connection (auditors, tax experts etc) - who is responsible for preparing/reviewing the income tax returns, and to what extent are external advisers employed for this.
4	Tax Due Diligence	Tax	Provision of copies of the long form annual audit reports for the Target Companies for the income years under review.
5	Tax Due Diligence	Tax	Provision of a corporate overview, including an overview of the members of the Danish joint taxation group of which the Target Companies are part of and the members of the VAT group of which the Target Companies are part of (if any).
6	Tax Due Diligence	Tax	Indication of name and contact information of tax advisers (internal and external) who have been assisting the Target Companies enabling us to contact the tax advisers to discuss existing risks.
7	Tax Due Diligence	Tax	Provision of a description of the involvement of external tax advisers.
8	Tax Due Diligence	Tax	Provision of copies of any correspondence with tax authorities (incl. requests, inquiries, decisions, considerations, audits, advance rulings etc.)
9	Tax Due Diligence	Tax	Provision of all correspondence, memos etc. relating to corporate tax, transfer pricing, property taxes, VAT, PAYE and excise duties between the Target Companies and the auditors and/or other tax advisers.
10	Tax Due Diligence	Tax	Provision of a copy of the Danish tax/VAT registration certificates for the Target Companies
11	Tax Due Diligence	Tax	Provision of an overview of any COVID-19 aid packages received by the Target Companies.

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Nº.	Category	Sub-Category	Description of Request
12	Tax Due Diligence	Tax	Provision of corporate tax returns and specifications (including draft returns ready for submission) for the Target Companies for the income years under review, including: 1) submitted tax returns, 2) schedules for computation of the taxable income, 3) computation of deferred taxes including tax reconciliations, 4) schedules for computation of the joint taxable income, 5) schedules for computation of interest limitation (if any) and 6) schedules for fixed assets.
13	Tax Due Diligence	Tax	Provision of copies of tax assessments (in Danish: årsopgørelser) for the Target Companies for the income years under review.
14	Tax Due Diligence	Tax	Provision of information on the expected taxable income for the period from 1 January 202X and until today's date, especially whether any changes is expected to the taxable income etc. compared to the income years under review for the Target Companies.
15	Tax Due Diligence	Tax	Confirmation that all tax returns, notifications, payments etc. have been filed and paid in due time.
16	Tax Due Diligence	Tax	Provision of information on any permanent establishments for the Target Companies (if not relevant then an indication of this).
17	Tax Due Diligence	Tax	Provision of a list of the jurisdictions of which the Target Companies have paid taxes within the last three years (if the Target Companies have not paid taxes in any other jurisdictions than Denmark then an indication of this).
18	Tax Due Diligence	Tax	Provision of information pertaining to any announced or ongoing tax audits of the Target Companies.
19	Tax Due Diligence	Tax	A list with dates and a description of any acquisitions, mergers, or other restructurings within the income years under review.
20	Tax Due Diligence	Tax	Information on any (i) distribution of dividend, (ii) payment of interest on shareholder loans and (iii) any other payments or funding to/from related parties (parties, loan amount, interest level), including restructuring of funding, group contributions, cash pooling etc) for the past three income years and copies of any form for reporting on withholding taxes etc.
21	Tax Due Diligence	Tax	Provision of an overview of all transactions between the Target Companies and its shareholders.
22	Tax Due Diligence	Tax	Provision of copies of any transfer pricing policy prepared for the intra-group transactions (i.e. policy for interest rates on loans, profit margins on services performed etc.).
23	Tax Due Diligence	Tax	Provision of copies of any benchmark studies etc. prepared in connection with the transfer pricing policy.
24	Tax Due Diligence	Tax	Provision of copies of any transfer pricing documentation prepared for the Target Companies.
25	Tax Due Diligence	Tax	Provision of copies of property valuations for properties owned by the Target Companies.
26	Tax Due Diligence	Tax	Provision of copies of property tax bills for the income years (if any).
27	Tax Due Diligence	Tax	Provision of copies of any lease agreements, including addenda (if any).

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Nº.	Category	Sub-Category	Description of Request
28	Tax Due Diligence	VAT	Provision of the VAT returns for the Target Companies for the past three years.
29	Tax Due Diligence	VAT	Provision of documentation of the voluntary registration for the lease of real property.
30	Tax Due Diligence	VAT	Information on whether the Target Companies have any employees working on the development of the building, e.g. working construction on the building site.
31	Tax Due Diligence	VAT	Information on whether any other lease agreement is in place.
32	Tax Due Diligence	VAT	Specification on the level of VAT deduction of the Target Companies. If the Target Companies are only entitled to partial VAT recovery, a specification on the determination of the deduction percentage is needed.
33	Tax Due Diligence	VAT	Provision of specifications on the VAT regulation obligation on each of the investment goods.
34	Tax Due Diligence	VAT	Confirmation that all VAT returns have been filed and VAT has been paid in due time.
35	Tax Due Diligence	VAT	Specification on whether the Target Companies have sold any real property within the past three years and if so, a specification on the VAT treatment hereof.
36	Tax Due Diligence	PAYE	Confirmation that all PAYE withholding obligations and payment and reporting of taxes, labour market contributions and social securities have been made in due time.
37	Tax Due Diligence	PAYE	Provision of information on the general handling of PAYE (withholding tax, payment and reporting of taxes and labour market contributions and payment and reporting of social security contributions).
38	Tax Due Diligence	PAYE	Provision of information on incentive/bonus/benefit/stock programs, etc. for employees and management of the Target Group (If not relevant, then an indication of this).
39	Tax Due Diligence	PAYE	Provision of an overview of payments to self-employed consultants made by the Target Companies for the past three years.
40	Tax Due Diligence	PAYE	Information and details about any internationally mobile employees working for Target Companies.

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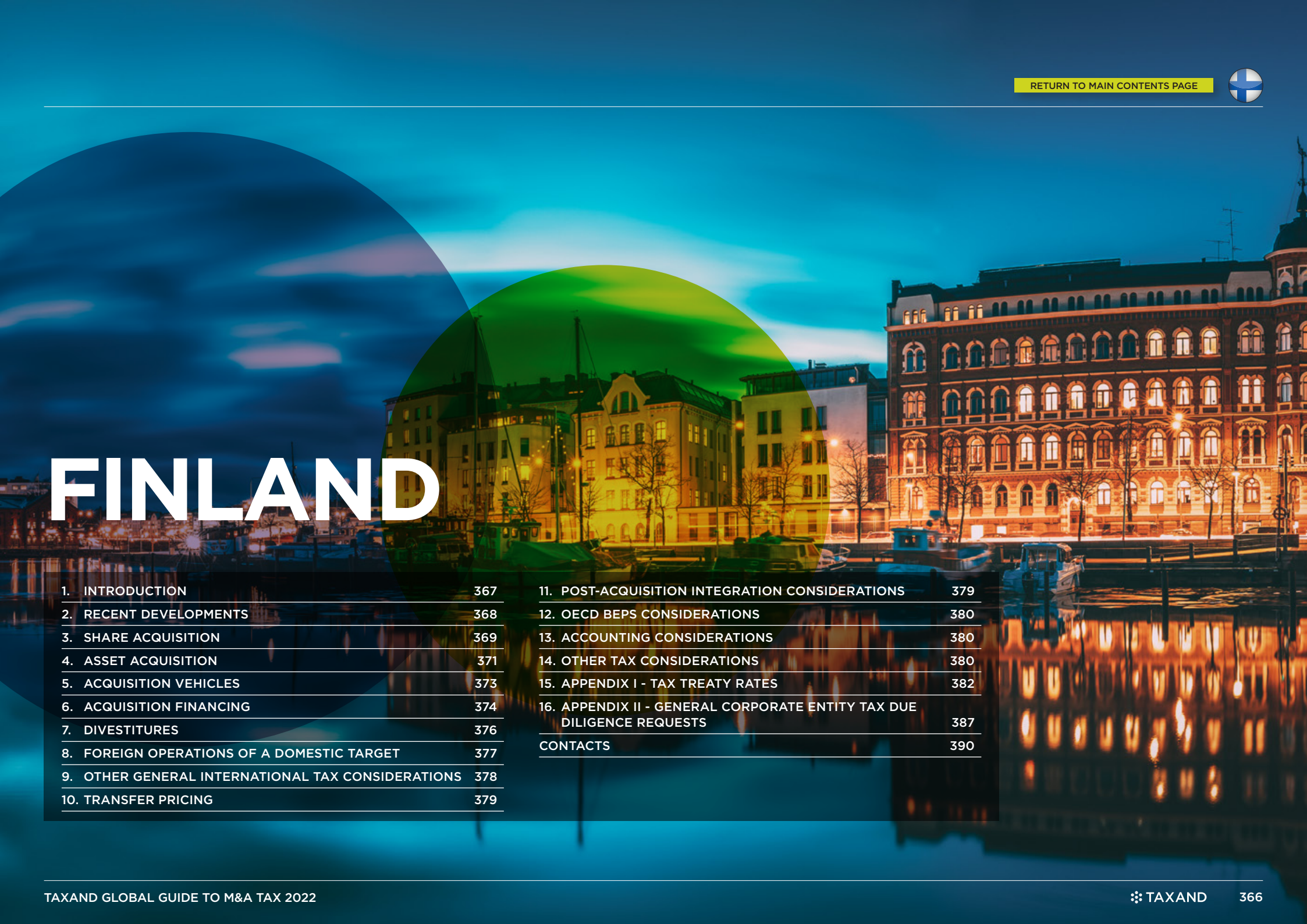
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1. INTRODUCTION

a. Forms of Legal Entity

Finnish limited liability companies are Finnish tax residents purely as a result of having been incorporated in Finland, and thus, are separately liable to Finnish income tax. However, it is possible under certain conditions to apply the Finnish group contribution regime to enable group companies to offset their profits and losses. The current corporate income tax rate is 20%. With regard to private equity funds, the fund is usually organised as a Finnish limited partnership, which holds the target company through holding companies. A limited partnership is not a taxable subject for corporate income tax purposes, but the partners are liable to tax to their participation in the limited partnership. However, limited partners who are non-resident in Finland and invest in Finnish private equity funds are liable to tax only as if the income had been directly obtained provided that the limited partner is resident in a double tax treaty state. This means that the tax treatment of the income included in the fund's share of income is determined according to the original type of income, as if the limited partners had received the income directly instead of through a fund. Therefore, Finnish and treaty based tax exemptions and withholding rates, which are available to non-resident direct shareholders of Finnish companies generally apply.

A real estate company is not a specifically defined legal term in Finnish law even though it is commonly used in practice; real estate companies can be organised, (e.g. as ordinary limited liability companies, residential housing companies or mutual real estate companies ("MRECs")). Regular real estate companies ("RECs") operate just as any limited liability companies, (i.e. there is no flow through of income to the shareholders and taxable profits are expected to be incurred on the REC level). MRECs are limited liability companies with the purpose to own and manage at least one building or a part of a building. A MRECs' shares are attributable to certain parts of the real property and based on their shareholding shareholders are entitled to hold and control the respective parts of the real estate. Therefore, for example, rental income arising from the leasing of the real estate accrues directly to the shareholders. Typically, income received by MREC comprises of monthly charges that the shareholders pay to the mutual real estate company.

b. Taxes, Tax Rates

As noted above, the Finnish corporate tax rate is 20%.

The standard rate of VAT in Finland is 24%. However, two reduced VAT rates (14% and 10%) and a zero-rate of VAT are applied to certain goods and services.

The Finnish capital income tax rate for resident individuals is 30% up to EUR30,000 and 34% over EUR30,000; while earned income is taxed in accordance with the progressive scale of state taxation.

c. Differences between income shown on tax returns and local financial statements

In general, the taxable income is calculated based on the financial accounts prepared in accordance with Finnish accounting standards and the profit shown in the accounts is taxable as a starting point. Typical differences between accounting and taxation may occur with respect to, for example, dividends and capital gains arising from shares. As a main rule, dividends from EEA sources are treated as tax exempt income for a Finnish company shareholder. In addition, capital gains of shares in EU-resident companies are tax exempt for a Finnish company provided that the participation exemption applies. Other divergences may relate to, (e.g. certain share acquisition costs, depreciation and devaluation of assets), which are not deductible for tax purposes.

2. RECENT DEVELOPMENTS

a. General Comments

The most recent developments in Finland relate closely to the implementation of Anti-Tax Avoidance Directive ("ATAD"). Finnish interest deduction limitations concerning the tax deductibility of interest payments have been generally applicable to corporations, partnerships, corresponding foreign entities and their permanent establishments as of fiscal year 2014. Due to the national implementation of ATAD that entered into force 1 January 2019, the limitations also cover net interest expenses to third party loans, to which a general safe haven of EUR3 million of net interest expenses would be applicable. Moreover, the rules of equity-based ratio exemption have changed as of 1 January 2022. The new rules aim to limit the use of the exemption especially in private equity structures. Under the amended rules, shareholder debt will be classified as equity in a parent company's consolidated financial statements for equity-based ratio exemption purposes, in case the debt has been issued by a party holding at least 10% of the shares, voting power, or rights to the profits of any group company. The holding could be direct, or through a related party.

In addition, the CFC regulation has been amended due to ATAD as of 1 January 2019 and reverse hybrid rules as of 1 January 2022 due to ATAD2.

As for the most topical case law, the Supreme Administrative Court ("SAC") published two rulings on debt push down structures in 2021. The use of debt push down in third party acquisitions was accepted by the SAC (SAC 2021:179) whereas the SAC deemed debt push down in an intra-group reorganisation artificial and tax avoidance (SAC 2021:178). Therefore, going forward, the use of Special Purpose Vehicles ("SPVs") has to be carefully analysed in order to avoid the application of Finnish anti-avoidance provisions.

b. Amended transfer pricing adjustment provision

According to the previous transfer pricing adjustment provision, it was not possible to disregard a business transaction that has been agreed and implemented by the parties. The Supreme Administrative Court had stated in several rulings that making such a transfer pricing adjustment would require an explicit authorisation, which was not included in the Finnish transfer pricing adjustment provision. As a result, the transfer pricing adjustment provision was amended and new provision entered into force on 1 January 2022. Under the amended provision, the analysis of whether the actual transaction executed between the associated enterprises complies with the arm's length principle should always include an accurate delineation of the transaction based on the economically relevant characteristics of the transaction. The amended provision hence allows making transfer pricing adjustments to the full extent permitted by the OECD Transfer Pricing Guidelines.

c. Coronavirus (COVID-19) actions and measures

Finland does not have specific COVID-19 measures in place in relation to taxation anymore except for certain VAT exemptions. However, previously there were some measures implemented to address the COVID-19 outbreak. The Government and the competent authorities implemented decisions and recommendations in accordance with the Emergency Powers Act, the Communicable Diseases Act and other legislation. These decisions and recommendations targeted for providing corporate taxpayers with short-term liquidity. The measures included, for example, a possibility to request more time to file tax returns in 2020 and 2021, removal of late-filing penalties, temporary refunds of VAT to the companies, as well as allowing payment arrangements with eased terms and removal of late-payment interest. Temporary exemptions of import duties and VAT on imports outside of the EU and the VAT exemption of the domestic sales and intra-community

acquisition of medical equipment and supplies and coronavirus home tests remain in force until the end of June 2022. Companies may still apply for amendments to the amounts of the tax prepayments and for more time for filing income tax return or real estate tax return. The COVID-19 measures could have importance for example, when analysing whether the tax returns have been filed on time and whether VAT has been correctly paid and withhold. With regard to the application of tax treaties, the Finnish Tax Administration instructed in line with the OECD guidelines that exceptional and temporary changes in circumstances caused by the COVID-19 pandemic will not, as a starting point, lead to the establishment of a new permanent establishment in Finland.

3. SHARE ACQUISITION

a. General Comments

In general, share acquisitions are preferred due to the possible application of the participation exemption and the tax saving it may have in the seller's income taxation. Moreover, the buyer may obtain transfer tax savings in comparison to direct transfers of real estate. On the other hand, the buyer has to deal with all underlying tax risks relating to the purchased company even though depending on the circumstances the seller may be liable to reimburse additional taxes due. In addition, due to the divergent treatment of acquisition costs of shares and annual expenses attention should be paid to possible tax savings with respect to allocation of transaction costs. Acquisition costs are not subject to depreciation, whereas, for example, financial costs relating to the acquisition of shares are deducted as annual expenses, (i.e. they are not included in the shares' acquisition costs). This means that costs relating to financing or refinancing of the target company should be deductible in the acquisition year, whereas the acquisition cost of the acquired shares are not subject to depreciation. Especially with regard to shares to which participation exemption is applicable, the classification of costs as acquisition costs of shares may result in non-deductibility of these costs.

As a general rule, the VAT on acquisition costs can be recovered by the buyer provided that the buyer starts supplying VAT taxable management services to the acquired company after the acquisition. However, in case of acquisition companies indirectly owned by private equity funds, the Finnish Tax Administration has challenged the deduction right based on the view that the acquisition costs relate to the VAT exempted investment activity of the private equity fund and not to the VAT taxable activities of the acquisition company. There are currently several cases pending concerning the matter, and it is expected that the question will be solved by a court decision in the future.

b. Tax Attributes

A change of control in a company causes a forfeiture of tax losses, but generally other tax attributes remain unaffected. The right to carry forward losses is forfeited, if more than 50% of shares in a company have changed hands during the loss year or thereafter (i.e. the 50% change does not have to occur under one single transaction). In addition, if a corresponding change of ownership has taken place in a company owning at least 20% of the shares in the loss making company, such shares in the loss making company are deemed to have changed hands (i.e. care needs to be taken in cases of indirect transfers of shares also). The Finnish Tax Administration may upon application under certain conditions grant a special permission to offset losses despite the ownership change. In case of a merger or demerger the transfer of losses is conditional and has to be evaluated case by case basis.

However, for a listed company the right to carry forward losses is not forfeited unless more than half of the non-listed shares change hands (i.e. changes in the ownership of listed shares do not result in forfeiture of losses). Changes in ownership of listed shares do not affect losses of companies owned by listed companies either.

c. Tax Grouping

Corporations are taxed separately under the Finnish tax regime. However, the Finnish group contribution regime allows under certain conditions Finnish group companies and Finnish permanent establishments to offset their profits and losses. In practice, the eligible contribution is deducted from the taxable income of the contributing company, whereas the contribution is considered to be taxable income of the acquiring company.

The group contribution regime is available only if certain conditions are met, such as both the contributing and acquiring companies are Finnish tax residents carrying out business activities. Additionally, there must be a sufficient direct or indirect group ownership between the participating companies. Moreover, it is required that the group relationship between participating companies has lasted for the entire fiscal year and that the participating companies' financial years ends at the same time. Group contribution is also available to holding companies and RECs as of fiscal year 2020 irrespective of if they carry out business activities. Since the beginning of 2021, a foreign entity similar to a limited liability company may also be a party to group contribution if the foreign entity is taxable in Finland based on effective place of management. In such cases the group relationship is deemed to have existed only for the period during which the foreign entity has been generally taxable in Finland based on the place of effective management.

For VAT purposes, grouping is available for companies engaged in financial and insurance activities when the companies in question are closely bound to one another by financial, economic and organisational links.

d. Tax Free Reorganisations

As an EU Member State, Finland has harmonised its tax provisions for tax neutral corporate transactions in accordance with the Merger Directive. These rules apply to reorganisations involving entities in EU/EEC and to purely domestic transactions. Additionally, according to old case law, tax neutral reorganisation provisions should apply also to mergers involving parties residing in tax treaty states, if the merger meets conditions for a merger under the resident state's legislation. However, share exchanges where the receiving company (i.e. the company who receives the shares) has resided in a non-EU/EEC country have not been treated as tax neutral.

Tax neutral mergers, divisions and transfers of assets are commonly utilised as pre- or post-acquisition measures. An exchange of shares is mostly used as a means of carrying out the acquisition itself. Tax neutrality of reorganisations in effect means that arrangements do not cause income tax implications either for companies participating in the arrangements or their shareholders. Tax neutrality is often subject to fulfilment of certain conditions, for example in mergers, divisions and exchanges of shares, there are restrictions on the amount of cash contributions.

Sale of shares is exempt from VAT in Finland. Mergers and divisions are universal successions and therefore, they are considered out-of-scope of VAT in Finland.

e. Purchase Agreement

The feasible transaction structure and the need for special tax related representation, warranties and indemnity clauses depend on the given case at hand.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

A transfer tax of 1.6% of the acquisition price is levied on the transfer of shares and other securities in Finnish companies. For real estate and housing companies, the transfer tax is 2%. As a main rule, transfer tax is not applicable to trade of shares in publicly listed companies. Additionally, a transfer of shares between parties not tax resident in Finland are exempted from Finnish transfer tax unless the target is directly or indirectly a Finnish real estate or housing company. In addition to the acquisition price of the shares, the transfer tax base may include other payments benefiting the seller.

The purchaser is liable to pay the transfer tax and file a transfer tax return to the Finnish Tax Administration.

g. "Purchase accounting" applicable to share acquisitions

No special legal provisions are in place to step up the value of the target company's underlying assets upon the acquisition of its shares. However, in legal practice it has been ruled that the basis of the assets may be step up for tax purposes regardless of accounting treatment.

The acquisition cost of the shares as well as costs arising directly from facilitating the acquisition, such as fees from legal and other professional services and transfer tax, are included in the acquisition cost of shares. As such, the buyer may not depreciate the acquisition cost of the shares. The acquisition cost of shares is deductible against sales proceeds of the shares unless the participation exemption is applicable.

h. Share Purchase Advantages

Share deals are typically preferred by the sellers because under certain conditions the participation exemption may apply in which case the sale of the shares would be tax exempt.

Confirmed tax losses of the target company may under certain conditions be utilised against the target company's future profits despite the change in ownership. Additionally, in a share deal, a buyer may gain transfer tax savings, if assets of the target company comprise of real properties.

i. Share Purchase Disadvantages

With respect to direct tax consequences, two significant tax disadvantages could be considered with regarding a share deal. Firstly, transfer tax of either 1.6% or 2% of the acquisition price is levied on the transfer of shares in Finnish companies (other than publicly traded shares). If the value of the company is mainly based on property other than the securities or real estate it owns, then the basis for transfer taxation can be significantly higher in comparison to an asset deal. Secondly, the buyer cannot depreciate the acquisition cost of shares. The depreciation of the target company's assets may be continued within the company according to the depreciation plan applied by the seller, but goodwill paid on the shares cannot be depreciated.

A sale of shares is exempt from VAT. From the seller's point of view, a potential disadvantage is that the deduction of VAT incurred on transaction costs may be denied. However, according to the Finnish Supreme Administrative Court's ("SAC's") rulings, a seller of shares is able to deduct the VAT on transaction costs as overhead costs when the shares are sold in connection with closing down a part of the business. This concerns for example a situation where a parent company sells the shares of a subsidiary to which the parent company has supplied VAT taxable services.

4. ASSET ACQUISITION

a. General Comments

In general, an asset acquisition is preferred by a buyer, since it enables the buyer to depreciate assets in comparison to share acquisitions. However, from the seller's point of view an asset deal is a taxable event, the feasibility of which depends on the possibility of tax savings by, for example costs and loss deductions.

VAT on acquisition costs can be recovered by the buyer in the proportion the company acquiring the assets has VAT taxable activities. It should be noted that only the company acquiring the assets may deduct the VAT, not any other group company.

b. Purchase Price Allocation

In general, the paid purchase price is specifically allocated to the acquired assets. The acquisition cost is allocated to the acquired assets often resulting in a step-up in the book values of the assets in question. The buyer may begin to depreciate these new values (in accordance with general depreciation rules). The purchase price may also be allocated to goodwill, which may also be depreciated. The Finnish Tax Authority is not obliged to respect the allocation that the parties agree on and has a right to challenge the purchase price allocation. Ultimately the allocation should be in line with the fair values of the assets.

The purchase price allocation is of relevance with respect to acquisition of real estate, since land areas are non-depreciable in comparison to buildings and other depreciable assets.

c. Tax Attributes

Tax attributes are not transferred to the buyer in an asset acquisition.

d. Tax Free Reorganisations

Tax neutral arrangements are typically not used as a pre-acquisition measure for asset deals (more commonly in post-acquisition situations). However, if such pre-acquisition measures are executed, the tax neutrality of reorganisation in effect means that arrangements do not cause income tax implications either for entities participating in the arrangements or their shareholders. Undepreciated balances of the transferred assets and tax attributes are generally transferred as such to the receiving company. Tax neutrality is often subject to fulfilment of certain conditions, for example in mergers, divisions and business transfers for share consideration, there are restrictions on the amount of cash contributions.

e. Purchase Agreement

In Finland there are no particular differences between share purchase and asset purchase agreements. The feasible transaction structure depends on the given case at hand and the special features of a case have an effect on the form and contents of the documents as you would expect. In general, Finnish contract law is based on the principle of freedom of contract. However, exemptions may apply for example when the assets acquired include real estate, the purchase agreement will be in a specified form.

f. Depreciation and Amortisation

Goodwill (i.e. the difference between the target's book value and the purchase price paid for it that cannot be specifically allocated to other assets) is regarded as an intangible asset that may not separately be disposed of. The purchase price for goodwill may be depreciated during its probable economic impact period (maximum 10 tax years). The depreciated amount is equal for each tax year during its economic impact period.

g. Transfer Taxes, VAT

A transfer tax of 1.6% for Finnish non-listed securities, 2% for housing or real estate companies and similar and 4% for Finnish directly owned real estate is levied in cases where these assets are included in the acquired assets. With regard to real estate, transfer in a form of shares is therefore more advantageous than transferring the real estate directly.

An asset deal is out of scope of VAT when it fulfils the requirements set out in the VAT legislation. A case-by-case analysis is usually required to confirm the VAT treatment.

h. Asset Purchase Advantages

An asset deal is generally preferable from the buyer's perspective. The acquisition cost is allocated to the acquired assets often resulting in a step-up in the book values of the assets in question. The buyer may begin to depreciate these new values (in accordance with general depreciation rules). The purchase price may also be allocated to goodwill, which may also be depreciated. In a share deal, goodwill may not be amortised or depreciated for tax purposes, but the acquisition cost of shares is deductible in a subsequent transfer thereof unless the participation exemption applies.

For VAT purposes, the transaction costs are generally considered overhead expenses of the seller, and therefore, the VAT incurred on the costs is usually deductible in the proportion of the taxable activities of the seller. Exceptions may apply if, for example, the assets only consist of real estate used in VAT exempt activity. In comparison to a sale of shares, this may be an advantage for the seller. However, a seller may deduct VAT on costs incurred on a sale of shares in certain circumstances. Therefore, depending on the circumstances, a seller might be able to deduct costs on a sale of shares as well and thus, both transactions may be equally feasible.

From the seller's perspective, an asset deal may be a feasible option if the company has confirmed tax losses that can be utilised against taxable profit arising in the asset sale or if the conditions for a participation exemption are not fulfilled (i.e. if the seller is not eligible to qualify for the participation exemption, this may make them more open to the possibility of an asset deal).

i. Asset Purchase Disadvantages

A transfer tax of 1.6% for Finnish non-listed securities, 2% for housing or real estate companies and similar and 4% for Finnish directly owned real estate is levied in cases where these assets are included in the acquired assets. With regard to real estate, transfer in a form of shares is therefore more advantageous than transferring the real estate directly. Another drawback is that tax losses may not be transferred in an asset deal.

From the sellers' perspective, asset deals may not be tax efficient because selling the assets may give rise to a taxable profit at the level of the target company and repatriation of the profits to the shareholders may be subject to further tax. Additionally, the seller has to deal with the remaining company and its potential tax liabilities, which are not attached to the purchased assets and are not transferred to the buyer.

5. ACQUISITION VEHICLES

a. General Comments

In general, Special Purpose Vehicles ("SPVs") organised as Finnish limited liability companies are used in acquisitions. The use of Finnish holding companies may facilitate the use of group contributions, which group companies use to offset profits and losses. Group contributions are a way of allocating taxable income allowing groups to seek to offset the interest deductions on any acquisition debt against profits. In practice, third party lenders may require multiple Finnish holding companies.

Foreign holding companies in the structure may be utilised to mitigate possible Finnish income tax and transfer tax implications in acquisitions of Finnish RECs and MRECs (i.e. forms of Finnish real estate company). Due to the limited applicability of the Finnish participation exemption rules, foreign holding companies may also be used in order to enable a tax-exempt exit in the future. Finland has a broad income tax treaty network ensuring of preferential treatment of payments to foreign holding companies provided that application of the provision is not denied for example due to the principal purpose test.

6. ACQUISITION FINANCING

a. General Comments

With respect to acquisition financing, attention should be paid to the deductibility of interest expenses and the use of group contribution in the acquisition structure in order to optimise interest deductions and profit repatriation. In addition, financing costs related to acquisition of shares are deducted as yearly expenses, (i.e. they are not included in the shares' acquisition costs). Due to the divergent treatment, drawing the line between annual expenses and acquisition costs is a key consideration from a tax point of view. Especially with regard to shares to which participation exemption applies, the classification of costs as acquisition costs of shares may result in non-deductibility of costs.

b. Equity

Dividend distributions made by a Finnish company to a foreign corporate recipient are generally subject to withholding tax at 20%. However, this rate may be reduced in situations such as the following:

- Situations covered by the Parent-Subsidiary Directive;
- Situations where a tax treaty provides for a lower withholding tax rate;
- With regard to dividends paid to other EEC Member States, where the dividend would be tax exempt in similar domestic relations, assuming an agreement concerning exchange of information (or the Directive 77/799/EEC) is applicable between the countries, and assuming that the dividend recipient does not have the possibility of full tax credit in its home country.

Since dividends are tax exempt in most domestic relations between limited companies, the exemption actually applies to dividends paid to most EU Member States even if the Parent Subsidiary Directive is not applicable.

c. Debt

i Limitations on interest deductions

The interest deduction limitations as of 1 January 2019 are generally applicable to Finnish corporations, partnerships, corresponding foreign entities and their permanent establishments. A general safe haven of EUR500,000 is applied; if net interest expenses (including third party and related party interests) exceed EUR500,000, the interest limitation will nevertheless be applied to the entire amount. Interest may become non-deductible if such net interest expenses exceed 25% of the company's tax EBITD (taxable business profits added with the aggregate amount of interest costs, depreciations and group contributions received; after deducting the amount of group contributions granted). However, a general safe haven of EUR3 million is applied to net interest expenses on third party loans irrespective of the EBITD threshold. Third party loans will be deemed to be intragroup loans if a related party pledges a receivable to an unrelated party as security for the loan and the unrelated party provides a loan to another related party, or the loan from an unrelated party is de facto a back-to-back loan from a related party. The regulation allows an indefinite carry forward of interest expenses that cannot be deducted based on the aforementioned restrictions.



However, interest expenses will remain fully deductible if the equity ratio of the company is equal to or higher than the consolidated equity ratio of the group. In case law, the statutory consolidated financial accounts of a group company owned by private equity funds did not qualify as the ultimate parent company, on which consolidated financial accounts the equity ratio could be based. The underlying reason was that the group company was regarded as a sub-group parent company and not an ultimate parent.

The equity-based ratio exemption test requires that certain accounting related conditions are met. Firstly, the consolidated financial statements must have been prepared in accordance with IFRS standards, or in accordance with other accounting standards of an EU or EEA country, or similar standards. Secondly, the consolidated financial statements have to be prepared in an EU or EEA country, or a country with which Finland has concluded a double income tax treaty. Thirdly, since the comparison is made only if the calculation of the taxpayer's ratio of its equity over its total assets are valued using the same method as in the consolidated financial statements, the taxpayer must provide its financial statements valued using the same method as in the consolidated financial statements or vice versa. This may usually be the case, since Finnish corporations are obliged to prepare financial statements in accordance with Finnish GAAP in order to facilitate group contribution regime to apply. A conversion of the Finnish taxpayer's financial accounts may therefore be required in order to facilitate both the exemption test and group contribution to apply.

The rules of equity-based ratio exemption have changed as of 1 January 2022. The new rules aim to limit the use of the balance sheet test in certain private equity structures. The first change is that the financial statements used in the equity-based ratio exemption test would have to be subject to a statutory audit. Unlike before, the audit requirement applies also to the group's consolidated balance sheet that is used as the basis for the comparison. Therefore, it is no longer possible to prepare a consolidated balance sheet only for the purposes of the equity-based ratio exemption test. The second change is that under certain conditions, the shareholder debt will be classified as equity in the parent company's consolidated financial statements for equity-based ratio exemption test purposes. This reclassification shall be made in case the debt has been issued by a party holding at least 10% of the shares, voting power, or rights to the profits of any group company. The holding could be direct, or through a related party.

ii Debt Pushdown

For most acquisitions the preferred means to push down debt is the usage of a Finnish Special Purpose Vehicle ("SPV") SPV, if a foreign buyer acquires a Finnish target company. The SPV is financed by loans from third parties or foreign group companies, often located in a jurisdiction with a low corporate income tax rate. As interest deductibility is subject to limitations, feasibility of the debt structure has to be evaluated in detail.

Following the acquisition, the target's profits may be offset against the SPV's interest expenses under Finnish group contribution rules. As an alternative, the target may be merged with the SPV or liquidated, for example in order to consolidate operating profits and the interest expenses or acquisition loans. According to Finnish group contribution rules, eligible contributions from an affiliated company are deducted from taxable profit of the contributing company and are added to the recipient company's taxable profit. The same rules apply to a Finnish permanent establishment of a foreign head office that is tax resident in an EU Member State or in a state with which Finland has concluded a tax treaty containing an article of non-discrimination. On 15 December 2021, the Supreme Administrative Court ("SAC") published two rulings on the use of debt pushdowns. The SAC approved the use of debt pushdown in third party acquisitions (SAC 2021:179) whereas it deemed the debt pushdown in an intragroup reorganisation artificial and tax avoidance (SAC 2021:178). Therefore, the use of the debt pushdown structures has to be carefully analysed in order to avoid the application of Finnish anti-avoidance provisions as well as to comply with transfer pricing rules.



d. Hybrid Instruments and other instruments

Recent case law has reduced the attractiveness of PIK loans provided by private individuals. In private equity deals, preference shares have replaced partnership loans.

e. Earn-outs

Earn-outs are treated as part of the sales price for income tax purposes and are subject to Finnish transfer tax. No special tax treatment is available for earn-outs. The moment when taxes on earn-outs are due to be paid depends on case specific circumstances.

7. DIVESTITURES

a. Tax Free

Under the participation exemption regime, capital gains derived by companies from the transfer of shares are not considered as taxable income and consequently acquisition costs of shares are not tax-deductible if the following conditions are met:

- The transferor of the shares is a limited liability company, a co-operative, a savings bank or a mutual insurance company taxed in accordance with the Business Income Tax Act;
- The transferor is not engaged in venture capital or private equity activities;
- The shares belong to the transferor's fixed assets;
- The transferor has owned at least 10% of the share capital of the target company without interruption for at least one year during a period that has ended no more than one year prior to the transfer;
- The target company is not a residential housing company, a real estate company or a limited company the activities of which de facto mainly consist of real estate holding or managing;

The target company is:

- A Finnish resident company;
- A company referred to in Article 2 of the EU Parent Subsidiary Directive;
- A company resident in a country with which Finland has a tax treaty, which is applied to dividends distributed by that company.

b. Taxable

If the participation exemption is not applicable, capital gains are subject to corporate income tax at the rate of 20%. Capital losses accruing from the transfer of shares belonging to fixed assets, but not covered by the exemption, are deductible from taxable capital gains derived from transfers of fixed asset shares in the same tax year and the subsequent five tax years. This limitation is not applied to the transfer of shares in residential housing companies, real estate companies and real estate holding or management companies. If the company transferred is not resident in a tax treaty state, the capital loss is not deductible for the transferor's tax purposes.

c. Cross Border

Capital gains derived from the sale of shares are not regarded as Finnish source income under Finnish legislation, as long as the company's assets do not essentially consist of real estate property. Only capital gains from shares in Finnish real estate, housing or other companies holding directly more than 50% of its assets in Finnish real estate may be taxed as Finnish source income.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

Finland applies a worldwide tax system to Finnish resident taxpayers, Finnish companies are liable to tax on their worldwide income.

b. CFC Regime

Due to the implementation of ATAD, Finland amended its CFC regulation. The amendments entered into force as of 1 January 2019. Under the amended rules the CFC regime applies not only to Finnish residents but also to non-resident taxpayers if control of a CFC is attributed to a permanent establishment of the non-resident taxpayer in Finland.

A foreign company is generally deemed to be a CFC, if the taxpayer's control, or capital or profit entitlement (including direct or indirect holding of related parties) is at least 25%, and the effective income tax rate in its country of residence is less than three-fifths of the Finnish corporate income tax (i.e. 12%). The CFC rules may not apply if an EEA corporation carries on a substantive economic activity in the country of residence. As regards a corporation resident in a non-EEA country, the corporation may be exempt under the same conditions, but it is required to meet the following conditions:

- the country of residence is not on a so-called black list issued by the EU;
- the country of residence has concluded a treaty with Finland providing sufficient tax information exchange; and
- profits mainly arise from industrial production, other production or provision of services, shipping activities or sales or marketing activities related to these activities.

In practice, a foreign company that mainly operates as an investment company, IP holding company, financing company or management company in a low-tax jurisdiction may be deemed to be a CFC for Finnish tax purposes. Even holding companies in the EU with no or little activities may prove to be problematic.

c. Foreign branches and partnerships

Finnish companies are liable to tax on their worldwide income including also any activities of a foreign branch. Finnish legislation provides for a tax credit method for foreign income tax paid. In general, the double tax treaties in force generally provide for a tax credit method as well.

As for acquisitions of Finnish entities by foreign partnerships or acquisitions of stakes in Finnish partnerships, the passive ownership could raise a permanent establishment issue. Therefore, such acquisitions involving a partnership should be carefully analysed and structured.

d. Cash Repatriation

Dividends to Finnish corporate shareholders from companies resident in an EEA state are generally tax exempt. However, dividends are taxable income if the distributing company is not covered by the Parent-Subsidiary Directive and the company is resident in a low tax EEA country (tax rate below 10% on profit from which the dividend is distributed). In addition, dividends subject to the Limitation-On-Benefit rule implemented based on the Parent-Subsidiary Directive restricts the tax exemption of dividends. Moreover, dividends from listed companies to unlisted companies are taxable, if the receiving unlisted company holds less than 10% of the distributing company. Dividends from non-EEA companies are taxable income. However, the double tax treaties applicable to dividends usually limits the taxation of the dividend received by a Finnish company.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

A real estate company is not a specifically defined legal term in Finnish law even though it is commonly used in practice; real estate companies can be organised, (e.g. as ordinary limited liability companies, residential housing companies or mutual real estate companies ("MRECs")). Regular real estate companies ("RECs") operate just as any limited liability companies (i.e. there is no flowthrough of income to the shareholders and taxable profits are expected to be incurred on the REC level). MRECs are limited liability companies with the purpose to own and manage at least one building or a part of a building. A MREC's shares are attributable to certain parts of the real property and based on their shareholding shareholders are entitled to hold and control the respective parts of the real estate. Therefore, for example, rental income arising from the leasing of the real estate accrues directly to the shareholders. Typically, income received by MREC comprises of monthly charges that the shareholders pay to the mutual real estate company.

Capital gains derived by Finnish and foreign corporations (provided Finland is allowed to tax the capital gains) from the sale of RECs are subject to corporate income tax. Many of Finland's Double Taxation Agreements ("DTAs") include a paragraph entitling Finland to tax income arising from a shareholding in a Finnish company which owns real estate in Finland and shareholders of which are entitled to use the real estate based on their shareholding. Typically, Finland's taxing right also covers capital gains derived from the disposal of shares in real estate companies the assets of which mainly comprise of directly or indirectly owned real property located in Finland. However, there are also DTAs not allowing Finland to tax income or capital gains relating to such shares. Specific transfer tax provisions apply to sales of real estate companies.

From a VAT point of view, the taxability of the activities of the real estate company should be carefully analysed prior to the transaction to ensure the deductibility of VAT incurred on the transactions and operations going forward. VAT deduction may be limited because leasing activities are VAT exempt (with an option to VAT under certain circumstances).

b. CbC and Other Reporting Regimes

Country-by-country reporting rules have been applicable from accounting periods ending in 2017 onwards.

In addition, the mandatory disclosure rules contained in the EU Directive on Administrative Cooperation (Intermediaries Directive) imposes an obligation for intermediaries providing tax planning services (e.g. lawyers, tax consultants) to inform tax authorities of certain cross border arrangements that could potentially be used for aggressive tax planning. Finland has implemented the Intermediaries Directive and the rules became applicable from 1 July 2020 onwards. However, certain cross-border arrangements are also reportable retrospectively from 26 June 2018. A penalty of up to EUR15,000 may be imposed if either the intermediary or the taxpayer neglects to fulfil the reporting obligation.

10. TRANSFER PRICING

In acquisition structures, attention should be paid to transfer pricing issues relating to intragroup financing, which should always be carefully analysed.

According to the previous transfer pricing adjustment provisions, it was not possible to disregard a business transaction that has been agreed and implemented by the parties. The Supreme Administrative Court ("SAC") had stated in several rulings that making such a transfer pricing adjustment would require an explicit authorisation, which was not included in the Finnish transfer pricing adjustment provision. As a result, the transfer pricing adjustment provision was amended, and new provision entered into force on 1 January 2022. Under the amended provision, the analysis of whether the actual transaction executed between the associated enterprises complies with the arm's length principle should always include an accurate delineation of the transaction based on the economically relevant characteristics of the transaction. The amended provision hence allows making transfer pricing adjustments to the full extent permitted by the OECD Transfer Pricing Guidelines.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities and Hybrid Instruments

Tax benefits arising from hybrid entities or instruments have generally been restricted by applying the General Anti-Abuse Rule ("GAAR"). In addition, the implemented rule covering a Limitation-on-Benefits on dividends based on the amendment of Parent-Subsidiary Directive has been in effect since the beginning of 2016. The ATAD rules regarding hybrid mismatches entered into force on 31 December 2019 and have been applicable from 1 January 2020 onwards.

The so-called reverse hybrid rule included in Article 9a of ATAD2 was introduced into Finnish legislation and the rules are applicable from 1 January 2022 onwards.

b. Principal/Limited Risk Distribution or Similar Structures

Principal or limited risk distributor structures are often used to carry out operations in Finland. Finland made a reservation to the Multilateral Instrument regarding permanent establishment provisions and based on the Finnish Tax Administration's current guidelines the approach towards principal structures has not tightened as a consequence of BEPS. However, since there is no recent public case law relating to agency permanent establishments, operational models should be planned prudently.

c. Intellectual Property

There is no special tax treatment for licensing or transferring intellectual property. No adverse tax consequences specifically relating to transfer of intangible assets are imposed. Post-acquisition licensing of intellectual property must be evaluated in detail in order to mitigate risk of recharacterisation of the transaction as transfer of intellectual property.



d. Special tax regimes

There are no special tax regimes in Finland.

12. OECD BEPS CONSIDERATIONS

Finland has been active in putting the BEPS actions into practice. There are already enacted interest deductibility limitations and CFC regulations. Country by country reporting rules have been applicable to accounting periods ending in 2017 onwards. The implemented rules based on the amendment of the Parent Subsidiary Directive have been in effect since the beginning of 2016. The implemented rules cover a Limitation-on-Benefits ("LOB") rule and a General Anti Abuse Rule ("GAAR").

Finland signed the Multilateral Instrument in June 2017 opting only for the minimum standards and making reservations to other articles. The parliament approved the adoption in February 2019. When in effect this means that existing provisions, concerning for example permanent establishments, will remain unchanged in covered tax treaties. By adopting the Principal Purpose Test, it is intended that Finland would fulfil the minimum standard of Article 7. Finland did not adopt the additional provision granting the competent authority the right to grant the treaty benefits even though the Principal Purpose Test provision applies.

Finland is also following closely the work in relation to Pillar I and Pillar II. Pillar I will ensure a fairer distribution of profits and taxing rights among countries with respect to the largest MNEs, including digital companies. Pillar II seeks to introduce a global minimum corporate tax rate that countries can use to protect their tax bases.

13. ACCOUNTING CONSIDERATIONS

a. Combinations

There are no specific accounting considerations having impact on taxation of combinations.

b. Divestitures

There are no specific accounting considerations having impact on taxation of divestitures.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Distribution of restricted equity (share capital) is generally subject to capital gains taxation decreasing the acquisition cost of the shares. Distribution of unrestricted invested equity is taxed as dividend unless the distribution from an unlisted company meets several conditions in order to be taxed as capital gain. Distribution of unrestricted equity from listed companies is always treated as dividend for tax purposes.



b. Substance Requirements for Recipients

There are no specific substance requirements for holding or finance companies tax resident in Finland. So far, the Finnish tax authorities have not issued specific substance requirements for foreign holding companies in similar manner that many other jurisdictions have. However, applicability of the Finnish General Anti Abuse Rule and adoption of the Principal Purpose Test through the Multilateral Instrument have to be evaluated case by case.

c. Application of Regional Rules

Legal instruments adopted by the EU are applicable to Finland as an EU Member State. That means in general that Finland is obliged to apply its national provisions in accordance with EU law and principles. The taxpayers may rely directly not only on the four freedoms, but in certain cases also on provisions of the directives. ECJ case law is an important source of law also in taxation.

In the field of income taxation, the four freedoms of the EU have traditionally been more important than directives, although directives have nowadays grown in importance (e.g. Merger Directive, Parent Subsidiary Directive and ATAD). Finland is part of the common EU VAT area. In practice, the EU VAT Directive and ECJ case law has an important role when interpreting the VAT rules.

d. Tax Rulings and Clearances

Tax rulings and clearances are not necessary for an acquisition, divestiture, or post acquisition integration. An advance ruling from the Finnish Tax Administration may be applied for if there are specific unclear tax items relating to an arrangement. However, the feasibility of applying for an advance ruling should be evaluated case by case. As an alternative to tax advance rulings the Finnish Tax Administration has recently launched a preliminary discussion procedure whereby taxpayers may receive guidance to unclear tax items swiftly.

15. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends (portfolio) / interest on cooperative capital %	Dividend (direct investment*) %	Royalties %	Footnote
Argentina	15	10 (25)	15	[15]
Armenia	15	5 (25)	10	[6]
Australia	15	5 (10)	5	[6] [12] [8]
Austria	10	0 (10)	5	[2] [12] [22]
Azerbaijan	10	5 (25)	5	[8] [4]
Barbados	15	5 (10)	5	[5] [12] [1]
Belarus	15	5 (25)	5	
Belgium	15	5 (25)	5	[2] [1] [22]
Bosnia-Herzegovina	15	5 (25)	10	
Brazil	20 / 30	20 / 30	20 / 30	A
Bulgaria	10	10	5	[2] [1] [22]
Canada	15	5 (10)	10	[12] [1]
China	10	5 (25)	10	
Chile	20 / 30	20 / 30	20 / 30	B
Colombia	20 / 30	20 / 30	20 / 30	C
Croatia	15	5 (25)	10	
Cyprus	15	5 (10)	0	[2] [22]
Czech Republic	15	5 (25)	10	[2] [1] [13] [22]
Denmark	15	0 (10)	0	[2]
Egypt	10	10	25	
Estonia	15	5 (25)	0	[2] [24]
France	0	0	0	
Georgia	10	5 (10) or 0 (50)	0	[8]
Germany	15	5 (10)	0	[2] [8]
Great Britain	0	0	0	[5]
Greece	13	13	10	[2] [1] [22]
Hungary	15	5 (25)	5	[2] [1] [22]

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Jurisdiction	Dividends (portfolio) / interest on cooperative capital %	Dividend (direct investment*) %	Royalties %	Footnote
Hong Kong	10	5 (10)	3	
Iceland	15	0 (10)	0	[2]
India	10	10	10	
Indonesia	15	10 (25)	15	[4]
Ireland	0	0 (10)	0	[2] [12] [5]
Israel	15	5 (10)	10	
Italy	15	10 (50)	5	[2] [1] [22]
Japan	15	10 (25)	10	[8]
Kazakhstan	15	5 (10)	10	
Korea, Republic of	15	10 (25)	10	
Kyrgyzstan	15	5 (25)	5	
Latvia	15	5 (25)	0	[2] [26]
Liechtenstein	20 / 30	20 / 30	20 / 30	[2] [21]
Lithuania	15	5 (25)	0	[2] [25]
Luxembourg	15	5 (25)	5	[2] [1] [22] [9]
Macedonia	15	0 (10)	0	[12]
Malaysia	15	5 (10)	5	
Malta	15	5 (10)	0	[2] [12]
Mauritius	20 / 30	20 / 30	20 / 30	D
Mexico	0	0	10	
Moldova	15	5 (25)	7	[6]
Morocco	10	7 (25)	10	
Netherlands	15	0 (5)	0	[2]
New Zealand	15	15	10	
Norway	15	0 (10)	0	[2]
Pakistan	20	12 (25)	10	[18]
Philippines	20 / 30	15 (10)	25	[3] [12]
Poland	15	5 (25)	5	[2] [22]
Portugal	20 / 30	20 / 30	20 / 30	E [2] [22]

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Jurisdiction	Dividends (portfolio) / interest on cooperative capital %	Dividend (direct investment*) %	Royalties %	Footnote
Puerto Rico	20 / 30	20 / 30	20 / 30	F
Romania	5	5	5	[2] [16] [22]
Russia	12	5 (30)	0	[7]
Serbia and Montenegro	15	5 (25)	10	
Singapore	10	5 (10)	5	[12]
Slovak Republic	15	5 (25)	10	[2] [1] [13] [22]
Slovenia	15	5 (25)	5	[2] [22]
South Africa	15	5 (10)	0	
Spain	15	5 (10)	0	[2] [23] [12]
Sri Lanka	10	7,5 (25)	10	
Sweden	15	0 (10)	0	[2]
Switzerland	10	0 (10)	0	
Tajikistan	15	5 (25)	5	
Tanzania	20	20	20	
Thailand	20 / 30	20 (25)	15	[11]
Turkey	15	5 (25)	10	
Turkmenistan	15	5 (25)	10	
Ukraine	15	5 (20)	10	[14] [8]
United Arab Emirates	20 / 30	20 / 30	20 / 30	[20]
United States	15	5 (10)	0	[19] [12]
Uruguay	15	5 (25)	10	[17]
Uzbekistan	15	5 (10)	10	[12] [6]
Venezuela	20 / 30	20 / 30	20 / 30	G
Vietnam	15	10 (25) or 5 (70)	10	
Zambia	15	5 (25)	15	[1] [10]



Footnotes	
*	The recipient is a company whose share in the company making the payment is at least the percentage indicated in parentheses.
A	See the protocol.
B	No DTT between Finland and Chile.
C	No DTT between Finland and Colombia.
D	No DTT between Finland and Mauritius.
E	No DTT in force between Finland and Portugal as of 1 January 2019.
F	No DTT between Finland and Puerto Rico.
G	No DTT between Finland and Venezuela.
1	Tax is not levied on literary, scientific or artistic royalties (for film royalties see text of treaty).
2	If corporate entity ⁘ No tax, if these dividends were tax free under . 6 a Business Tax Act if paid to a Finnish corporate entity, and if the recipient does not receive a full credit for the Finnish tax in the country of residence. ⁘ No tax on dividend paid to a company meant in the EU Parent-Subsidiary Directive owning at least 10% of the capital of the paying company.
3	Tax 15% on films, tapes used in television or radio broadcasts, use of copyright of literary, artistic or scientific works or royalty paid for usufruct.
4	Tax 10% on literary, scientific, artistic and film royalties.
5	Tax for an individual is 30% if income is tax-exempt in the country of residence.
6	A lower tax in certain cases.
7	Foreign capital > USD100,000 when dividend becomes due and payable.
8	For additional requirements, see the treaty.
9	Tax agreement does not apply if the recipient is a special holding company (art 29).
10	Tax 5% on royalties from films and tapes.
11	Tax 15% if the payer is also an industrial enterprise.
12	The 10% is calculated on the total voting stock.
13	Tax 5% for computer software.
14	Tax 5% for the use of secret process or for know-how, no tax for computer software or patent.
15	Tax 10% on industrial royalty, 3% on royalties to news agency and 5% on artistic royalty to the author or his mortis causa successor.
16	Tax 2.5% on royalties paid for the use of computer software.
17	Tax 5% on royalties paid for the right to use of software.
18	Tax 15% if the recipient is a company.

Footnotes	
19	No tax on dividends to qualified parents-subsidiaries and pension funds (Article 10 paragraph 3).
20	No tax, if the recipient proves that he has domicile (individual) or is incorporated in the Arab Emirates.
21	If corporate entity tax is 15% or 20%, § 7 subsection 1 paragraph 2 and 3, Act on Tax at source.
22	No tax on royalties between associated companies meant in EU Directive (2003/49/ EC, 2013/13/ EU) (§ 3 b-f, Act on Tax at source).
23	No withholding tax if the recipient is a pension scheme.
24	Notice of the Ministry of Finance 55/2016 (SopS 55/2016).
25	Notice of the Ministry of Finance 67/2019 (SopS 67/2019).
26	Notice of the Ministry of Finance 15/2021 (SopS 15/2021).

16. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

The Finnish Tax Administration ("FTA") may adjust the taxation of a corporate entity (corporate income taxation and payroll taxation) within 3 years from the beginning of the calendar year following the tax year in relation to tax year 2017 and years following thereafter. The tax adjustment period for VAT is also 3 years from the beginning of the calendar year, during which the tax should have been paid and reported. Where the financial period of the taxpayer is not a calendar year, the tax adjustment period for VAT is 3 years following the calendar year during which the financial period in question ended. However, in certain situations, the FTA may extend the time limit. Hence, due to the usual time limit of 3 years, financial statements, tax returns and tax decisions are requested for the 3 previous years.

Nº	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Group structure chart.
2	Tax Due Diligence	General	Copies of financial statements, including P/L specifications and balance sheet specifications on account level.
3	Tax Due Diligence	General	Copy of a recent tax debt certificate.
4	Tax Due Diligence	General	Information on any advance rulings from tax offices or the Central tax board and any other correspondence with the tax office and authorities.
5	Tax Due Diligence	General	Details of any assessments or litigations that are under appeal or under other legal and/or authoritative process.
6	Tax Due Diligence	General	Details and reports of completed and ongoing tax audits targeted to the company (income tax, VAT). A specific mentioning if no tax audits have been made.
7	Tax Due Diligence	General	Copies of memorandums and other opinions on tax issues provided by tax consultants and/or law firms including also compliance or tax return review memorandums (income tax, VAT).
8	Tax Due Diligence	General	Previous tax DD reports, if any.
9	Tax Due Diligence	General	Copies of shareholder loan agreements, if any.
10	Tax Due Diligence	General	Information on the organisation of the tax management procedures and resources, i.e. how is the tax management of the company organised?
11	Tax Due Diligence	General	Description on the tax planning activities conducted by the company. What is the attitude the company has towards tax planning (low/medium/aggressive)?
12	Tax Due Diligence	General	Description on what is the company's policy as regards external tax advisers. Has the company received any written instructions, notes or memoranda from external tax advisers and if yes, what has been the subject matter of these instructions?
13	Tax Due Diligence	Income tax	Corporate income tax returns including appendices.
14	Tax Due Diligence	Income tax	Income tax assessment decisions from the tax administration.
15	Tax Due Diligence	Income tax	Copy of the tax calculation pertaining to the ongoing fiscal year.

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Nº	Category	Sub-Category	Description of Request
16	Tax Due Diligence	Income tax	Advance tax bill for the previous, ongoing and next fiscal year and a description of the advance tax payment policy adopted in the company.
17	Tax Due Diligence	Income tax	Transfer pricing documentation and other documents prepared for transfer pricing purposes.
18	Tax Due Diligence	Tax Due Diligence	Description of past and ongoing restructurings in the company during the 10 years preceding the current fiscal year (including but not limiting to, e.g. share purchases, mergers, demergers, transfer of assets etc.) including all material relevant for tax purposes related thereto.
19	Tax Due Diligence	Income tax	Information on ownership changes during the 10 years preceding the current fiscal year. Information on whether there has been a change in ownership exceeding 50 in the company or in a company owning at least 20 of the company.
20	Tax Due Diligence	Income tax	Does the company have any deferred tax assets (e.g. previous tax losses) or is it expected to have such for current fiscal year?
21	Tax Due Diligence	Income tax	Description of the company's depreciation policy. Are there any differences between depreciations in accounting and in taxation? If yes, how are the differences monitored in practice?
22	Tax Due Diligence	Income tax	Description on any significant debt that has been forgiven / waived. If any, how this has been treated in accounting and for tax purposes?
23	Tax Due Diligence	Income tax	Description on if the company has concluded any write downs of assets in taxation.
24	Tax Due Diligence	Income tax	Information on changes in the company's equity position (e.g. increase/decrease of share capital or invested free equity).
25	Tax Due Diligence	Income tax	Description on whether there have there been any redemptions of shares in the company and if any, what was the price paid and how was it determined.
26	Tax Due Diligence	Income tax	Description on granted or received group contribution payments during the ongoing fiscal year, if any.
27	Tax Due Diligence	Income tax	Description of transactions between the company and their owners (covering the ongoing and five previous fiscal years (including description of the transaction, parties, volumes and pricing method of said transactions).
28	Tax Due Diligence	Income tax	Description on shareholder loans including at least the following information: • Has the company issued or received a shareholder loan? • Have the loan contracts been made in writing? • What is the interest rate and schedule for repayment?
29	Tax Due Diligence	Payroll tax	In case the company is using subcontractors, please describe the procedures it is using in order to control that the subcontractors are registered as self-employed taxpayers.



Nº	Category	Sub-Category	Description of Request
30	Tax Due Diligence	Payroll tax	Does the company pay external service providers for its C O or board members' services?
31	Tax Due Diligence	Payroll tax	Description of employee benefits (including for example personnel benefits, gifts, health care and voluntary pension schemes) that are differing from the benefits typically offered to employees or benefits whose tax treatment has been uncertain. With the typical benefits we mean benefits that are in line with the Finnish Tax Administration's guidance.
32	Tax Due Diligence	Payroll tax	Does the company have share awards or option schemes for the employees in the company (including also C O and board members)?
33	Tax Due Diligence	VAT	Copies of VAT returns.
34	Tax Due Diligence	VAT	VAT manuals/guidelines used in the business, any instructions possibly received from the tax authorities/ auditors that are followed, and other policies adopted regarding VAT. Has there been any changes in the VAT treatment during the period in question? Description on the internal routines regarding the reporting of VAT. If an accounting firm is used, please confirm whether the Company controls the figures reported to the Finnish tax authorities and how.
35	Tax Due Diligence	VAT	Does the Company supply goods or services outside of Finland. If yes, to where and what?
36	Tax Due Diligence	VAT	Does the Company purchase goods or services outside of Finland. If yes, from where and what?
37	Tax Due Diligence	VAT	Is the company VAT registered in countries outside of Finland? If so, description on the reasons for the VAT registration/s and the yearly sales with VAT in each country.
38	Tax Due Diligence	VAT	Does the company carry out any VAT exempt activities (other than possible zero-rated supplies of goods and services to outside of Finland)?
39	Tax Due Diligence	VAT	Does the company limit its deduction of input VAT in any way? Description on VAT treatment of company owned cars (if applicable) and representation costs.

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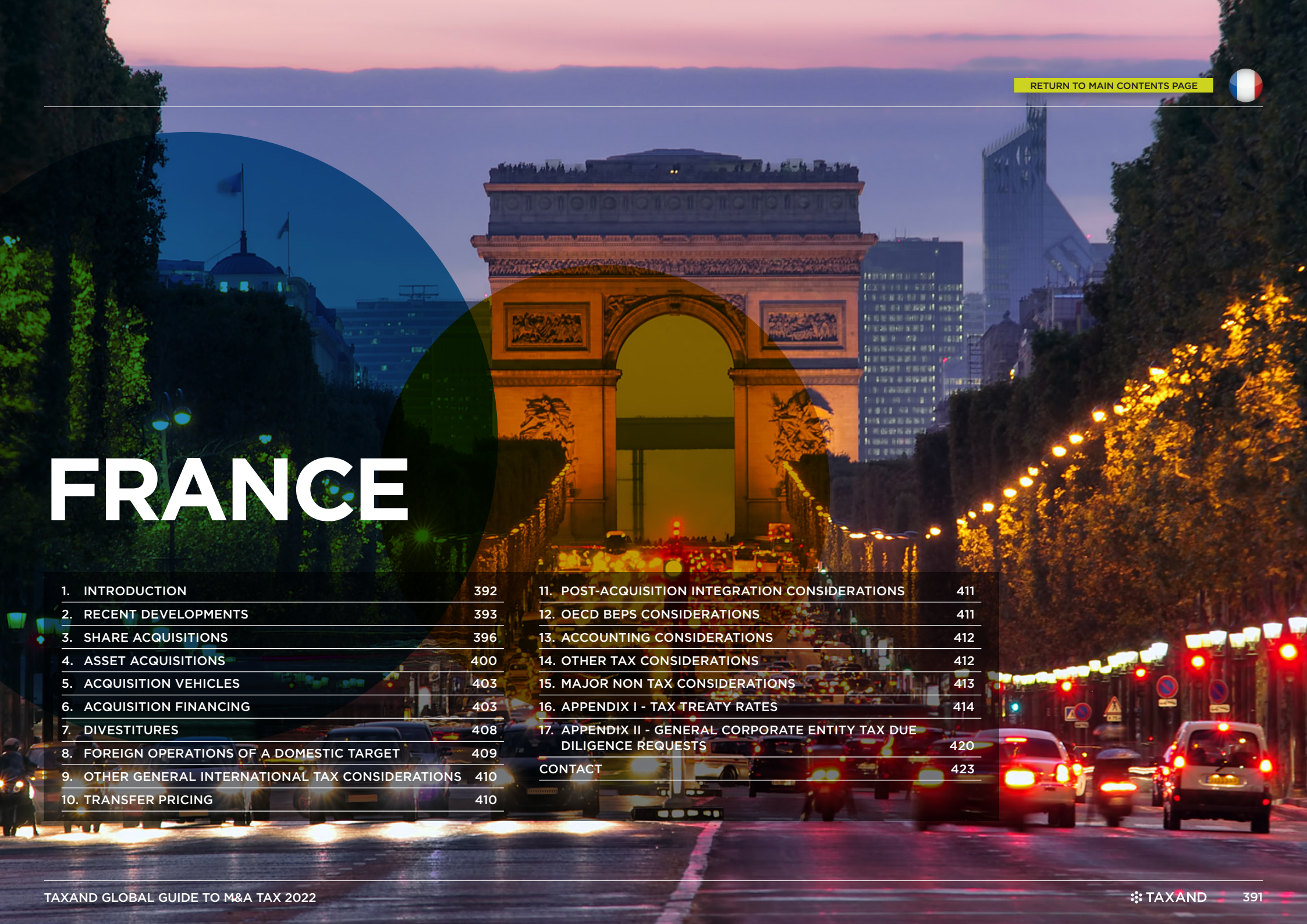
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FRANCE

1. INTRODUCTION

a. Forms of Legal Entity

From both legal and tax perspectives, two main categories of entities exist in France, companies and partnerships. The most common companies are:

- the joint stock company (société anonyme, "SA"), having minimum share capital is EUR37,000.
- the limited liability company (société a responsabilité limitée, S.à r.l.), having no minimum share capital.
- the simplified stock corporation (société par actions simplifiée, "SAS"), having no minimum share capital.

Although shareholders of these companies may forfeit their equity contributions, they are not responsible for the obligations and debts of the companies. These companies are subject to corporate income tax ("CIT").

The most common partnerships are:

- the commercial partnership (société en nom collectif, "SNC"); and
- the French real estate company (société civile immobilière, "SCI") whose purpose is to hold real estate assets.

Partners are responsible for the obligations and debts of the partnerships to the extent of their personal assets. No minimum capital is required. The tax results of a partnership are determined at the level of the partnership itself, but the tax on the results is assessed directly against the partners, such that a partner's share of the losses of one partnership may offset that partner's share of income from a different partnership.

b. Taxes, Tax Rates

The standard French CIT rate is being gradually reduced from 33.3% in 2017 to 25% for financial years open on or after 1 January 2022 (see section 2 for the applicable rates). France does not assess local taxes on income.

The top rate for personal income tax amounts to 45%.

c. Common divergences between income shown on tax returns and local financial statements

In France, there are several discrepancies between accounting and taxable income.

Regarding M&A transactions, the common divergences are as follows:

- Long-term capital gains : Capital gains derived from the sale of qualifying participations that have been held for at least two years are subject to CIT on only 12% of the gross capital gains, resulting in a taxation at an effective rate of up to 3% maximum.
- Dividends : dividends distributed under the parent-subsidiary regime are exempt up to 95% or 99% within a tax consolidated group.

2. RECENT DEVELOPMENTS

a. Progressive reduction of the CIT rate:

Finance Laws for 2018, 2019 and 2020 provided for the following progressive reduction in the French CIT rate:

Portions of taxable income	2019	2020	2021***	2022***
Turnover < €7.63 million*				
€0 – €38,120	15%	15%	15%	15%
€38,120 – €500,000	28%	28%	26.5%	25%
>€500,000	31%			
Turnover 7.63 million – 250 million				
€0 – €500,000	28%	28%	26.5%	25%
>€500,000	31%			
Turnover >= €250 million				
€0 – €500,000	28%	28%	27.5%	25%
>€500,000	33.3%**	31%		

* Subject to compliance with the conditions set forth in Article 219, I-b of the CGI
** Thirty three and one third percent. The rate of 33.3% applies to fiscal years ("FY") beginning in 2019 and ending on or after 6 March 2019
*** Turnover increase to EUR10 million to allow companies to benefit from the 15% corporate reduced rate

b. Interest limitation rules modified:

New interest deduction limitation rules were adopted and implemented for financial periods open as of 1 January 2019 and as of 1 January 2020. Those new rules implement the European Union Anti-Tax Avoidance Directive ("ATAD"). The former thin capitalisation mechanism, the former anti-hybrid mechanism, the general ceiling rule and the Carrez amendment have been repealed.

c. Facilitation of the reorganisation regime:

French tax law provides an election for certain mergers to be tax neutral, with the primary advantage of such election being that the absorbed company is not subject to CIT on net capital gains on fixed assets transferred in such a merger (rollover regime).

Furthermore, the scope of restructuring operations eligible for the tax neutral merger regime has also been amended[1] as follows:

- Extension of the scope of the rollover regime to contributions of shares to reinforce an existing controlling situation; and

1 Second amended Finance Law for 2017, article 23.



- Cancellation of the formal commitment to hold shares received from a contribution for a three year period, although, in practice, such shares must be held for more than two years to benefit from the participation exemption regime.

The favourable tax regime for mergers applies to operations which, since 21 July 2019, can legally be carried out without an exchange of shares, mergers of sister companies wholly owned by the same parent company and spin-offs of a company wholly owned by a parent company in favour of companies which are also wholly owned by that company.

For mergers placed under the preferential regime that are carried out as of 1 January 2020, the transfer to the absorbing company of prior tax losses, net financial expenses carried forward and the unused deduction capacity of the absorbed company is, subject to conditions, exempt from approval if the amount of the sums transferred is lower than EUR200,000. This automatic transfer may also apply in the event of the absorption of the parent company of a tax consolidated group.

d. Adjustment of the tax consolidation regime:

For fiscal years beginning on or after 1 January 2019, several adjustments apply:

- Capital gains derived from the sale of qualifying participations that have been held for at least two years are subject to CIT on only 12% of the gross capital gains. The taxable 12% fixed proportion was previously neutralised at the level of the tax group. Such neutralisation was repealed.
- The merger of the parent company of a French tax consolidated group into another company belonging to the same tax group should no longer trigger the termination of the tax group provided that certain conditions are met (notably filing of election letters).
- Dividends not subject to the parent-subsidiary regime will no longer be fully tax exempt, but a 1% lump sum will remain taxable if the dividend is received by a member of a French tax consolidated group and the dividend is received from a subsidiary located in EU, Iceland, Norway or Liechtenstein.

e. Patent box introduced

French companies (not including partnerships) benefit from a favourable tax rate that applies to (i) income derived from the licensing of patents and patentable rights and (ii) capital gains realised on patents and patentable rights held for at least two years. This rate was reduced from 15% to 10% for fiscal years beginning on or after 1 January 2019. Because the Finance Law for 2019 adopts the so called "nexus approach" of BEPS Action 5, the patent box regime applies only if the taxpayer performs R&D activities in France.

f. General anti-abuse provision

Pursuant to ATAD, the Finance Bill for 2019 creates a new and vague general anti-abuse rule applicable to CIT for financial years open on or after 1 January 2019. Under the new Article 205 A of the French Tax Code ("FTC"), no account will be taken of an arrangement or a series of arrangements which, having been put into place for the main purpose, or one of the main purposes, of obtaining a tax advantage contrary to the object or purpose of the applicable tax provisions, are not authentic, considering all relevant facts and circumstances.

g. DAC 6

Please note that Directive (EU) 2018/822 ("DAC 6") imposes reporting obligations on intermediaries or, where appropriate, taxpayers, as of 1 July 2020 with respect to cross border arrangements that include at least one of the hallmarks as referred in the aforementioned Directive and that have been implemented as of 25 June 2018. In this context, an analysis should be carried out to determine the operation at stake should be reported to the competent authorities in order to comply with the automatic exchange among EU Member States.

h. Public economic measures against COVID-19

The emergency bill n° 2020-290 to deal with the COVID-19 pandemic enacted on 23 March 2020 empowers the French Government to implement the measures previously announced through ordinances.

Some of the tax measures which have been implemented by the French government include the following:

- Deferred payment and payment extensions for tax deadlines;
- Deferred payment and easing of the adjustment of CIT instalments;
- Automatic deferral and easing of the adjustment of the company valued-added contribution ("EAVC") instalments;
- Possibility to suspend payments of EAVC, the Enterprise Land Contribution ("ELC") and property tax, etc;
- Early repayment in 2020 of account receivables for losses carried back;
- Deferment of DAC6 reporting requirements until 28 February 2021 for arrangements entered into until 30 June 2020 and until 1 January 2021 for arrangements entered into since 1 July 2021; and
- Deductibility of rents waived by the creditor between 15 April and 31 December 2020.

Other measures taken by the government concern VAT, tax audits and collections, the possibility to obtain tax rebates, the early repayment of account receivables for losses carried back, etc.

i. 2021 Finance Bill / Update for 2022

The 2021 Finance Bill includes the following tax measures (subject to Parliamentary approval):

- Diminution of the Economic Territorial Contribution ("ETC") by reduction of EAVC and adjustment of the ceiling rate of ETC;
- Extension of the ELC exemption within three years from the creation of the extension of an establishment;
- Tax neutralisation of the free reassessments of assets (this optional mechanism applies to the first free reassessment of assets recorded at the end of a fiscal year ending on from 31 December 2021 until 31 December 2022;
- Extension of the reduced CIT (15%) rate on part of the profit of companies with a turnover lower than EUR10 million (instead of EUR7.63 million);
- Creation of a tax credit for collaborative research;



- Extension and adjustment of the innovation tax credit;
- Reduction of the profit basis for the losses' offset (carry-back mechanism); and
- Temporary amortisation mechanism for goodwill acquired between 1 January 2022 and 31 December 2025.

3. SHARE ACQUISITIONS

a. General Comments

SA and SAS companies are frequently used for share acquisitions due to lower registration duties (see below).

b. Tax attributes

In France, a change in control of a company does not impair its tax attributes and generally has no tax consequences unless the company concerned joins another tax consolidated group (i.e. there is an acquisition of more than 95% of its share capital).

Tax consequences may exist where the company leaves (and does not join) a tax consolidated group. The leaving subsidiary may not deduct from its subsequent income any tax losses and long-term capital losses incurred during the tax consolidation.

Unless it results from a merger subject to the special regime of Article 210 A of the FTC with another company of the group, or an intermediate company, the exit also results in the add-back in the tax consolidated group income of the year of exit of:

- capital gains or losses on intragroup transfers previously neutralised;
- subsidies and debt write-offs that have been neutralised in respect of a financial year beginning before 1 January 2019.

As from 1 January 2004, losses may be carried forward indefinitely, but their use is limited. Losses carried forward may be used fully against a following year's taxable income up to EUR1 million and thereafter only against 50% of such year's income exceeding EUR1 million.

Up to EUR1 million of losses may also be carried back and offset against the taxable income of the previous financial year. For the losses which are recorded during financial years closed as from 31 December 2021, the basis of such carry back is reduced up to the amount of taxable income that gave rise to corporate tax paid thanks to a tax credit.

c. Tax Grouping

French corporations and their 95% owned (taking into account both capital and voting rights) domestic subsidiaries may elect to file one single tax return, thus allowing the offset of losses (generated during the tax consolidation) of one group corporation against the profits of another group corporation. CIT is then levied on the aggregate income after certain adjustments for intragroup provisions (e.g. dividend distributions) have been made.

A French subsidiary can also be included in a tax consolidated group if the French company that is the head of the consolidated group owns indirectly at least 95% of the capital and voting rights of the French subsidiary so long as no intermediary company is organised outside the European Union, Iceland, Norway or Liechtenstein.



Moreover, it is possible to set up a "horizontal" tax consolidation between French companies subject to CIT and at least 95% of whose capital and voting rights are held, directly or indirectly by the same non-resident parent entity, so long as such non-resident parent entity is organised in the European Union, Iceland, Norway or Liechtenstein and is subject to a tax equivalent to CIT2[2]. In this case, a French company is chosen as the head of the tax consolidation and will be solely liable for the group's CIT. Acquisition, by a French company subject to CIT, of 95% of the share capital and voting rights of the parent company of a tax consolidated group results in the termination of said tax consolidation.

d. Tax Free Reorganisations

Upon election, a merger or spinoff benefits from a deferral of taxation of capital gains and provision (unless provisions are no longer required) at the level of the absorbed company if the beneficiary company complies with several requirements to allow the future taxation of capital gains and provisions which were exempt from tax at the time of the merger/spin-off (e.g. record all the transferred assets for the value they had in the absorbed company's books).

The operation can be retroactive from the fiscal year opening date for accounting and tax purposes. As a consequence, the operation is deemed to take place at the fiscal year opening date. In other words, so long as it is formally provided in the merger agreement, mergers or assimilated restructuring can be concluded with retroactive effect such that any taxable result generated by the absorbed company between the retroactive date and the effective date of the merger would be included in the taxable profits of the absorbing company.

When a wholly owned subsidiary merges with and into its sole owner, the operation can be implemented by a simplified merger or a "dissolution without liquidation"[3]. The dissolution without liquidation can benefit from the same tax rollover regime. Although retroactive effect may (as per the above) be applied for tax purposes, it may not be applied for accounting purposes.

Taxpayers should be aware that the French Tax Authorities ("FTA") often attempt to deny the deduction of interest related to the acquisition of a company if the holding company decides to merge the target company in a short period of time after the acquisition. Some arguments and formal FTA positions may exist to justify the merger, but taxpayers will need to evaluate their facts and apply the authorities' positions to them on a case by case analysis.

e. Intragroup share transfers

Acquisitions of shares between companies of the same group (controlled companies as defined by article L 233-3 of the Trade Code[4] or tax consolidated group) are exempt from registration duties.

2 Please refer to BOI-ANNX-000071-20150506 for a list of tax equivalent to CIT in the French tax guidelines

3 As defined by Section 1844-5 of the FTC.

4 Within the meaning of Article L. 233-3 of the Commercial Code: "I. – [...] a company is deemed to control another company: 1 When it directly or indirectly holds a fraction of the capital that gives it a majority of the voting rights at that company's general meetings; 2 When it alone holds a majority of the voting rights in that company by virtue of an agreement entered into with other partners or shareholders and this is not contrary to the company's interests; 3 When it effectively determines the decisions taken at that company's general meetings through the voting rights it holds; 4 When it is a partner in, or shareholder of, that company and has the power to appoint or dismiss the majority of the members of that company's administrative, management or supervisory structures." The notion of control is still used in laws and regulations dealing with major holdings and concerted actions, but explicit mention of control has been phased out of the laws dealing with takeover bids.



f. Purchase Agreement

It is common in France that shares in the target company are acquired by a French special purpose vehicle ("SPV") which may borrow funds to finance the operation and permit the offset of the SPV's interest expense with the target company's net income through the use of a tax group.

No special rules regarding warranties for share deals exist. In a share deal, the target continues to be liable for all taxes. Therefore, special attention must be paid to the drafting of the representations and warranties (that may give rise to indemnities in case of a breach) in the share purchase agreement notably considering the existence of a tax consolidation group.

g. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

France subjects acquisitions of shares to much lower registration duties than asset acquisitions. Stamp duty is 0.1% of for SA and SAS companies, 5% for real estate and 3% for all other interests in companies. A real estate company is a company whose fair market value of gross assets is composed of more than 50% of French real estate at any time during the year preceding the sale.

Registration duty is assessed against the purchase price of the company interests reduced by the product of (i) the ratio of number of shares purchased divided by total number of shares issued by the acquired company and (ii) EUR23,000.

As from 1 January 2019, mergers and assimilated operations (spin-offs, partial business transfers, etc.) are no longer subject to registration duty[5].

h. "Purchase accounting" applicable to share acquisitions

As a general principle, acquisitions of shares are performed at fair market value and booked as such in the balance sheet of the acquiring company. The accounting and tax bases of the assets of the acquired company are not adjusted to fair value but remain at their historical figures.

i. Transaction costs

The acquisition costs of shares are the transaction costs which are connected directly with the acquisition of the shares, for example, fees for legal, accounting and tax advice, bank advisory fees (other than fees attributable to the financing of the acquisition) and registration duties due upon the transfer of ownership[6].

From an accounting standpoint, acquisition costs of shares must be, upon election of the taxpayer, either booked as a deductible expense of the fiscal year during which they are incurred, or included in the book value of the shares acquired (Section 332-1 of the Accounting General Code).

From a tax standpoint, Section 209-VII of the French Tax Code ("FTC") provides that costs incurred to acquire shares qualifying as a controlling interest (as qualified by Section 39-1- 5°-18 of the FTC) must be incorporated into the acquisition cost of said controlling interest. However, the above mentioned Section provides that the deduction of acquisition costs may be spread over a five year period. In the case of an acquisition in the course of a fiscal year, the deduction is pro-rated. Acquisition costs include registration duties, commissions, fees (including auditor fees, external appraiser fees, adviser fees etc.) and "act expenses" related to the acquisition ("act expenses" refers to the costs incurred for the signing of the acquisition agreement itself and for making it enforceable, (i.e. printing costs, legal formality of publicity, prospectus, etc.).

5 Finance Act for 2019, Article 26.

6 BOI-IS-BASE-30-10 n°30.



Since a merger involves the cancellation of the shares of the acquired company, it is not possible to amortise the transaction costs borne by the buyer company on the acquisition.

On the other hand, a merger may result in a merger loss corresponding to the difference between the book value of the shares, net of the said costs and the net book value of the assets transferred by the merged entities.

Pursuant to accounting guidelines, when the difference between the value of the shares and the value of the transferred assets generate a loss ("mali de fusion"), this loss could be treated differently depending on its nature:

- The so called "mali technique" : it corresponds, up to the limit of the cancelled shares value, to the latent capital gains on assets transferred by the merged company, (i.e. the difference between the fair market value and the net book value of the transferred assets, less unrecognised liabilities). This component is generally recognised for mergers or universal transfers of assets and liabilities performed at the book value, when the net value of the shares of the merged company (booked at the level of the merging company) exceeds the net book asset contributed. At the transaction date, the "mali technique" is allocated to the various assets contributed, whether or not they are booked in the accounts of the merged company, and then (i) recorded in a specific account by category of asset concerned after its allocation (PCG, Section 745-6).
- The so called "vrai mali": the surplus of merger loss corresponds to a depreciation of the interest hold in the merged company and should be recorded in P&L account, as a financial expense.

From a French tax standpoint, the merger loss is computed with respect to the tax value of the cancelled shares, (i.e. their acquisition price increased by the part of the acquisition costs that has not been depreciated yet).

- The so called "vrai mali" corresponds to a tax loss which can be subject to the tax long term regime, if the cancelled shares have been held for more than two years. Otherwise, this merger loss would be in principle tax deductible.
- The so called "mali technique" cannot be considered as a deductible loss and cannot be depreciated either through provision or amortisation.

j. Financing costs

Loan issuance costs are as general matter deductible from the taxable profits made on the financial year, during which such costs were incurred. Nevertheless, upon prior option, these costs may be linearly spread over the duration of the loans or pro rata the accrued interest due in consideration of the loan[7].

The tax treatment of these costs must comply with their accounting treatment. It must be underlined that no pro rating of these costs can be applied during the first fiscal year.

This option to spread deductions of the financing costs is made for a two year long period and applies to all the loans entered into during this two year period. This option is tacitly renewable.

7 Section 39-1-1° quarter of the FTC; BOI-BIC-CHG-20-30-40 n°1



k. Share Purchase Advantages

The main advantages of a share acquisition are the following:

- An acquiror may benefit from tax losses of the target company (tax losses become limited in France not as a result of a change in control but, as explained below, only upon a change in underlying activity);
- Existing supply or technology contracts remain binding (i.e. generally no counterparty consents or renegotiations except where required by contract upon change in control); and
- Registration duties on share acquisitions are generally lower than transfer taxes on asset purchases.

l. Share Purchase Disadvantages

The main disadvantages of a share acquisition are the following:

- The historical liabilities of the target company remain with the target company; and
- The purchase price is not deductible (currently or through depreciation/amortisation).

4. ASSET ACQUISITIONS

a. General Comments

The purchase of assets consists of the straight sale of one or more assets or of a going concern ("fonds de commerce").

As the acquisition must be made at actual value, the tax basis of the assets will reflect the purchase price paid, including cash transferred from buyer to seller, liabilities assumed by buyer and acquisition costs incurred by buyer.

b. Purchase Price Allocation

A Purchase Price Allocation ("PPA") is needed to assess the value of assets. The valuation of the assets determines the amount of capital gains and the existing goodwill transferred with the assets.



c. Tax Attributes

The asset acquisition may entail a change of the purchaser's activity and the forfeiture of carried forward losses available.

In fact, an addition / a sale of new business activity may constitute a change in activity where, during the fiscal year of the change or the following fiscal year, in comparison with the fiscal year preceding] the change, there is an increase of more than 50% of either:

- The company's turnover; or
- The average number of staff and the gross amount of fixed assets.

A complete or partial surrender or transfer of a business activity may also characterise a change in activity if there is a decrease of more than 50% of both of the previous criteria in comparison to the relevant time periods.

d. Tax Free Reorganisations

A contribution of a business is a transaction whereby a company transfers part or all of its assets and liabilities to another company in exchange for shares. The assets transferred must constitute a "complete and autonomous branch of activity." This concept of a complete and autonomous branch of activity requires that the collection of assets and liabilities to be transferred are those of a division of a company that constitutes, from a technical standpoint, an independent activity capable of being carried out autonomously using the division's own resources under normal conditions in the economic sector concerned[8]. Such a transfer should not be taxable in France currently. The tax deferred nature of this transaction is not contingent on the transferee conducting the transferred activity for a minimum period.

As of 1 January 2018, a contribution of shares that increases the participation of a shareholder that already holds more than 50% of the share capital can qualify as a complete and autonomous branch of activity.

e. Purchase Agreement

The joint sale of several assets may be requalified as a transfer of a going concern ("TOGC") by the French Tax Authorities ("FTA"), which has consequences in terms of registration duties (see Section 4.g.). If the sale is not requalified as a sale of a going concern, the value of each asset must be determined separately. Registration duties will apply to each asset depending on its nature and according to the rates described below in section 4.g. Transfer Taxes, VAT.

f. Depreciation and Amortisation

Amortisation of shares is not possible from an accounting and tax standpoint.

From an accounting standpoint, in some specific cases, amortisation of intangible assets such as goodwill are only possible if it is foreseeable, at the date of their creation or the date of acquisition, that their beneficial effects will end on a given date. Intangible assets that grant the company temporary rights are amortisable.

From a tax standpoint, the amortisation of goodwill was not deductible, as a general principle. However, according to the 2022 Finance Bill, amortisation booked on goodwill acquired between 1 January 2022 and 31 December 2025 has become deductible from taxable income under certain conditions.

8 French tax guidelines (BOI-IS-FUS-20-20-20181003, n°230 and 240) accept that back office services provided by the transferring company after such a transfer do not prevent the transferred activity from qualifying as a "complete and autonomous branch of activity" for these purposes.



g. Transfer Taxes, VAT

The transfer of assets qualifying all together as a going concern are subject to registration duties at:

- 0% up to EUR23,000;
- 3% of the sale price from EUR23,000 to EUR200,000; and
- 5% of the sale price exceeding EUR200,000.

The transfer of real estate assets (both assets that are immovable by nature, such as land and buildings and assets that are immovable by use, such as equipment permanently affixed to land) are subject to a transfer tax at a rate of 5.09% plus additional duties, calculated on the sale price. From a VAT standpoint, the asset deal should be neutral, provided the assets sold all together form at least a single complete business.

In cases of mergers and assimilated operations (described above), under Article 816 of the French Tax Code ("FTC"), no transfer tax is due as from 1 January 2019[9].

h. Asset Purchase Advantages

The main advantages of an asset purchase are the following:

- The purchase price can be depreciated or amortised for tax purposes (except for goodwill);
- A step up in the cost base of individual assets for capital gains tax purposes is obtained;
- No previous liabilities of the company are inherited; and
- It is possible to acquire only part of a business.

i. Asset Purchase Disadvantages

The main disadvantages of an asset purchase are the following:

- There may be a need to seek transfer consents or renegotiate supply, employment and technology agreements;
- Capital gains derived from the sale of assets are subject to the standard CIT rate, while capital gains on shares generally benefit from a participation exemption regime (CIT limited to a 12% lump sum of the capital gain realised);
- Higher registration duties; and
- The benefit of any losses incurred by the target company remains with the seller (although such losses may be available to the seller to offset any gains on the asset dispositions).

9 Finance Act for 2019, Article 26.



5. ACQUISITION VEHICLES

a. General Comments

Acquisition transactions in France generally involve the incorporation of a French SPV. The SPV will raise the acquisition financing and acquires the shares or the assets. The type of SPV created is driven by economic, legal and tax considerations. The SPVs commonly used in France are companies subject to corporate income tax ("CIT") in order to set up a tax consolidation group.

b. Domestic Acquisition Vehicle

In general, the main acquisition vehicle is a joint stock company or a simplified stock corporation as they are companies with limited liability (see Section 1). For real estate investments, French property companies are frequently used.

c. Foreign Acquisition Vehicle

There is no special rule under French tax law for a foreign acquisition vehicle.

d. Partnerships and Joint Ventures

Partnerships and joint ventures are possible even if no specific legal form is provided under French law. A joint venture can be organised by contract or by setting up a company or a French economic interest grouping (Groupement d'intérêt économique – "GIE").

e. Strategic vs Private Equity Buyers

The preferred acquisition vehicle mainly depends on the investment strategy pursued by the investor as well as the industry. No general statement can be provided.

6. ACQUISITION FINANCING

a. General Comments

Broadly speaking, a company is generally not prohibited from borrowing or receiving funds as equity contributions. Financial expenses are deductible, within certain limits.

b. Equity

i Increase in share capital

The share capital of a company may be increased to finance an acquisition. An increase in share capital can be performed by a contribution in cash or in kind, remunerated through issuance of shares. Cash contributions made to companies subject to CIT are exempt from registration duties.



ii Consequences of the detention of more than 50% of the shares of a company subject to a privileged tax regime

Pursuant to Article 209 B of the FTC, if a legal entity established in France and liable to CIT carries on a business established outside France or holds directly or indirectly more than 50% of the shares in a legal entity established outside France benefiting from a privileged tax regime[10], the entire profits of that legal entity are taxable in France at the level of the shareholder. This rule does not apply if the legal entity is:

- Conducting its activity in a Member State of the European Union, unless the situation is an artificial arrangement intended to circumvent French tax law; or is
- Outside the European Union, if the French taxpayer demonstrates that the operations of the company or legal entity established or incorporated outside France has a principal purpose and effect other than to enable profits to be located in a territory where it is subject to a privileged tax regime.

Currently, the French Tax Authorities ("FTA") are focusing special attention on taxpayer compliance with these provisions.

c. Debt

i Limitations on use of debt

A company and its shareholders may generally choose the company's forms and amounts of financing (as between equity and debt)[11]. However, French tax authorities may challenge the use of indebtedness if the incurrence of debt (a) was against the corporate interest of the company or (b) abusive[12].

ii Limitations on interest deductions

A number of rules relate to the deductibility of interest on borrowings.

Interest rate limitation for related party debt

Assuming a company's share capital has been entirely paid by its shareholders[13]:

- When the lender is a direct shareholder and not a "qualified related party"[14], the law permits the underlying debt to carry, at maximum, an interest rate provided by Section 39-1-3° of the French Tax Code ("FTC") and corresponding to the rate that the borrowing company would have obtained from independent financial institutions under similar conditions.
- When the creditor constitutes a "qualified related party" of the borrowing entity, the law permits the underlying debt to carry, at maximum, an interest rate equal to that which the borrowing company could have obtained from independent financial institutions under similar conditions, so long as the company is be able to prove that the interest rate applied is arm's length. Currently, the FTA are focusing special attention on taxpayer compliance with these provisions.

10 A privileged tax regime refers to two criteria : (1) absence of taxation and (2) tax paid abroad is lower (40% or more) than tax that would be paid in France.

11 Supreme Administrative Court, December 30, 2003, No. 233894, SA Andritz.

12 Supreme Administration Court, January 13, 2007, No.3911196, SAS Ingram Micro

13 A company may not deduct interest if its share capital is not entirely paid.

14 According to Section 39-12 of the FTC, related parties are deemed to exist between two undertakings (a) where one of the undertaking holds directly or through an interposed person the majority of the share capital of the other undertaking or exercises de facto therein the decision power, or (b) where the two undertakings are under the control of a third undertaking under the conditions defined in (a) above.



Anti-hybrid legislation

As from 1 January 2020, new rules against hybrid schemes have been introduced into French tax legislation in order to implement ATAD1 and ATAD2 Directives. A hybrid mismatch should be qualified where the mismatch outcome[15] is attributable to:

- A difference in the tax characterisation of (i) the financial instrument16[16] or the underlying payment or (ii) the debtor/beneficiary entity[17]; or
- A difference in the laws applicable in the residency country of the hybrid entity governing the allocation of that payment to the hybrid entity and the laws of the residency country of any person with a participation in such hybrid entity.

However, only mismatches occurring between associated enterprises, between a head office and its permanent establishment or between two or more permanent establishments of a same entity fall within the scope of this new regulation.

An "associated enterprise" is defined for the purpose of ATAD2 mechanism as:

a) an entity in which the taxpayer holds directly or indirectly a participation in terms of voting rights or capital ownership of 50%[18] or more or is entitled to receive 50% or more of the profits of that entity;

b) an individual or entity which holds directly or indirectly a participation in terms of voting rights or capital ownership in a taxpayer of 50% or more or is entitled to receive 50% or more of the profits of the taxpayer;

c) an entity in which an individual or entity who/which holds directly or indirectly a participation in terms of voting rights or capital ownership of 50% or more of the taxpayer, also holds a participation in terms of voting rights or capital ownership of 50% or more.

(d) an entity that is part of the same consolidated group for financial accounting purposes as the taxpayer (section 212 bis, VI, 2° of the FTC), an enterprise in which the taxpayer has a significant influence in the management of an enterprise that has a significant influence in the management of the taxpayer. A significant influence is presumed when the parent entity holds directly or indirectly a participation in terms of voting rights of 20% or more of the other entity.

For the application of a), b) and c), a person who acts together with another person in respect of the voting rights or capital ownership of an entity shall be treated as holding a participation in all of the voting rights or capital ownership of that entity that are held by the other person.

Also, section 205 B, III-3 of the FTC provides for a specific rule to deny the deduction in France in respect of a payment giving rise to an imported hybrid mismatch (i.e. when this payment, which is deductible in France, corresponds with another payment qualified as hybrid mismatch in a third country).

15 A "mismatch outcome" means a double deduction or a deduction without inclusion or a double inclusion.

16 A "financial instrument" means any instrument to the extent that it gives rise to a financing or equity return that is taxed under the rules for taxing debt, equity or derivatives under the laws of either the payee or payer jurisdictions and includes a hybrid transfer.

17 17 An "hybrid entity" means any entity or arrangement that is regarded as a taxable entity under the laws of one jurisdiction and whose income or expenditure is treated as income or expenditure of one or more other persons under the laws of another jurisdiction.

18 For several types of hybrid mismatches, the 50% threshold mentioned in a), b) and c) must be replaced by a 25% threshold.



In this context, where a hybrid mismatch falls within the scope of the new anti-hybrid provisions, corrective measures set out in section 205 B, III-1 of the FTC provide for:

- A denial of the deduction of such payment from French taxable income of the debtor; or
- The add-back of the payment to the tax result of the French beneficiary.

Lastly, please note that this new regulation does not address extensively the case of structure involving UCITS except for reverse hybrid mismatches where UCITS[19] are expressly excluded from the limitation.

Even if the FTC does not provide for such exception in the case of an ordinary hybrid mismatch, one could consider that flows involving UCITS are out of the scope of the regulation as well but specific commentaries on the ruling will be necessary to confirm such analysis.

Limitation based on EBITD

For fiscal years beginning on or after 1 January 2019, French companies (not partnerships) are subject to EBITDA based limitations on interest deductibility; the applicable rule depends on whether the company is thinly capitalised. A company is deemed to be thinly capitalised if the amount of debt from qualified related parties exceeds 1.5 times the "fonds propres" (adjusted net equity). Third party loans which are guaranteed by a related party are not considered to be debt from a related party for this purpose. These rules are applied to any French company or to a French consolidated tax group, if one exists.

If the company or group is not thinly capitalised, a corporate taxpayer may deduct net financial expenses (including interest) only up to the greater of 30% of its earnings before interest, tax, depreciation and amortisation ("EBITDA") or EUR3 million.

- A company (or group) may deduct 75% of its financial expenses in excess of 30% of its earnings if it can demonstrate that the ratio of its equity over its total assets is equal to or higher than the equivalent ratio of the taxpayer's (or group's) local financial consolidated group (so called "safe harbour provision").
- Financial expenses which cannot be deducted in one tax period as a result of these limits may be carried forward indefinitely. In addition, unused interest capacity may be carried forward over five tax years.

If the company or group is thinly capitalised, two levels of deduction apply:

- Interest paid by a company or group to unrelated party companies (not including partnerships or individuals) may be deducted up to the greater of 30% of its prorated EBITDA or EUR3 million, to the extent related party debt does not exceed 1.5 times the company's (or group's) equity ("fonds propres") (the "First Level").
- Total interest paid by a company (or group) to one or more related party companies (not including partnerships or individuals) may be deducted up to the greater of 10% of its prorated EBITDA or EUR1 million, to the extent related party debt amount does not exceed 1.5 times the company's (or group's) equity ("fonds propres") (the "Second Level").

A thinly capitalised company (or group) is not subject to the Second Level if the debt to equity ratio of the company (or group) is equal to or lower than the equivalent ratio of the financial consolidated group.

19 "Collective investment vehicle" means an investment fund or vehicle that is widely held, holds a diversified portfolio of securities and is subject to investor-protection regulation in the country in which it is established.



Financial expenses which cannot be deducted in one tax period as a result of these limits may be carried forward indefinitely. However, only one third of any amounts limited by the Second Level may be deducted in any one year.

Moreover, thinly capitalised companies or groups may deduct limited financial expenses which have been carried over only to the extent of any positive difference between (a) the greater of 30% of the prorated EBITDA or EUR3 million pro-rated and (b) the net financial charges for the year minus those subject to Second Level. Thinly capitalised taxpayers may not carry forward unused interest capacity.

Charasse amendment for consolidated groups

The so called "Charasse amendment" limits tax deductibility for interest expenses within a French tax consolidated group of companies when:

- The shares of a French company have been purchased by another company from parties who also directly or indirectly control (de jure or de facto) the acquiring company at the time of acquisition; or
- Both the acquired and acquiring companies become members of the same French tax consolidated group of companies after the transaction (including by way of merger).

Any interest expense resulting from this situation is non-deductible to the extent of:

- Financial expenses x [(acquisition price – amount of contribution in cash to the acquiring company) / average group debt]
- For the acquisition accounting period and the following eight tax years.

iii Debt Pushdown

Most taxpayers achieve debt pushdowns in France with either (a) a levered distribution up to the amount of the target company's distribution capacity or (b) the purchase of part of the target's assets (including stock of a subsidiary) by an affiliated company in exchange for an intercompany note.

A company's dividend distribution capacity may be increased without adverse tax consequences, for example, by transactions made at fair market value with a limited tax impact (e.g. sale of shares benefiting from the participation exemption regime).

If the debt pushdown is achieved by a sale of assets, care should be taken that tax on any gain is either immaterial relative to the pushdown benefits or non-existent due to the application of a participation exemption regime or fiscal unity rules.

A merger may also create a debt pushdown when an acquisition company borrows funds for the acquisition of a target and subsequently merges the target into the acquisition company. If the merger occurs within a short time of the acquisition, French authorities generally attempt to deny the deduction of interest on acquisition related debt. However, much depends on the particular facts and the reviewing authorities (e.g. FTA recently permitted such a situation between two holding companies in the case of a secondary leveraged buyout). Aside from careful tax analysis, a taxpayer must also carefully analyse the application of financial assistance regimes and prohibitions on financing a company's own acquisition.



d. Other instruments

Some securities issued by a company (such as preference shares/*actions de préférences*, "ADP", or share purchase warrants/bons de souscription d'actions, "BSA") may resemble, in part, both traditional debt (bank debt or bonds) and equity. In each case, particular care must be taken to their characteristics and valuation so that they are not reclassified as debt instruments.

e. Earn-outs

Earn-out payments are taxable only upon receipt.

7. DIVESTITURES

a. Tax free

Only a 12% lump sum of the capital gains derived from the sale of qualifying shareholdings is subject to CIT, resulting in capital gains taxation at the effective rate of 3% maximum.

Qualifying shareholdings must satisfy both of the following conditions:

- They must be qualified as a controlling interest (specific class of shares for accounting purposes that enables the shareholder to have a controlling interest[20]) or, be eligible for the dividend participation exemption regime (i.e. the shareholding constitutes at least 5% of the voting rights in the subsidiary's capital); and
- They must have been held for at least two years before their sale.

b. Taxable

Capital gains derived from the sale of shares other than those mentioned below are fully subject to CIT at standard rate.

c. Cross border

Subject to the provisions of relevant tax treaties having a substantial shareholding provision (e.g. those with Spain, Italy, Hungary, etc.), capital gains recognised by non-French resident companies on shareholdings held in a French company are subject to French withholding tax at the standard CIT rate provided the that the foreign seller has held, at any time during the five years preceding the sale, directly or indirectly, more than 25% of the share capital of the French company[21].

20 For this purpose, a "controlling interest" exists, without regard to the percentage of shares or their value, if the shareholdings provide rights to a shareholder that allow effective participation in the company as a shareholder.

21 Section 244 bis-B of the French Tax Code ("FTC").



8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

France applies a territorial tax system. Regarding CIT, Article 209, I of the French Tax Code (FTC") provides that profits realised by companies operating in France are taxable in France. As a result, profits realised by companies on operations outside of France are generally not taxable in France other than as provided in the French CFC regime described below.

b. CFC regime

Controlled foreign companies ("CFC") rules apply to more than 50% owned or controlled foreign subsidiaries or to permanent establishments of a French company when the actual cash tax imposed on such subsidiary or establishment is lower than 50% of the French CIT rate. In such a case, taxation of the French company is computed as follows:

- If the CFC is a PE or a branch, the French company is taxed on the income deemed to be received from the CFC computed according to French tax rules;
- If the CFC is a subsidiary, the French company is deemed to have received distributed income from the CFC computed according to French tax rules.

EU companies are outside the scope of the CFC rules unless the structure was put in place to avoid tax. Moreover, for companies located outside the EU, CFC rules do not apply if the French company demonstrates that the operations of the CFC have a principal purpose and effect other than to avoid tax in France.

c. Foreign branches and partnerships

Under the application of the territorial tax system, local branches of foreign corporations and partnerships are taxed similarly, in respect of their French profits, to French corporations and partnerships.

d. Cash repatriation

Dividends distributed by a French company to non-residents are, in principle, subject to withholding tax. However, the law provides for various exemptions (e.g. dividends paid to a parent company established in EU, Iceland, Norway or Liechtenstein). Moreover, most double tax treaties reduce or eliminate the rate of the withholding tax.



9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

For capital gains tax purposes, a real estate company is any entity (including a partnership) with assets made than 50% of whose gross fair value[22] consists of French real estate assets at the date of the transfer or at the closing date of the last fiscal year. Properties used for the purpose of a commercial activity (other than the business of leasing or in the business of buying and selling real estate) are not deemed to be "real estate assets" for these purposes.

Capital gains on the transfer of shares in or assets of real estate companies are subject to CIT at the standard CIT rate. No participation exemption is available with respect to transfers of shareholdings in real estate companies. As discussed above, different transfer duties apply to the transfers of real estate companies and real estate than apply to transfers of other assets.

b. CbC and Other Reporting Regimes

i Transfer Taxes Territoriality

Transfers of shares in French companies (other than real estate companies) recognised by deeds concluded abroad are subject to transfer tax in France, unless otherwise provided for in double tax treaties.

Transfers of shares of foreign companies are only subject to transfer tax in France if they are recognised by a deed concluded in France.

Transfers of shares of a real property company, either French or foreign, with a preponderance of French real estate assets, is subject to transfer tax in France, even if the deed is concluded abroad.

ii Country-by-Country Reporting

France introduced a country-by-country reporting requirement in 2016 (see Section 10).

10. TRANSFER PRICING

French transfer pricing rules generally follow the OECD guidelines and principles. Multinational companies with French operations must ensure that the pricing of intercompany transactions meet the arm's length standard.

Transfer pricing documentation rules were introduced into French law in 2010. Companies with sales in excess of EUR400 million must maintain extensive transfer pricing documentation. Companies with sales less than EUR400 million but in excess of EUR50 million must maintain "light" transfer pricing documentation if annual payments to related foreign entities exceed EUR100,000.

France introduced a country-by-country reporting requirement in 2016 for groups with an aggregated turnover of EUR750 million or more at the level of the local financial consolidated group. For fiscal years beginning on or after 1 January 2018, the head of such a group must present to the FTA transfer pricing documentation (a master file and local file) that largely follows the OECD's recommendations.

22 Fair value must be supported by a legitimate appraisal.



11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of hybrid entities

The use of hybrid entities is not common in France, as the main categories of legal entities in France are companies and partnerships.

b. Use of hybrid instruments

France implemented the Anti-Tax Avoidance Directive (EU) 2016/1164, as modified by Council Directive (EU) 2017/952 ("ATAD").

As regards hybrid instruments and relevant considerations, please refer to Section 6.

c. Principal/limited risk distribution or similar structures

France does not have specific rules that tax contract or toll manufacturing operations differently than any other business, so long as the return of the company is consistent with the arm's length principle.

d. Intellectual Property

Income and capital gains arising from patents24 (acquired or created) are taxed in France at a reduced corporate tax rate of 10% for FYs open on or after 1 January 2019. Taxation at the reduced rate is applicable on an option basis, exercised either on an asset by asset approach or on a group of assets. The Finance Law for 2019 also introduces the so called "nexus" approach of BEPS Action 5. Therefore, this favourable tax regime should only apply if the taxpayer performs R&D activities.

The favourable reduced rate applies to the net income derived from the licensing of qualifying patents, after deduction of R&D expenses and after application of a ratio comparing the R&D expenses incurred for the creation or development (but not the acquisition) of the qualifying patent by the taxpayer or non-related parties to the total R&D expenses incurred for the creation, development or acquisition of the qualifying patent.

e. Special tax regimes

France has special tax regimes for certain types of activities and business sectors that, due to their complexity, must be considered on a case by case basis, for example the carried interest regime, funds regime, innovative start-up regime and the privatisation regime.

12. OECD BEPS CONSIDERATIONS

France has implemented many measures to address BEPS issues. France is proactive and sometimes implements measures before the publication of BEPS final reports.

For example, the following measures have been implemented: hybrid instruments (Action 2), CFCs (Action 3), interest deductibility and thin capitalisation rules (Action 4), treaty abuse (Action 6), permanent establishments (Action 7) and transfer pricing documentation (Action 13).

Recently, France has introduced the patent box and presented measures on digital economy taxation[23].

23 This rule applies only to patents (with certain exceptions) and not to any other kind of intellectual property.



13. ACCOUNTING CONSIDERATIONS

a. Combinations

In the case of mergers and similar transactions, the transcription of contributions into the accounts of the beneficiary company must be carried out in accordance with accounting rules.

Contributions must be recorded at their book value for transactions involving entities under common control. The contributed assets must also be recorded at their book value for transactions involving entities under separate control, when the acquired company takes control after the merger.

Contributions must be recorded at market value when the entities are under separate control when the purchaser takes control after the merger.

b. Divestitures

Divestitures must be recorded at fair market value.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

The distributable profit is determined by Article L. 232-11 of the Trade Code and merely correspond to share premium, retain earnings and accounting income of the year.

It should be noted that free of tax contributions repayments (through share capital decrease) would be viewed as deemed dividend distribution, and taxed as such, should the company whose share capital is decrease has available distributable reserves at the time of the contributions repayments.

b. Substance Requirements for Recipients

Article 119 of the FTC exempts from withholding tax dividends distributed by a French company to a parent company located in the European Economic Area under certain conditions.

However, this exemption does not apply to dividends distributed in the context of an arrangement (or series of arrangements) which aim is to obtain a tax advantage contrary to the object or purpose of the regime.

c. Application of Regional Rules

European Union law has an increasing influence over Member States' tax law. Regarding M&A, several European directives have been adopted by France, such as the Directive 90/435/EEC of 23 July 1990 on parent companies and subsidiaries, the Directive 90/434/EEC of 23 July 1990 on cross-border mergers, the Directive 2003/49/EC of 3 June 2003 on the common system of taxation applicable to interest and royalty payments made between associated companies or the Directive 2016/1164 of 12 July 2016 ("ATAD").



d. Tax Rulings and Clearances

In France tax rulings are not commonly used for mergers and acquisitions.

Prior approval by the tax authorities is required to allow the transfer of tax losses carried forward from the absorbed company or the branch of activity transferred to the acquiring or receiving company.

15. MAJOR NON TAX CONSIDERATIONS

This section is left intentionally blank.



16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends % [1]	Interest % [2]	Royalties %	Footnote Reference
Argentina	15	20	18	
Australia	0 / 5 / 15	0 /10	5	[3] [4]
Austria	0 / 15	0	0	[5]
Belgium	0 / 12.8	0	0	[5]
Brazil	15	0 / 10 / 15	10 / 15 / 25	[6] [7]
Canada	5 / 15	0 / 10	0 / 10	[5] [8] [9]
Chile	15	4 / 5 / 10 / 15	2 / 5 / 10	[10] [11] [12] [13]
China (People's Rep.)	5 / 10	10	10	[14]
Colombia	0 / 30	0	0 / 31	[15]
Croatia	0 / 15	0	0	[5]
Cyprus	10 / 15	0 / 10	0 / 5	[5] [16] [17]
Czech Republic	0 / 10	0	0 / 5 / 10	[18]
Denmark	0 / 15	0	0	[19]
Finland	0	0 / 10	0	[20]
French Polynesia	D	0 / D	D	[21] [22]
Germany	0 / 15	0	0	[5]
Greece	D	0 / 12	5	[21] [23]
Hungary	5 / 15	0	0	
India	5 / 10 / 15	0 / 10 / 15	10 / 20	[24] [25] [26]
Indonesia	10 / 15	0 / 10 / 15	10	[27]
Ireland	10 15	0	0	[28]
Italy	5 / 15	0 / 10	0 / 5	[5] [29] [30]
Japan	0 / 5 / 10	0 / 10	0	[31] [32]
Korea (Rep.)	10 / 15	0 / 10	10	[5] [33]
Luxembourg	5 / 15	10	D	[21]
Malaysia	5 / 15	15 / D	10 / D	[5] [34] [35] [36] [21]
Malta	0 / 15	0 / 5	0 / 10	[5] [37] [38]
Mauritius	5 / 15	0 / D	0 / 15	[5] [37] [21] [39]

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Jurisdiction	Dividends % [1]	Interest % [2]	Royalties %	Footnote Reference
Mexico	0 / 5 / 15	0 / 5 / 10 / 15 / D	0 / 10 / 15	[40] [41] [42] [43] [44] [21]
Netherlands	5 / 15	10	0	
Norway	0 / 15	0	0	[5]
Philippines	10 / 15	0 / 15	15	[45]
Poland	5 / 15	0	0 / 10	[3] [37]
Portugal	15	10 / 12	5	[46]
Puerto Rico	0 / 30	0	0 / 31	[19]
Romania	10	10	10	
Russia	5 / 10 / 15	0	0	[47]
Serbia	5 / 15	0	0	[48]
Singapore	5 / 15	0 / 10	0 / D	[5] [49] [50] [21]
Slovakia	10	0	0 / 5	[37]
Slovenia	0 / 15	0 / 5	0 / 5	[37] [51] [52] [53]
South Africa	5 / 15	0	0	[5]
Spain	0 / 15	0 / 10	0 / 5	[5] [29] [54]
Sri Lanka	D	0 / 10	0 / 10	[37] [21] [55]
Sweden	0 / 15	0	0	[5]
Switzerland	0 / 15	0	5	[5] [56]
Turkey	15 / 20	0 / 15	10	[5] [57]
United Kingdom	0 / 15	0	0	[5]
United States	0 / 5 / 15	0	0	[58]
Venezuela	0 / 5	0 / 5	5	[59] [60]

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Footnotes: this table only refers to outcome flows from France to contracting States	
1	Dividends - Unless indicated otherwise, the lowest rate in this column applies when the recipient company holds directly or indirectly at least 25% of the capital or the voting power of the paying company.
2	Interest - The withholding tax rates listed in the table are the ones provided in the treaties. Please note that a 0% rate should normally apply as per French domestic tax law.
3	Dividends - To qualify for the zero rate, the Australian company must hold at least 10% of the voting power in the French company. The 5% rate applies if the profits related to the dividends paid (in respect of a 10% holding) have not been subject to the normal corporate tax rate.
4	Interest - To qualify for the zero rate, interest must notably be related to a public loan made by the government or a local authority, The zero rate also applies to interest paid to a financial institution independent from the paying company.
5	A new tax treaty has been entered into between both countries on 9 November 2021 (not yet in force nor effective). Dividends - To qualify for the zero rate, the company must, inter alia, hold 10% of the capital for 365 days period that includes the day of the payment of the dividends. Otherwise, 12.8% rate applies.
6	Interest - The zero rate applies to loans granted by the government. To qualify for the 10% rate, interest must relate to loans granted for at least seven years by banks with public participation and linked to the sale or installation of industrial or scientific equipment or public works.
7	Royalties - To qualify for the 10% rate royalty payments must relate to copyright. The 25% rate applies to trademarks.
8	Interest - To qualify for the 0% rate, interest must be paid by the state, local authorities, the central bank or entities of similar nature. The zero rate also applies to interest related to sales on credit (but not between "associated" companies), public bonds notably or guaranteed by particular institutions.
9	Royalties - To qualify for the zero rate, royalty payments must be received as consideration of the use or the right to use copyright (excluding cinematographic films which are not cultural cinematographic films), computer software, patents and know-how. The zero rate also applies to royalties paid to the government or to an approved organisation of Canada.
10	Interest - The 5% rate applies to interest on loans from banks, insurance companies, publicly traded securities and sale of equipment on credit. The 15% rate applies in all other cases.
11	Interest - By virtue of a most favoured nation clause, the rate is reduced to 4% when the beneficiary is a bank, an insurance company, a company selling equipment on credit or a company of which more than 50% of the debts come from bonds issued on financial markets or of which 50% of the assets come from receivables from unrelated companies.
12	Royalties - The 5% rate concerns the use or the right to use industrial, commercial or scientific equipment.
13	Royalties - A most favoured nation clause might apply and reduce the rate to 2%.
14	Royalties - Royalties paid for the right to use industrial, commercial or scientific equipment are subject to tax on 60% of the gross income.
15	The tax treaty between France and Colombia has not entered into force yet. For now, the domestic rates apply to dividends, interest and royalties (we refer to [19]).
16	Interest - The zero rate applies to interest paid to the State or a local authority and interest guaranteed by a banking institution, the State or a local authority. It also applies to interest related to sale on credit of merchandise between two companies or industrial, commercial or scientific equipment.
17	Royalties - To qualify for the 5% rate, royalty payments must concern copyright on films and television.



Footnotes: this table only refers to outcome flows from France to contracting States	
18	Royalties - To qualify for the zero rate, royalty payments must relate to copyright, excluding computer software. The 5% rate is applicable to equipment leasing. The 10% rate applies to patents, trademarks and know-how.
19	A tax treaty has been entered into between both countries on 4 February 2022 (not yet in force or effective). Dividends - To qualify for the zero rate, the company must, inter alia, hold 10% of the capital for 365 days period that includes the day of the payment of the dividends. Otherwise, 15% rate applies. Interest - 0%. Royalties - 0%.
20	Interest - The zero rate applies to interest paid in relation with the sale of industrial, commercial or scientific equipment. It also applies to loans granted by a banking institutions and to specific compensations for delay.
21	D' means that according to the provisions of the Tax Treaty, domestic rates may apply to dividends, interest and royalties in specific situations. Dividends - To qualify for the zero rate, the company must, inter alia, hold 10% of the capital for two years. Otherwise, 30% rate applies. Interest - 0%. Royalties - The zero rate applies to royalties paid between "associated companies" (holding 25% of the capital for two years, centre of effective management within the European community, being subject to corporate income tax, inter alia). Otherwise, 31% rate applies in 2019, 28% in 2020 and 26.5% in 2021.
22	Interest - There is no withholding tax on interest relating to loans, deposits, bank accounts, etc.
23	Interest - The 12% rate applies to interest from negotiable bonds and debentures.
24	Dividends - By virtue of a most favoured nation clause, the rate is reduced to 5% (for holdings of 10%) and 10% in all other cases.
25	Interest - The 10% rate applies to interest paid to banking institutions or to a company holding 10% at least of the capital of the company paying the interest and 15% in all other cases. By virtue of a most favoured nation clause, the general rate is reduced to 10%. The zero rate applies to interest paid to the government or particular institutions. It also applies to loans guaranteed by the BFCE, COFACE, and other specific institutions in charge of financing foreign trade.
26	Royalties - By virtue of a most favoured nation clause, the rate is reduced to 10%.
27	Interest - The 10% rate applies if the interest is paid by a financial institution or by an enterprise engaged in specified activities, or to a bank or another enterprise. The zero rate applies to interest paid to a public institution or to loans implicating a public institution in relation to the sale of industrial or scientific equipment.
28	Dividends - To qualify for the specific rate a 50% holding is required.
29	Royalties - The lower rate is applicable to royalty payments received as consideration for the use of the right to use any copyright of literary, artistic or scientific work, excluding cinematographic films and works used for radio and television shows, etc.
30	Interest - The zero rate applies to sale on credit of industrial, commercial or scientific equipment or merchandise between two companies. It is also applicable to interest paid by, paid to, or guaranteed by a state or a local authority.



Footnotes: this table only refers to outcome flows from France to contracting States	
31	Dividends - To qualify for the 5% rate the Japanese company must hold at least 10% of the capital of the French company for at least six months before the end of the accounting period. The zero rate is applicable when the Japanese company is a "qualified resident" and has held at least 15% of the capital in the French company for at least six months.
32	Interest - The zero rate, inter alia, applies to interest paid to banks, insurance companies, the state or a local authority.
33	Interest - The zero rate applies to interest related to sale on credit of industrial, commercial or scientific equipment, as well as public bonds, inter alia. It is also applicable to loans made or guaranteed by particular institutions.
34	Royalties - The domestic rate is applicable to royalty payments related to films.
35	Interest - The domestic rate applies if the recipient is not the effective beneficial of the interest.
36	Royalties - The domestic rate might apply to excessive royalty payments.
37	Royalties - The lower rate is applicable to royalty payments in relation with copyright, including films, etc.
38	Interest - The zero rate applies to loans granted to a State or guaranteed by a State or a public institution.
39	Interest - The zero rate applies to interest paid if the recipient is the effective beneficial of the interest paid and if the interest is paid to a State, a public institution or a banking institution of the State.
40	Dividends - To qualify for the 5% rate, the recipient must be a Mexican company whose capital is controlled for more than 50% by one or more residents of third parties. The 15% rate applies when the company holds less than 10%.
41	Interest - The zero rate is notably applicable to interest received or paid by the government or public institutions. The 15% rate applies to interest paid to the effective beneficiary, otherwise the domestic rate applies.
42	Interest - By virtue of a most favoured nation clause, the rate is reduced to 5% when concerning interest paid to banks and insurance companies and for interest from quoted bonds and 10% in other cases.
43	Royalties - The zero rate is applicable to copyright royalties, except films.
44	Royalties - By virtue of a most favoured nation clause, the rate is reduced to 10%.
45	Interest - The zero rate is notably applicable to public bonds or similar securities. It also applies to loans granted by the BFCE or COFACE. The 15% rate applies to interest paid to the effective beneficiary, otherwise the domestic rate applies.
46	Interest - The 10% rate is applicable to interest on bonds issued in France after 1 January 1965.
47	Dividends - To qualify for the 5% rate, the recipient company must be subject to tax in Russia but is exempt from tax on the dividends received and must invest in the French company at least EUR76,225. To qualify for the 10% rate, only one of these conditions must be met.
48	Refers to the treaty concluded between France and the former Yugoslavia.
49	Royalties - The domestic rate applies to copyright related to literary or artistic work, including films, and information in relation with commercial experience. The domestic rate applies to royalty payments related to copyright and know-how.
50	Interest - The zero rate applies to interest paid to the Government or specific public institutions. It also applies to interest paid in relation to bonds issued by a company with an industrial or lender activity.
51	Dividends - To qualify for the lower rate, a 20% holding is required.

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Footnotes: this table only refers to outcome flows from France to contracting States	
52	Interest - The zero rate applies to interest paid to the State, or a local authority, or interest paid in relation to loans guaranteed by a State, the Central Bank, or a local authority.
53	Interest / Royalties - To qualify for the zero rate, the recipient must be a company holding directly at least 20% of the capital of the paying company (or vice versa), or a third French or Slovenian company holding directly 20% of the capital of both the payer and the recipient company.
54	Interest - The zero rate is applicable to some specific interest such as interest paid by the government, to a banking institution and between companies engaged in commercial or industrial activities.
55	Interest - The zero rate applies to interest paid in relation to sale on credit of industrial, commercial or scientific equipment when approved by the Government. It also applies to interest paid to a Government.
56	Dividends - To qualify for the zero rate, the Swiss recipient company must not be directly or indirectly controlled by a non-Swiss resident.
57	Interest - The zero rate applies to interest paid to the Government or the Central Bank or to loans guaranteed or supported by the State.
58	Dividends - To qualify for the 5% rate, the US company must hold directly or indirectly at least 10% of the capital of the French company. To qualify for the zero rate, the US company must own directly or indirectly at least 80% of the capital of the French company for at least 12 months.
59	Interest - The zero rate applies to interest paid or received by a State or a local authority.
60	Dividends - To qualify for the 5% rate, a 10% holding is required. Venezuelan shareholders - natural persons or legal entities that are not parent company - may obtain a refund of the tax credit (less a 15% withholding tax) provided that the dividends (including the tax credit) are subject to tax in Venezuela.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Documentation is requested for the last three fiscal years (general statute of limitation), except for specific documents (for which the specific statute of limitation has been specified below).

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Tax contact person available to discuss income and non-income tax matters. A current organisation chart, including all entities by full legal name, jurisdiction, date and place of formation, entity type, class of shares, and ownership percentages. Include a full history of each entity in the structure.
3	Tax Due Diligence	Corporate income tax	Corporate income tax returns.
4	Tax Due Diligence	Corporate income tax	Form n°2572.
5	Tax Due Diligence	Corporate income tax	Financial statements.
6	Tax Due Diligence	Corporate income tax	General ledgers.
7	Tax Due Diligence	Corporate income tax	General and special statutory auditors' reports.
8	Tax Due Diligence	Corporate income tax	Minutes of the shareholders general ordinary and extraordinary meetings.
9	Tax Due Diligence	Corporate income tax	If applicable, election letter for CIT normal basis regime.
10	Tax Due Diligence	Corporate income tax	If the company has a special tax status: any information relating to this status.
11	Tax Due Diligence	Tax consolidation (if applicable)	Tax consolidation returns.
12	Tax Due Diligence	Tax consolidation (if applicable)	Election letter for the tax-consolidation regime filed by the parent company (with the corresponding acknowledgement of receipt).
13	Tax Due Diligence	Tax consolidation (if applicable)	Agreement letter for the group subsidiaries (with the corresponding acknowledgement of receipt).
14	Tax Due Diligence	Tax consolidation (if applicable)	Tax-consolidation agreements concluded with member companies of the group.
15	Tax Due Diligence	Tax credit	Tax credit form n° 2069-RCI.
16	Tax Due Diligence	Tax credit	Any document related to tax credit held by the company.
17	Tax Due Diligence	R&D tax credit	R&D tax credit form n° 2069 A.
18	Tax Due Diligence	R&D tax credit	Available documentation to justify the eligibility of the projects for R&D tax credit.
19	Tax Due Diligence	R&D tax credit	Detailed documents regarding the computation of expenses that have been considered as eligible for R&D tax credit.

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Nº.	Category	Sub-Category	Description of Request
20	Tax Due Diligence	Competitive and employment tax credit ("CICE")	CICE tax credit form 2079-CICE.
21	Tax Due Diligence	FEC ("Fichier des écritures comptables")	FEC files.
22	Tax Due Diligence	VAT	VAT returns.
23	Tax Due Diligence	VAT	Table of cross-checking between turnover for VAT purpose (as declared in VAT returns) and turnover booked in P&L accounts.
24	Tax Due Diligence	VAT	If applicable, election letter for VAT on leases.
25	Tax Due Diligence	VAT	Sample of invoices issued by companies within the Group to a client located in France/ EU/outside EU.
26	Tax Due Diligence	VAT	If applicable, detail of VAT credits held by each entity (origin, refunds already obtained, etc.).
27	Tax Due Diligence	Economic Territorial Contribution ("Contribution Economique Territoriale")	Tax notice for "Enterprises Land Contribution" ("Cotisation Foncière des Entreprises") for the last three civil years.
28	Tax Due Diligence	Economic Territorial Contribution ("Contribution Economique Territoriale")	Tax returns n°1329-DEF for "Enterprises Added Value Contribution" ("Cotisation sur la Valeur Ajoutée des Entreprises") for the last three civil years.
29	Tax Due Diligence	Economic Territorial Contribution ("Contribution Economique Territoriale")	If applicable, copy of the request letters for the benefit of tax ceiling.
30	Tax Due Diligence	Tax audits	Any information relating to past/ongoing tax audits.
31	Tax Due Diligence	Intercompanies agreements	If applicable, any agreements concluded between the companies of the group.
32	Tax Due Diligence	Intercompanies agreements	If applicable, any loan agreements concluded between the companies of the group.
33	Tax Due Diligence	Transfer pricing	Transfer pricing documentation and choice of pricing method.
34	Tax Due Diligence	Transfer pricing	If applicable, French 2257-sd filling forms.
35	Tax Due Diligence	Transfer pricing	Country by Country Reporting (CbCR), where applicable.
36	Tax Due Diligence	Transfer pricing	Documents containing discussions with the FTA on this subject (e.g. exchange letters, tax rulings etc.).
37	Tax Due Diligence	Transfer pricing	Any analysis performed by advisers on the transfer pricing policy.



Nº.	Category	Sub-Category	Description of Request
38	Tax Due Diligence	Transfer pricing	All the computations files used to remunerate the intercompany transactions implemented.
39	Tax Due Diligence	Previous restructuring	Any legal and tax documents relating to past reorganisations.
40	Tax Due Diligence	Previous restructuring	FTA agreements for the transfer of tax losses and of the special merger tax regime.
41	Tax Due Diligence	Previous restructuring	“54 septies” form (special form about tax deferrals).
42	Tax Due Diligence	Wage tax	Wage tax forms.
43	Tax Due Diligence	Wage tax	Internal documents with the computation of the taxation ratio.
44	Tax Due Diligence	Filing requirements	Specific forms n°2561 (“IFU”) for the declaration of interest and dividend payments and acknowledgment of receipt for the last five civil years.
45	Tax Due Diligence	Filing requirements	DAS 2 forms for the declaration of wages, commissions and fees and acknowledgment of receipt for the last five civil years.
46	Tax Due Diligence	Others	If applicable, any tax rulings from the FTA.
47	Tax Due Diligence	Others	Any internal documents of tax related topics.

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GERMANY

1. INTRODUCTION

a. Forms of Legal Entity

The corporate entity most frequently involved in private acquisitions is the limited liability company ("Gesellschaft mit beschränkter Haftung") ("GmbH"). Other entities involved in private acquisitions are limited partnerships ("Kommanditgesellschaft") ("KG"), often in a mixed form where the general partner is a GmbH ("GmbH & Co. KG"), or stock corporations ("Aktiengesellschaft") ("AG").

Partnerships are transparent for (corporate) income tax purposes with their income being apportioned to their partners on a pro-rata basis. For Trade Tax ("TT") purposes the partnership itself is liable to tax if it is either trading (that is, actually operating a trade or business) or deemed trading (due to its partner and management structure). The partnership's liability for TT also comprises a taxable capital gain from the sale of an interest in that partnership realised by one of its partners.

b. Taxes, Tax Rates

Corporations are subject to corporate income tax ("CIT") and trade tax ("TT") on their taxable income. The CIT rate is 15% with a solidarity surcharge of 5.5% on the CIT, resulting in an effective CIT rate of 15.825%. The TT rate varies locally, in major cities between approximately 8% and 18%.

The taxable income is determined on the basis of the financial statements prepared under German GAAP, subject to several tax-specific adjustments both within and off the balance sheet. In determining the tax base for TT purposes, the taxable income for CIT purposes serves as starting point which is adapted for certain add backs (e.g. a portion of the interest expenses) and deductions (e.g. income from a trading or deemed trading partnership already subject to TT at the level of the partnership).

2. RECENT DEVELOPMENTS

a. General developments

Germany has recently seen some legislative developments of relevance for M&A deals and private equity.

Formerly, there had been a proportional forfeiture of losses (loss carry forwards and current losses) of a corporate entity if, within a five year period, more than 25% up to 50% of its shares are transferred to a single shareholder or a group of shareholders with aligned interest. After the German Federal Constitutional Court ("Bundesverfassungsgericht") had declared such proportional loss forfeiture unconstitutional unless the legislature creates a constitutional and retroactively applicable new regulation, the loss forfeiture rules for the transfer of more than 25% up to 50% were retroactively abolished through a change of German tax law.

In the past, financial restructurings were facilitated by the tax authorities' restructuring decree ("Sanierungserlass") dated 27 March 2013 declaring that subject to certain conditions a debt waiver gain is not taxed. In its resolution of 28 November 2016, the Grand Senate of the German Federal Tax Court abolished this restructuring decree because it had no statutory basis. The German legislature then basically converted the restructuring decree into statutory law. Following the issuance of a "comfort letter" by the European Commission stating that it does not consider the restructuring decree and the newly adopted law to be contrary to EU state aid law, the German legislator adjusted the newly adopted rule to reflect the "comfort letter" and to expand its retroactive applicability also to waivers effected prior to 9 February 2017.



M&A deals are affected by recent amendments of the real estate transfer tax ("RETT") rules for share deals. Firstly, from 1 July 2021 on, the harmful threshold of direct and indirect share transfers in real estate holding companies has been lowered from 95% to 90%. Secondly, an additional RETT event for corporations holding real estate has been implemented, where (similarly to the existing rules for partnerships) the transfer of at least 90% of the shares in a corporation within a period of ten years is subject to RETT (i.e. the transfer of at least 90% of the shares to two or more unrelated investors would also trigger RETT). Thirdly, the holding periods, for example, for the seller regarding its minority interest in a partnership holding real estate as well as for certain RETT exemptions, have been extended from five to ten or, respectively, fifteen years.

With its Council Directive 2018/822/EU dated 25 May 2018 ("DAC 6") the European Commission amended Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (Mutual Assistance Directive) by introducing special disclosure obligations for potentially aggressive tax planning arrangements with a cross border element. This Council Directive became effective on 25 June 2018 and was implemented by Germany into its domestic law on 21 December 2019. In terms of timing the reporting obligations shall be applied as of 1 July 2020 with a filing period of 30 days for reportable tax planning arrangements where the first step was implemented after 1 July 2020.

On 20 January 2021, the German Federal Cabinet adopted a law on the modernisation of the relief from withholding taxes. The proposed changes concern, in particular, an amendment of the existing specific anti-abuse rule against treaty shopping.

On 25 June 2021, Germany passed the law implementing the Anti-Tax Avoidance Directive (Directive (EU) 2016/1164 and Directive (EU) 2017/952 (ATAD I and II)). Under the new rules, within a cross border context and applicable as of 1 January 2020, the tax deductibility of business expenses is denied due to the tax treatment at the foreign recipient level (none or low taxation) caused by a hybrid mismatch. Another amendment relates to the revision of German CFC rules for assessment periods from 2022 onwards.

On 25 June 2021, Germany passed a law on the modernisation of corporate income tax law. One proposed key element is an „option model" for partnerships to opt for the corporate income tax regime. Another important element is the internationalization of the German reorganisation tax act to the effect that, for certain reorganisations (so far, however, not for contributions) the preferential tax treatment shall also be applicable in non-EU/EEA cases. Both changes of law are applicable for assessment periods resp. reorganisation dates from 2022 onwards.

On 25 June 2021, the Tax Haven Defence Act was passed to implement defensive measures for business relationships or shareholdings with links to certain states on the EU list of non-co-operative tax jurisdictions, in particular, restrictions on the deduction of business expenses, stricter CFC rules, extension of withholding tax obligations and suspension of the participation exemption.

b. Potential future developments

German law has not abolished or limited yet the (non-resident) taxation of income from IP where the only German nexus is the registration in a domestic register. It is possible that this might happen in 2022. With respect to these cases of limited taxation, the German Federal Ministry of Finance issued a decree regarding a simplified tax procedure rule (no tax withholding required) for payments received by 30 September 2021.

It has been proposed to introduce a minimum shareholding requirement of 10% for the 95% exemption of capital gains from CIT and TT (similar to the existing requirement for dividends). However, there is currently no specific reform proposal for this.

c. COVID-19 related developments

As an immediate response on the COVID-19 pandemic, the German Federal Ministry of Finance and state ministries of finance had adopted certain tax reliefs (including deferral of tax debts and reduction of advance tax payments) to strengthen the affected businesses' liquidity. On 19 March 2020, two decrees with coordinated and generally applicable rules to support taxpayers affected by COVID-19 were issued for income tax and trade tax purposes.

On 19 June 2020 and, respectively, 29 June 2020, the First and Second Corona Tax Assistance Act were passed. The first act included an extension of the tax retroactive periods regarding corporate reorganisations from eight to twelve months for a temporary period which was extended until 31 December 2021 (with decrees of 20 October 2020 and 5 November 2020). Under the second act, for a six month period from 1 July to 31 December 2020, the standard VAT rate was reduced from 19% to 16%, and the reduced VAT rate was reduced from 7% to 5%.

The Second Coronavirus Tax Assistance Act implemented the first key elements of the government's stimulus package of 3 June 2020. Further key tax measures of this stimulus package included the extension of the tax loss carryback possibilities for the years 2020 and 2021 to EUR5 million (already usable for the year 2019 by creating a tax 'corona provision', to be released by 31 December 2022) as well as the introduction of the so called "option model" for partnerships.

The Annual Tax Act 2020 contained certain tax reliefs such as a tax lump sum of EUR5 euros per day (limited to a tax deductible amount of EUR600 per annum) for employees and self-employed persons.

Whilst many of the enacted Covid-19 provisions may no longer be in place, it will be important to be aware of them and consider compliance with relevant provisions in the course of tax due diligence processes.

3. SHARE ACQUISITION

a. General Comments

While shares in a corporation (e.g. GmbH, AG) are recognised as a separate asset with the share acquisition costs being reflected in the book value of the acquired shares, the acquisition of a partnership interest (e.g. GmbH & Co. KG) is treated as a proportional acquisition of the partnership's assets for income tax purposes. This implies different CIT and TT implications for both purchasers and sellers depending on the legal form of the respective target entity.

b. Tax Attributes

The direct or indirect transfer (or a similar transaction, such as a capital increase or an internal group restructuring) of more than 50% of the shares in a loss corporation to any shareholder or a group of shareholders with similar objectives within a five year period leads in principle to a complete forfeiture of current tax losses and tax loss carried forward. The law provides for several options to avoid the forfeiture of losses and losses carried forward:

- Intragroup escape

The acquisition of shares in principle no longer results in the loss (or partial loss) of losses and losses carried forward if the same taxpayer indirectly or directly holds 100% of the shares in both the transferring and the acquiring entity, the acquiror indirectly or directly holds 100% in the shares of the transferring entity, or the seller indirectly or directly holds 100% in the acquiring entity. Intragroup reorganisations that fulfil these (strict) requirements can therefore be carried out without the forfeiture of losses and losses carried forward.



- Hidden reserve escape

In addition, a corporation's unused tax losses are preserved to the extent they are compensated for by hidden reserves in the target entity, i.e. there is a positive difference between the purchase price and the tax book value of the target entity's equity; given that only taxable hidden reserves are considered, such positive differences attributable to shareholdings in another corporation or to foreign assets are disregarded (whether hidden reserves in a tax group subsidiary can be accounted for has not been finally clarified yet).

- Continued business escape

The continued business escape rule allows for losses to be carried forward if the relevant corporation carried on its business for the three fiscal years prior to the year of the harmful transaction. However, certain transactions during those three years (e.g. being a partner in a partnership or a controlled company in a tax group) will prevent the application of the escape. In practice, this provision is often difficult to manage.

c. Tax Grouping

German tax law provides for tax groups (fiscal unity, "Organschaft") for CIT and TT purposes as well as for VAT purposes.

- CIT and TT group

The main benefit of a tax group is that all profits and losses of the tax group members are pooled at the level of the controlling parent company. In principle, only the parent company has to pay CIT and TT. Nevertheless, the subsidiary (controlled entity) still qualifies as a taxable entity and has to file tax returns. One further tax benefit is that profit transfers of the subsidiary to the parent company are only taxed at the level of the parent company whereas, without a tax group, 5% of a dividend distribution would be subject to CIT and TT at the level of the parent company although the underlying profits were already taxed at the level of the subsidiary. Moreover, the tax group allows for a debt pushdown (see Section 6.c.). Further benefits might be available (e.g. regarding the interest barrier rules, no trade tax addition for interest expenses, royalties or rental expenses).

In order to be effective, the tax group requires that the parent company owns the majority of the voting rights in the subsidiary from the beginning of the subsidiary's fiscal year and that a profit and loss transfer agreement is concluded (for a minimum period of at least five entire years) and registered in the commercial register of the subsidiary. The subsidiary must be a corporation, while the parent of the tax group can be a corporation, but also a trading partnership or sole trader.

In particular in M&A deals with controlled entities, a clear termination of the profit and loss transfer agreement has to be ensured. The SPA should provide for a reasonable allocation of tax risks before the transfer date. An acquisition can be structured in a way that the tax group with the selling controlling entity exists until the transfer date (closing) and a new tax group with the buyer starts as of the transfer date (e.g. by implementing short fiscal years). Specific issues may arise if a tax sharing agreement between the controlling and controlled entity exists in addition to the profit and loss transfer agreement.

- VAT group

A VAT group is also possible under German tax law. Deviating from the CIT and TT group, the VAT group requires that the subsidiary is financially, economically and organisationally integrated into the parent company. Only the parent company is liable for VAT for transactions of the group. Unlike for a CIT and TT group, no profit and loss transfer agreement is required and the subsidiary does not have to file a tax return. However, the parent company itself has to be considered an entrepreneur (i.e. a taxable person) for VAT purposes; otherwise the VAT group is invalid.



d. Tax Free Reorganisations

In particular the Reorganisation Tax Act provides for tax-neutral reorganisations such as mergers, spin-offs, hive-downs, conversions, contributions of shares or specific business assets. The full or partial tax neutrality for the transferring entity in principle requires that (i) Germany retains the right to tax a capital gain regarding the assets transferred, (ii) the transferring entity receives only new shares in the receiving entity (or limited other consideration), and (iii) the relevant entity files an application for tax neutrality with the competent tax office. If these requirements are met, the transferring entity may recognise the assets at tax book value, thereby avoiding a capital gain. These rules also apply to cross border reorganisation measures.

German tax law also provides for structuring options outside the Reorganisation Tax Act. For instance, the assets of a partnership can be transferred to its sole remaining partner in a tax neutral way.

e. Purchase Agreement

Share purchase agreements typically comprise warranties and an indemnity to cover taxes and connected expenses relating to periods ending on the effective date or in relation to events which occurred on or before closing (as a counterpart to the indemnity, the purchaser must often reimburse the seller for any tax refunds or tax allowances relating to these periods).

In recent years, insurance covering damages resulting from breaches of warranties and indemnities and therefore shifting risks to the insurer (W&I insurance) has become more common in the German M&A market, especially where financial investors are involved.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

The main issue to consider when acquiring companies whose main assets consist of German real estate is that Germany levies RETT on the direct or indirect transfer of such real estate (based on a specially assessed property value). The tax rates vary between 3.5% and 6.5% depending on the federal state in which the real estate is located.

In a transfer of interests in a partnership or in a corporation, RETT is basically levied if at least 90% of the partnership interests are transferred within a period of ten years. A transfer of interests in a partnership or shares in corporations will also trigger RETT if a buyer (or a RETT group) acquires at least 90% of the shares. The tax base is in principle the fair value of the real estate.

RETT could be avoided by, for example, selling only 89.9% to a single purchaser and having the shareholder or a third party retain the remaining 10.1% shareholding for at least ten years.

RETT relief might be available for certain reorganisation measures (e.g. mergers, spin offs, hive downs or contributions and share for share exchanges). This requires, among other things, that the controlling company directly or indirectly holds at least 95% of the shares in the controlled company involved in the reorganisation within the five years prior to the relevant transaction and for at least five years after it.

The transfer of shares and partnership interests is in principle exempt from VAT. However, the supplier can opt to waive this VAT exemption (which in practice is usually not done).

There is no stamp tax or similar levy on a transfer of shares in Germany.



g. "Purchase accounting" applicable to share acquisitions

Acquisition costs are generally not deductible but have to be capitalised and depreciated over the average useful life of the respective asset (if applicable). Shares in corporations are not subject to regular depreciation.

Incidental acquisition costs usually have to be allocated to the acquired assets and are, in principle, not immediately deductible but have to be capitalised. An immediate deduction of such costs is possible if it can be proven that there is no economic connection between the acquired assets/shares and the corresponding costs. Financing related costs (e.g. commitment fees or advisory costs in connection with the financing) or costs for a W&I insurance (insurance premium, insurance tax) are only indirectly connected with the acquisition and, thus, immediately deductible. From a timing perspective, costs can only be classified as incidental acquisition costs if they are incurred after the purchase decision is basically made. In this respect, particularly the treatment of due diligence costs is controversial. Costs in regard to failed acquisitions are in principle immediately deductible. RETT paid in an asset deal has to be capitalised, whereas RETT triggered in a share deal transaction is in principle immediately deductible.

h. Share Purchase Advantages

From a seller's perspective, the main advantage of a share deal is that the capital gain deriving from the disposal of shares is in principle (i) 95% tax exempt in the case of a corporate seller, and (ii) 40% tax exempt in the case of an individual person as seller. Correspondingly, capital losses from share deals are (i) not tax deductible at all in case of a corporate seller, and (ii) 60% tax deductible in case of an individual person as seller. At the level of the target corporation (and its subsidiaries), losses carried forward and current losses up to the transfer date might be forfeited under the loss forfeiture rules (unless certain exceptions are fulfilled). Share transfers are generally VAT exempt. Depending on the VAT situation of the seller and the purchaser, the seller can opt for regular VAT in order to improve the deductibility of input VAT on transaction costs.

German tax law in principle does not provide for a tax-neutral step-up of the value of tangible or intangible assets in a share deal. Various options (e.g. sale, merger) are available to achieve a taxable step up of the assets after the share deal. In this context a tax benefit could be achieved only if existing losses or losses carried forward can neutralise the taxable capital gain. However, the minimum taxation rules have to be considered in cases where the taxable profit from the contribution exceeds EUR1 million and there are not sufficient losses available in the current year (see Section 4.c.).

i. Share Purchase Disadvantages

In a share deal, no step up of the book value of the assets in the target company is possible for the purchaser. Instead, the (high) acquisition costs are only reflected in the book value of the acquired shares and will thereby only reduce a potential future capital gain (which is 95% tax exempt in the case of a corporate seller and 40% tax exempt in the case of an individual person as a seller. Further, the buyer acquires all tax risks from prior years associated with the company's shares and therefore should request tax guarantees/indemnity from the seller. If the target company owns German real estate with considerable value, a share deal might enable the buyer to mitigate or even avoid RETT (e.g. in an acquisition of at most 89.9%). Various options are available for the buyer to achieve a debt pushdown (e.g. downstream merger, implementation of fiscal unity, debt financed dividend). Whether arm's length interest expense is deductible for tax purposes depends on the requirements of the interest barrier rule (see Section 6.c.).



4. ASSET ACQUISITION

a. General Comments

For the seller, the asset deal is in principle a taxable event, except for a potential tax neutral rollover regarding land, buildings or vessels if the corresponding proceeds are reinvested (see Section 7.a.).

The acquisition of a partnership interest is treated like an asset deal (and not like a share deal) for German tax purposes. Therefore, there is a step up of the value of the assets for the buyer when acquiring partnership interests. For income tax purposes, depreciation of the stepped up assets (shown in a supplementary tax balance sheet) is allocated directly to the acquiring partner. For trade tax purposes, an allocation of the stepped up assets would need to be contractually agreed as in this case, not the respective partner but the partnership itself is the taxpayer.

b. Purchase Price Allocation

The overall purchase price is to be allocated to the acquired assets (including any self-created intangible assets not shown in the seller's tax balance sheet) up to their respective fair values and any exceeding amount is to be capitalised as goodwill.

c. Tax Attributes

Capital gains could be offset against existing losses and losses carried forward of the seller. In this context the seller has to take into account Germany's minimum taxation rules. These rules limit the deduction of losses carried forward in a fiscal year to the amount of EUR1 million plus 60% of the income exceeding EUR1million. The seller usually retains all tax risks from prior years associated with the business assets. Capital losses from an asset deal are in principle tax deductible.

d. Tax Free Reorganisations

German law provides for various forms of tax neutral reorganisations, including mergers and spin offs. For commercial law purposes many of these reorganisation forms are dealt with in the Reorganisation Act. The Reorganisation Tax Act, which provides for specific taxation rules to enable tax neutral reorganisations, basically refers to the reorganisation forms of the Reorganisation Act. In general, mergers and spin-offs are considered as taxable events. However, under certain circumstances (see Section 3.d.) mergers/spin offs can be structured in a tax neutral manner.

e. Purchase Agreement

In an asset deal, the purchaser directly acquires certain assets from the company running the business through an asset purchase agreement. Its main advantage is that there is generally no automatic transfer of liabilities, apart from certain exceptions.

f. Depreciation and Amortisation

Goodwill or other intangibles acquired within an asset deal are subject to depreciation. Goodwill is depreciated over 15 years for income tax purposes. Acquired intangible fixed assets are depreciated straight line over their estimated useful lives.



g. Transfer Taxes, VAT

If the acquired assets comprise German real estate, RETT is always triggered with the purchase price being the assessment base (no avoidance strategies are available).

The transfer of assets is subject to German VAT unless it qualifies as transfer of an entire business as a going concern ("Geschäftsveräußerung im Ganzen").

h. Asset Purchase Advantages

An asset deal gives the buyer the possibility to step up the book values of the acquired assets, including goodwill, up to the acquisition price. The subsequent depreciation results in a lower tax burden for the buyer in the future.

A debt pushdown is not required as financing can be easily provided to the acquiring company. The deductibility of interest expense depends on the requirements of the interest barrier rule (see Section 6.c.).

In an asset deal, most of the tax risks from former years remain with the seller (one exception being a secondary liability for certain business taxes where the asset transfer comprises an enterprise or a separately managed unit of the enterprise as a whole).

i. Asset Purchase Disadvantages

The acquisition of assets is generally not exempt from VAT (unless the assets qualify as a going concern). This has to be carefully considered if the input VAT is not

fully deductible for the buyer (e.g. in the event of any VAT exempt turnover).

Where the asset transfer comprises an enterprise or a separately managed unit of the enterprise as a whole the purchaser has a secondary liability for certain business taxes (TT, VAT, wage tax as well as excise duties for the production of goods) arising within a specific period of time and limited to the acquired assets. This secondary liability does not apply to acquisitions from companies in insolvency or enforcement proceedings.



5. ACQUISITION VEHICLES

a. General Comments

The selection of the proper acquisition vehicle depends on various factors. For tax reasons and in order to limit liability exposure special purpose vehicles are frequently used for acquisitions.

b. Domestic Acquisition Vehicle

Domestic acquisition vehicles are often tax efficient where the acquisition of a German target corporation shall be financed with a substantial amount of debt. In such cases the domestic acquisition vehicle enables the pooling of the target corporation's operating profits with the interest expenses of the acquisition vehicle via implementation of an income tax group (see Section 6.d.).

c. Foreign Acquisition Vehicle

A direct purchase of shares in a German corporation by a foreign acquisition vehicle has the potential disadvantage that no income tax group can be implemented rto enable the pooling of any interest expenses from the acquisition financing with the target corporation's profits (see Section 5.b.).

In the case of non-German investors, the acquisition vehicle is regularly held through a foreign holding entity. If in a future exit the foreign entity sells the shares in the German corporation, German CIT and TT can be avoided in most cases (see Section 7.). Frequently, European holding entities are located in Luxembourg or the Netherlands which, among others, offer a 100% tax exemption of capital gains and a strong network of double tax treaties.

In real estate transactions, foreign acquisition vehicles without permanent establishment in Germany are used (as direct purchasers) to avoid TT on operating income.

d. Partnerships and joint ventures

A contribution of assets, upon establishment of a joint venture, may trigger income tax, RETT, and VAT implications. As a general rule, the transfer of German real estate or a 90% participation in a real estate holding company is a RETT event, the contribution of other assets than cash results in a realisation of hidden reserves to the extent the fair value exceeds the book value, and the contribution of assets other than cash is subject to VAT. In each case, certain exceptions may be applicable.

e. Strategic vs Private Equity Buyers

The acquisition vehicle is held either directly by the strategic investor or private equity funds or, as is more commonly the case with private equity sponsors, through structure of multiple intermediate entities. Where the investment is not carried out via existing structures (but through specifically set-up acquisition vehicles) this may, among others, have implications on the recovery of input VAT on transaction costs. A VAT recovery requires that the person that wants to claim input VAT has to qualify as an entrepreneur for VAT purposes. For that purpose, acquisition vehicles in private transactions typically assume management and administrative functions.



6. ACQUISITION FINANCING

a. General Comments

In the past, acquisition financing was typically arranged by banks. In recent years, especially in the case of private equity investors, acquisitions in the German market have increasingly been financed by debt funds (which are more flexible and open to higher risk levels than banks or are chosen for confidentiality reasons as fewer people have to be involved). Sometimes vendor loans (as a form of deferred consideration) are granted, which are contractually subordinated to third party debt.

The capital provided by the sponsor is often structured to a large amount as subordinated (shareholder) loans and only the remainder as actual equity.

b. Equity

When a foreign company holds shares in a German corporation, profit distributions by the German entity are subject to withholding tax ("WHT") of 25% (26.375% including solidarity surcharge of 5.5%), unless the distribution qualifies as a repayment from the tax contributions account (see Section 14.a.). The German WHT burden on the profit distribution may be fully or partially reduced under an applicable double tax treaty ("DTT") or the EU Parent Subsidiary Directive. However, the German entity may abstain from WHT deduction only if an exemption certificate is issued by the German Federal Central Tax Office prior to the relevant payment. A reduction or refund (without a prior exemption certificate) of German WHT is subject to the fulfilment of certain requirements concerning the activity and substance of the direct or indirect foreign shareholder of the German entity (see Section 14.b.).

Under most double tax treaties concluded by Germany, the taxation right for capital gains from the sale of shares in a corporation is allocated exclusively to the seller's state of residence (with the exception of shares in a German real estate company if more than 50% or 75% of that company's value consists of real estate located in Germany, for example, under the treaties with Luxembourg, the Netherlands, Poland or the UK), unless the shares are held through a German permanent establishment. In a case where Germany's taxation right was not excluded, the German Federal Tax Court ruled that capital gains from the sale of shares in a corporation realised by a non-domestic corporate seller without a permanent establishment or permanent representative in Germany shall be 100% tax exempt.

c. Debt

The general limitations on the deductibility of interest expenses (described below) apply to share and asset acquisitions.

i Arm's length principle

The interest rate on borrowings from shareholders or related persons must comply with arm's length principles. This also requires that financing agreements are concluded beforehand and preferably in writing in order to prevent the tax authorities from denying the interest deductibility.

ii Interest barrier rules

According to the German interest barrier rules, a taxpayer is able to immediately deduct net interest expenses (interest expenses minus interest income) only up to 30% of the taxable earnings before interest, taxes, depreciation and amortisation (tax EBITDA). The tax EBITDA only includes taxable income and thus does not necessarily match with the GAAP EBITDA. The interest barrier rules apply to all interest and not only to interest on intragroup loans. The interest barrier rules allow EBITDA carry forwards (broadly speaking, unused EBITDA in one year can be used to achieve an interest deduction in future years) and interest carried forward (non- deductible interest might be deductible in future years if there is sufficient EBITDA in such a year). Interest carried forward is subject to the change of ownership rules (see Section 3.b.); EBITDA carry forwards lapse after five years.



The interest barrier rules do not apply if one of the following conditions are met:

- The net interest expenses of the respective fiscal year to the extent that it exceeds the amount of the interest income (based on the tax authorities' view including any interest carried forward) are less than EUR3 million (exemption limit, no allowance);
- The taxpayer is not part of a group of companies and the interest expense paid to a material shareholder or a related party or a back to back lender does not exceed 10% of the company's total net interest expense; or
- The taxpayer proves that the borrower's equity ratio is at least as high as the worldwide group's equity ratio. It is acceptable if the German entity's equity ratio is 2 percentage points below the group's ratio. This escape clause applies only if the taxpayer or any other group company is not shareholder financed to a harmful extent; that is, if the taxpayer or any group company pays no more than 10% of its interest expense to a material shareholder or related party outside the group or to a third party secured by the material shareholder or related party.

iii Anti-hybrid rules

Within a cross border context and applicable as of 1 January 2020, the tax deductibility of business expenses may also be denied due to the tax treatment at the foreign recipient level (none or low taxation) caused by a hybrid mismatch (see Section 2.a.).

iv Add-back for TT purposes

25% of the interest expense must be added back for TT purposes (to the extent an allowance for interest and certain other expenses in the overall amount of EUR200,000 is exceeded).

v Debt Pushdown

Various options are available to achieve a debt pushdown. One is to implement a tax group (fiscal unity, "Organschaft") between the debt financed German acquisition vehicle and the target company. Such a tax group, which requires (i) that the acquisition vehicle holds the majority in the voting rights of the target company and (ii) the conclusion of a profit and loss transfer agreement, allows for a consolidation of the interest expense of the acquisition vehicle, resulting from the financing, with the profits of the target company. Alternatively, the acquisition vehicle and the target company can be merged. Leveraged distributions or repayments of (free) capital reserves of the target company are other potential options. When determining the level of debt financing, the German interest barrier rules have to be considered (see Section 6.c.). The German capital maintenance rules also have to be kept in mind (e.g. in the case of a merger loss).

d. Other Instruments

German law does not provide for special instruments like preferred equity certificates ("PECs") or different share classes (alphabet shares) which, in the case of private equity funds (especially with non-EU investors), are commonly used at the level of Luxembourg intermediate holding entities to allow the distribution of exit proceeds free of dividend withholding tax.

e. Earn-outs

Earn-outs may be a useful instrument for allowing the seller and the purchaser to share in risks and rewards of the future performance. However, due to disappointed expectations and the frequent use of ambiguous contractual language they often result in legal disputes. In particular, in larger transactions earn-out provisions are seldom seen.

For tax purposes earn-out payments are generally treated as subsequent purchase price (with retroactive increase of the capital gain and purchase price as at the transfer date).

7. DIVESTITURES

a. Taxable

In principle, capital gains from the disposal of assets (including partnership interests, but excluding shares in a corporation) by a corporation are subject to German CIT and TT. A capital gain derived by an individual person from the sale of a business, a separate business unit or a partnership interest is only subject to German income tax (TT only applies if the individual person is not a direct shareholder or, in the case of a partnership interest, if only a portion of the interest is sold).

Under certain conditions, there is an exception for the capital gain resulting from the divestiture of land, buildings or vessels if the proceeds deriving from the disposal are reinvested and new assets of such categories are (intended to be) acquired. In this case, the capital gain from the disposal of those assets is not immediately subject to income taxation but can be deducted from the acquisition costs of newly acquired assets. As a result, the depreciation base of the newly acquired assets is reduced. If no new assets are immediately acquired, the taxation of the capital gain can be postponed by forming a tax free reserve and deducted from new acquisitions within the next four or, or in the case of new buildings, six years. However, if no new acquisitions follow in the relevant period of time, the reserve has to be dissolved, leading to a retroactive taxation of the release amount (increased by 6% interest per annum). Individuals selling shares in corporations can benefit from rules similar to those described for real estate (applicable to capital gains of up to EUR500,000). They may transfer the reserve to (i) shares in corporations or depreciable movable assets acquired or manufactured in the fiscal year of the sale or in the following two fiscal years or (ii) to buildings acquired or manufactured in the fiscal year of the sale or in the following four fiscal years.

Capital gains from the disposal of shares in a corporation are also subject to German income taxation at standard tax rates; however, a tax exemption can apply (see Section 7.b.).

b. Tax Free

Capital gains of a corporation from the disposal of shares in a corporation are 100% exempt from CIT and TT, irrespective of any minimum shareholding or holding period. However, 5% of the capital gain qualifies as non-deductible business expense, which is subject to CIT and TT, so that effectively 95% of such a capital gain is tax exempt. Assuming a combined CIT and TT rate of approx. 30% the tax burden on the capital gain amounts to approx. 1.5% (i.e 30% on 5%). Specifically excluded from this tax exemption are banks and financial service institutions.



In the case of an individual person, the taxation of the capital gain from the disposal of shares depends on (i) the shareholding percentage, and (ii) whether the shares are held as private assets or as business assets. For shareholdings of 1% or more, 40% of the capital gain is tax exempt and 60% is taxable, at the individual income rate (this ratio also applies to expenses in connection with the transaction). The same treatment applies (irrespective of the holding percentage) if the shares belong to a business or trade of the individual. In those cases, 60% of the costs incurred in connection with the disposal are deductible. In all other cases, a capital gain is taxed at a flat tax rate of 26.375% whereby costs are not tax-deductible at all. If a partnership generates a capital gain from the disposal of shares, the applicable tax rule basically depends on the tax status of the partner being a corporation or an individual person.

c. Cross border

For non-domestic sellers, capital gain realised by a foreign shareholder is only subject to German (corporate) income tax if the foreign shareholder holds at least 1% of the company's share capital at any time in the five years before the sale. An additional taxation right was introduced for capital gains realised after 31 December 2018 by a non-German shareholder from the sale of shares in a corporation that, at the transfer date or sometime during the 365 days before the transfer date, derived more than 50% of its value directly or indirectly from German real estate (see Section 9.a.). In each case, German taxation only applies if the foreign shareholder has no protection under a double tax treaty (see Section 4.b.). TT generally does not apply to capital gains realised by a non-German shareholder.

With respect to tax free transactions for non-domestic sellers, the same rules as referenced above may also apply. However, if the corporate seller of shares in a corporation is subject to non-resident taxation (limited tax liability); a 100% tax exemption may be available provided that the shares are not attributed to a German permanent establishment.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Individual persons with domicile or habitual abode as well as (German or foreign) corporations with registered seat and/or place of management in Germany are subject to resident taxation (unlimited tax liability) in Germany. In this case, the taxpayer is subject to German taxation on their worldwide income. Non-residents are subject to taxation only with income which has a nexus to the German tax net, i.e. where the tax law stipulates that a German source of income exists (e.g. a German permanent establishment, real estate located in Germany, shares in a company with registered seat and/or place of management in Germany).

b. CFC Regime

German tax law provides for CFC rules applicable to individual persons and corporations subject to German resident taxation. German CFC rules basically apply to investments in foreign corporations generating passive and low taxed income if a German resident shareholder and its related parties hold the majority in the voting rights. This revised German ownership criterion in the form of a shareholder related group view was introduced through the transposition of ATAD I and II and replaces the former 'concept of control' by (unrelated) tax nationals. For certain capital income such as dividends with free float character, the ownership requirement does not apply. The catalogue of passive income is extensive and may include certain income from trade, services, lease or financing. Profit distributions and capital gains deriving from the sale of shares in corporations basically qualify as active income, while, due to the implementation of ATAD I and II, profit distributions



may be qualified as "passive" under certain conditions (e.g. free float). Also foreign reorganisations which would be tax neutral if they were within the German tax net are outside the scope of the German CFC rules. Corporations with registered seat and/or place of management in a country within the EU or EEA are not subject to the CFC rules if they actually pursue an active economic activity in this country and an information exchange procedure based on Directive 2011/16/EU is implemented between Germany and the EU/EEA country. The German CFC rules result in an automatic attribution of the CFC income of the foreign corporation to the German resident shareholder in proportion of the respective direct or indirect shareholding.

c. Foreign branches and partnerships

Based on the worldwide income tax system, the income of foreign branches is in principle subject to income taxation in Germany. However, if the foreign branch qualifies as a permanent establishment for the purposes of domestic law and an applicable double taxation treaty the right of taxation of this income may attributed to the foreign country. If the exemption method (with tax rate progression) applies Germany would exempt the income in Germany. Otherwise, Germany credits foreign taxes under certain conditions. Whether the exemption method or the credit method applies depends on the double taxation treaty applicable in the respective case. Double taxation treaties with industrialised countries tend to provide for the exemption method, whereas in other cases the credit method is usual.

The same principles apply to partnerships with a foreign permanent establishment if the partnership qualifies as a transparent vehicle for German income tax purposes. The classification of a partnership as transparent or an opaque vehicle merely depends on German law whereby Germany compares the foreign legal form with standard legal forms in Germany. In case of tax transparency of the partnership, the German resident partner is treated as if he is invested in a foreign permanent establishment. The exemption method basically requires that the income of the foreign permanent establishment (of the partnership) is actually taxed in the foreign country.

d. Cash Repatriation

The tax consequences of cash repatriations depend on the type of investment of the German resident taxpayer. If the taxpayer is invested in a foreign permanent establishment (of a partnership) the cash repatriation does not trigger German tax consequences since the income is already taxed or exempted (as the case may be).

In the case of an investment of a German tax resident taxpayer in a foreign corporation the dividends received by the German taxpayer are subject to German income taxation (unless the shares are attributed to a foreign permanent establishment). For an individual person the dividends are either subject to flat rate taxation of 26.375% or to the partial income tax system where 60% of the dividend is taxable at the personal income tax rate (40% of the dividend is tax exempt). For a corporation as investor with a shareholding of at least 10% the dividend is 100% exempt for CIT purposes whereby 5% of the dividend qualifies as a non-deductible business expense (effectively, 95% of the dividend is tax exempt). For TT purposes, a minimum shareholding of 15% at the beginning of the relevant tax year of the shareholder is required to benefit from a TT exemption. Otherwise, the dividend is fully subject to TT.



9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Germany introduced new rules for capital gains realised by non-resident shareholders from disposing of shares in a non-resident corporation that directly or indirectly holds real property located in Germany. The new rule applies to the disposal of shares after 31 December 2018. The corporation has to be rich in immovable property which is the case if at least 50% of the gross asset value (without debt or other liabilities) of the shares is derived directly or indirectly from German real estate. The threshold may be reached at any time during a period of 365 days prior to the disposal. Capital gains are taxable only if the non-resident seller holds a stake of at least 1% or has held at least 1% at any time in the five years preceding the disposal. The provision covers only capital gains realised after 31 December 2018.

The entire capital gain from the disposal of shares in a corporation is subject to taxation, (i.e. no limitation to capital gains attributable to the real property in Germany). Corporate shareholders may benefit from a 100% exemption of capital gains derived from the disposal of shares. The rules are also triggered at the time of a restriction or exclusion of Germany's right to tax gains from future disposals of shares.

b. CbC and Other Reporting Regimes

Germany implemented the CbC reporting under which a domestic company required to prepare consolidated financial statements is required to prepare and submit a country by country report of the group for a financial year following the end of that year, if (i) the consolidated financial statements include at least one foreign entity or a foreign permanent establishment, and (ii) the consolidated revenue recognised in the consolidated financial statements for the preceding financial year is at least EUR750 million. However, this obligation does not exist if the domestic company is included in the consolidated financial statements of another company. This is intended to avoid the transmission of several country specific reports for an internationally active group. The CbC report must be prepared no later than one year after the end of the financial year and transmitted to the German Federal Central Tax Office by remote data transmission.



10. TRANSFER PRICING

The importance of transfer pricing has increased during recent years due to the incorporation of the principles set out by OECD including many aspects of the OECD Action Plan on Base Erosion and Profit Shifting ("BEPS"). As a result several amendments of German international tax law occurred including, for instance, the introduction of higher standards of transfer pricing documentation and the arm's length principle in relation to permanent establishments. The dealing at arm's length principle applicable to cross border transactions is the core element of the German transfer pricing legislation. Germany basically follows the principles outlined in Article 9 of the OECD Model Tax Convention whereby it has to be assumed for German tax purposes that unrelated parties have complete knowledge of all relevant facts and circumstances of the business transaction and act like prudent and conscientious business managers. The arm's length principle applies to a single or multiple business transactions between the taxpayer and a related party or a taxpayer's enterprise and its foreign permanent establishment (which are deemed to be contractual relationships). Germany maintains a large network of double taxation treaties. Regarding the transfer pricing methods, Germany preferably applies transaction based methods, (i.e. comparison method, resale price method and cost plus method). Depending on the facts, also the transactional net margin method and the profit split method can be used.

There is no obligation for taxpayers to file transfer pricing documentation on a regular basis (e.g. with the annual tax return). However, tax authorities can request in a tax audit transfer pricing documentation which must be prepared and provided within 60 days after the respective request has been received. This means that documentation does not need to be contemporaneous. In case of exceptional business transactions, the transfer pricing documentation must be provided to the tax authorities already within 30 days after the respective request. In practice, it is often possible to extend the relevant deadlines. German tax law requires a master file and a local file (including a risk and functional analysis). The tax authorities can levy a penalty of EUR5,000 if a taxpayer does not provide transfer pricing documentation as requested by law or if the provided transfer pricing documentation is essentially of no use. The penalty must be at least 5% and at most 10% of the additional income arising from required corrections, including estimates by the tax authorities due to the failure by the taxpayer to comply with cooperation obligations. Moreover, if appropriate transfer pricing documentation is submitted too late, a fine of at least EUR100 applies for each full day of delay and may amount up to EUR1 million.

In addition to the penalties, if a taxpayer fails to comply with cooperation obligations the tax authorities can assume that the German income of the taxpayer to which the respective transfer pricing documentation relates is higher than the income declared. If the tax authorities have to conduct an estimate and the relevant income can only be determined within a certain range (in particular a price range), the authorities may use the upper end of the relevant range to the detriment of the taxpayer.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. General

The best way to effect a post-acquisition integration depends on the facts and circumstances of the individual case and in particular on what the taxpayer wants to achieve from a tax perspective (e.g. mitigation of capital gains taxation or forfeiture of losses, implementation of a tax consolidation group, debt pushdown). Deviating from other countries, structures of hybrid entities or instruments are not in the focus, mainly because German tax law provides for numerous regimes aiming at the avoidance of non-taxed income, double dip structures etc.

b. Principal/Limited Risk Distribution or Similar Structures

Principal/limited risk distribution structures or similar structures can be implemented after an acquisition. If the transaction is carried out between related parties, the purchase price must comply with the arm's length price to be recognised for tax purposes. The implementation of those structures therefore usually gives rise to capital gains taxation. In particular if business functions and risks in conjunction with tangible and intangible assets are transferred to a foreign group entity or permanent establishment, the transfer generally qualifies as a taxable relocation of functions. As a consequence, the value of the "transfer package" as a whole has to be determined instead of the value of the individual assets. To that effect, not only the hidden reserves in the assets but also the earning potentials that are not substantiated in a manner concrete enough to qualify as an asset are subject to (corporate) income and trade tax based on a sound business valuation. As an exception from the overall valuation of the transfer package, an individual valuation is allowed if, for example, the taxpayer demonstrates that either no material assets and other advantages are included in the transfer package or at least one material and precisely defined, asset is included in the transfer package. A taxable relocation of functions is not applicable in cases where a function is only duplicated across borders and the duplication does not lead to a limitation of the function performed locally. In practice, the triggering of immediate exit taxation can be avoided by licensing the transfer package. In this respect the legal and beneficial ownership must be retained by the licensor.



c. Intellectual property

The disposal of the legal and/or beneficial ownership of an intangible asset triggers an immediate taxation of the capital gain for (corporate) income tax and trade tax purposes. If the transaction is carried out between related parties, the purchase price must comply with the arm's length price to be recognised for tax purposes. In practice, German tax authorities accept a purchase price/valuation of intangible assets which is in line with principles contained in the German Standard for Chartered Accountants S5 (IDW S 5). Based on these principles, a valuation of intangible assets (e.g. brands) should consider the future benefit that a potential purchaser will derive from using the asset in question. For instance, the income approach is preferred for the valuation of brands. It is based on future economic benefits derived from the use of a brand. Accordingly, the value of brands is determined by totalling the discounted future financial surpluses.

Where an intangible asset is allocated to a foreign permanent establishment of the same company with the result that the German right to tax that asset is excluded or limited, the allocation is deemed to occur at fair market value for (corporate) income tax and trade tax purposes. To that effect, any capital gain embedded in such asset is immediately taxed even though it has not been realised in the market. Under certain conditions the taxation of such deemed profit can effectively be spread over a period of five years through setting up a tax adjustment item that subsequently is released by one fifth in the fiscal year in which it was formed and the following four fiscal years. The formation of the tax adjustment item requires that the asset is transferred to a permanent establishment in another EU member state and that the transferor is subject to unlimited tax liability in Germany (i.e. a company with German tax residency that transfers the asset to its foreign permanent establishment but not vice versa).

In practice, the triggering of immediate exit taxation can be avoided by licensing the transfer package. In this respect the legal and beneficial ownership must be retained by the licensor.

d. Special tax regimes

Germany does not have a patent box or similar special tax status for companies that hold intangible assets. However, following the German coalition agreement published on 7 February 2018, the three governing parties (CDU, CSU and SPD) introduced an R&D tax incentive which became effective as of 1 January 2020. Under this regime, companies and entrepreneurs subject to income tax or corporate income tax in Germany, may apply for subsidies of up to 25% of their R&D expenses to a total maximum of EUR500,000. Eligible for subsidies are research and development projects which fall into a category of fundamental research, industrial research or experimental research. Those subsidies are available after the business year in which the development has been conducted and will be credited against the tax payment liability.

12. OECD BEPS CONSIDERATIONS

Germany generally supports the BEPS actions. German tax law already covers many aspects of the BEPS action plan (e.g. interest barrier rules, CFC rules). With regard to BEPS Action 5, Germany introduced a limitation rule for license fees and royalties. Furthermore, regarding BEPS Action 13, Germany implemented the requirement to submit master and local files as well as country by country reporting. In addition, several existing tax rules have been changed in order to challenge treaty shopping. Also, Germany implemented ATAD I and II comprising a new CFC regime and provisions regarding hybrid mismatches (BEPS Action 2).



13. ACCOUNTING CONSIDERATIONS

The accounting of business combinations and the divestitures follows IFRS 3.

a. Combinations

A business combination in this sense is given if not only single assets and liabilities, but the aggregate of assets and liabilities is acquired. It is independent of whether it is a share deal or an asset deal. In the context of business combinations the purchase method is to be applied. The acquired assets and liabilities are recognised at fair value at the time of acquisition. This is the date on which the acquiror obtains control of the assets. As part of the purchase price allocation, the purchase price paid must be allocated to the acquired assets and liabilities as well as goodwill according to fair value criteria at the time of acquisition.

b. Divestitures

A divestiture by a sale of all shares leads to a deconsolidation. Such sale does not constitute a share deal, but rather the transfer of individual assets and liabilities (including goodwill) for consideration (i.e. an asset deal). The gain or loss from the divestiture is generally the difference between the proceeds and the consolidated book values of the assets including hidden reserves and goodwill (direct method).

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Profit distributions by a subsidiary are subject to dividend taxation at the level of a German shareholder. If the distributing entity is German resident, it has to withhold withholding taxes of 26.375% (25% plus solidarity surcharge). An exception from these principles is applicable if and to the extent the profit distribution is sourced from a specific tax contribution account which reflects previous contributions (in cash or in kind) by (also former) shareholders to the distributing entity for tax purposes. In this case the amount of profit distribution reduces the tax book value of the participation in the distributing company at the level of the shareholder. Such tax contribution account can also be maintained by subsidiaries resident in the EU/EEA whereby the German tax law recognises it only if certain formal and material requirements are fulfilled.

b. Application of Regional Rules

With respect to profit distributions the distribution company has to withhold German WHT of 26.375%. The EU Parent Subsidiary Directive (or an applicable double taxation treaty) may reduce the withholding tax rate to 0%. This means that the shareholder may apply for a refund of WHT withheld if the requirements are fulfilled. German domestic law, however, provides for an anti-treaty/directive-shopping provision which requires that the foreign shareholder of the German distributing company has sufficient substance and activities.

In light of the European Court of Justice's decisions in Deister Holding and Juhler Holding (Cases C-504/16 and C-613/16) and its resolution of 14 June 2018 (Case C-440/17, GS), that the previous German provision on substance requirements did not comply with EU law (namely the Parent Subsidiary Directive and the freedom of establishment), the German parliament approved a law on the modernisation of relief from withholding tax, which came into force on 9 June 2021.



The new law makes substantial changes to the German anti-treaty/directive shopping rules. It creates higher obstacles for obtaining treaty relief, especially in relation to multi-tier holding structures.

There are only a few special cases where the withholding obligation does not apply, for example:

- An exemption certificate is issued by the Federal Central Tax Office upfront.
- The distribution is treated as a tax neutral repayment of capital contributions.
- The recipient is a resident corporation (or German permanent establishment) and a certificate is issued by the competent tax office stating that, due to the nature of its business, the withholding tax would continuously exceed the recipient's overall CIT amount (including in the case of a holding company). For domestic shares (in a stock corporation) kept in collective safe custody, this potential exception was abolished as of 9 June 2021.

Due to Brexit, the Parent Subsidiary Directive no longer applies in relation to the UK implying that dividends paid to recipients in the UK are not eligible for an exemption but subject to German taxation at a rate of at least 5% (under the double tax treaty).

c. Tax Rulings and Clearances

Under German tax law, it is possible to apply for a binding tax ruling from the competent tax office. Such binding tax ruling may grant legal certainty regarding the tax treatment of certain transactions. The ruling process may take at least 10 to 12 weeks. This timing aspect has to be taken into account when considering going for a binding tax ruling. The tax office charges a fee for a (positive or negative) binding tax ruling which depends on the tax benefits of the ruling for the taxpayer (maximum EUR109,736). A specific form for a binding tax ruling in the transfer pricing area is an advanced pricing agreement ("APA") which, however, has no relevance in a M&A transaction since it takes too long to obtain.

15. MAJOR NON-TAX CONSIDERATIONS

Taxes are only one important aspect in an M&A transaction. In particular the legal and financial aspects of the transaction may have a higher relevance than taxes. It is therefore crucial that the (asset and/or share) purchase agreements deals with all relevant aspects in a way that it satisfactory to the seller and purchaser.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Argentina	15	0 / 10 / 15	15	[3]
Australia	0 / 5 / 15	0 / 10	5	[4] [5] [7]
Austria	[0] / 5 /15	0	0	[1] [6] [7] [2]
Belgium	[0] / 15	0 / 15	0	[1] [7] [2]
Brazil	-	-	-	[9]
Canada	5 / 15	0 / 10	0 / 10	[6] [7] [10] [11]
Chile	-	-	-	[9]
China	5 / 10 / 15	0 / 10	6 / 10	[12] [13] [14]
Colombia	-	-	-	[15]
Croatia	[0] / 5 / 15	0	0	[1] [6] [7] [2]
Cyprus	[0] / 5 / 15	0	0	[1] [6] [7] [2]
Czech Republic	[0] / 5 / 15	0	[0] / 5	[1] [16] [7] [2]
Denmark	[0] / 5 / 15	0	0	[1] [17] [7] [2]
Finland	[0] / 5 / 15	0	0	[1] [18] [7] [2]
France	0 / 5 / 15	0	0	[1] [19] [7] [2]
Greece	[0] / 25	0 / 10	0	[1] [20] [2]
Hungary	[0] / 5 / 15	0	0	[1] [6] [2]
India	10	0 / 10	10	[21]
Indonesia	10 / 15	0 / 10	7.5 / 10 / 15	[22] [7] [23] [24]
Ireland	[0] / 5 / 15	0	0	[1] [45] [7] [2]
Italy	[0] / 10 / 15	0 / 10	0 / 5	[1] [7] [25] [2] [26] [27]
Japan	0 / 5 / 15	0	0	[28]
Luxembourg	[0] / 5 / 15	0	[0] / 5	[1] [2] [29]
Malaysia	5 / 15	0 / 10	7	[6] [7] [30] [31]
Malta	[0] / 5 / 15	0	0	[1] [2] [32]
Mauritius	5 / 15	0	10	[6] [7]
Mexico	5 / 15	0 / 5 / 10	10	[6] [7] [33]
Netherlands	[0] / 5 / 10 / 15	0	0	[1] [34] [2]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Norway	0 / 15	0	0	[35]
Philippines	5 / 10 / 15	0 / 10	10	[36] [37]
Poland	[0] / 5 / 15	0 / 5	[0] / 5	[1] [6] [7] [38] [2]
Portugal	[0] / 15	0 / 10 / 15	[0] / 10	[1] [39] [2]
Puerto Rico	-	-	-	[40]
Romania	[0] / 5 / 15	0 / 3	[0] / 3	[1] [6] [7] [41] [2]
Russia	5 / 15	0	0	[42]
Serbia	15	0	10	[43]
Singapore	5 / 10 / 15	0	5	[44]
Slovakia	[0] / 5 / 15	0	[0] / 5	[1] [46] [2]
Slovenia	[0] / 5 / 15	0 / 5	[0] / 5	[1] [46] [47] [2]
South Africa	7.5 / 15	10	0	[48] [49]
South Korea	5 / 15 / 25	0 / 10	2 / 10	[50] [51] [52]
Spain	[0] / 5 / 15	0	0	[1] [53] [2]
Sweden	0 / 15	0	0	[1] [54] [2]
Switzerland	0 / 5 / 15 / 30	0	0	[55]
Turkey	5 / 15	0 / 10	10	[56] [57]
UK	5 / 10 / 15	0	0	[58] [59]
USA	0 / 5 / 15	0	0	[60]
Venezuela	5 / 15	0 / 5	5	[61] [62]

Maximum rates according to German tax law:

- Dividends: 26.375% (25% plus 5.5% solidarity surcharge)
- Interest: 26.375% (25% plus 5.5% solidarity surcharge (WHT only in limited situations, i.e. loans secured by real estate in Germany, profit participating loans and silent partnerships))
- Royalties: 15.825% (15% plus 5.5% solidarity surcharge)

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German anti-treaty-shopping provision (§ 50d(3) Income Tax Act): Any reduction from the maximum rates according to German tax law cannot be claimed by a foreign company if and to the extent that it is owned by persons who would not be entitled to reimbursement or exemption if they directly generated the income and the income generated by the foreign company in the fiscal year in question did not derive from its own economic activity, and (i) there are no economic or other substantial reasons for involving the foreign company in respect of these earnings, or (ii) the foreign company does not participate in general economic transactions with a business operation suitably established for its business purposes.

Footnotes:	
1	Dividends – Parent Subsidiary Directive: Reduction of the WHT rate to 0% for dividends paid by company to corporation resident in a Member State of the European Union which holds at least 10% of the capital in the distributing company at the time of the dividend distribution.
2	Interest and Royalties - Interest and Royalties Directive: Reduction of the WHT rate to 0% if paid by an enterprise of the Federal Republic of Germany or a permanent establishment located in Germany of an enterprise of another Member State of the European Union as debtor to an enterprise of another Member state of the European Union or to a permanent establishment located in another Member State of the European Union of an enterprise of a Member State of the European Union as creditor. Requirement is that creditor and debtor are connected enterprises (i.e. the debtor holds at least 25% of the capital of the creditor or vice versa or a third enterprise holds at least 25% of the capital of the debtor and the creditor).
3	Interest - The 10% rate applies to interest paid in connection with the sale of industrial, commercial or scientific equipment on credit, for a bank loan and in connection with the financing of public works. The 15% rate applies to all other cases. A special rate of 0% is applied if interest is paid to the Argentinian government, the Argentinian central bank, the German government, the German Development Loan Corporation ("Kreditanstalt für Wiederaufbau") or the German Corporation for Economic Cooperation ("Deutsche Gesellschaft für wirtschaftliche Zusammenarbeit").
4	Dividends - Reduced rate of 5% applies to dividends paid to a company (other than a partnership) that holds at least 10% of the shares of the distributing company for a period of 6 months prior to the date of dividend payment (including the day of dividend payment). Reduction to 0% if the dividends are paid to a corporation that holds at least 80% of the voting rights in the distributing company for a period of 12 months prior to the profit appropriation resolution and if the receiving corporation (i) is listed on a recognized stock exchange, (ii) is directly or indirectly owned by companies which are listed on a recognised stock exchange or would be entitled to the same treaty benefits under a double taxation treaty or (iii) does not qualify for (i) or (ii) but the competent tax authority that the anti-abuse provision of the double taxation treaty is not applicable.
5	Interest - A special rate of 0% is applied if the interest is derived by a Contracting State or by a political or administrative subdivision or local authority thereof, or by any other body exercising governmental functions in a Contracting State, or by a bank performing central banking functions in a Contracting State, or the interest is derived by a financial institution which is unrelated to and dealing wholly independently with the payer.
6	Dividends - Reduced rate of 5% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends.
7	Dividends - Maximum rate of 15% in other cases.
8	Interest - The 0% rate applies to interest which is paid to an enterprise in the other Contracting State. However, the reduced rate is not applicable if the interest is paid on bonds and other debt instruments with the exception of bills of exchange on commercial claims. The reduced rate is also not applicable if interest is paid by a company to a company resident in the other Contracting State which directly or indirectly holds at least 25% of the voting rights in the paying company.
9	Currently no tax treaty.

Footnotes:	
10	Interest - The 0% rate applies to interest which is paid (i) in connection with the sale on credit of any equipment or merchandise by the purchaser to the seller (with the exceptions of a sale between associated persons), (ii) in respect of indebtedness of the government of a Contracting State or of a "Land" or political subdivision or local authority thereof, (iii) to the Canadian Export Development Corporation or the German Development Loan Corporation ("Kreditanstalt für Wiederaufbau") or the German Corporation for Economic Cooperation ("Deutsche Gesellschaft für wirtschaftliche Zusammenarbeit"), (iv) to the government of a Contracting State or of a "Land", or political subdivision thereof, or to the central bank of a Contracting State or (v) to a resident of the other State which was constituted and is operated exclusively to administer or provide benefits under one or more pension, retirement or other employee benefits plans provided that the resident is generally exempt from income tax in the other State and the interest is not derived from carrying on a trade or a business or from an associated person.
11	Royalties - The 0% rate applies to (i) copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion picture films nor royalties in respect of works on films or videotape or other means of reproduction for use in connection with television broadcasting) and (ii) royalties for the use of, or the right to use, computer software or any patent or for information concerning industrial or scientific experience (but not including any such royalty provided in connection with a rental or franchise agreement).
12	Dividends - The rate of 5% applies to dividends paid to a company (other than a partnership) which directly owns at least 25% of the capital of the distributing company. A rate of 15% applies if the dividends are paid out of income or gains derived directly or indirectly from immovable property by an investment vehicle which distributes most of this income or gains annually and whose income or gains from such immovable property is exempted from tax. In all other cases a rate of 10% applies.
13	Interest - The reduced rate of 0% applies to (i) interest arising in a Contracting State and paid to the Government of the other Contracting State, (ii) interest arising in a Contracting State and paid in consideration of a loan guaranteed or insured by the other Contracting State or any financial institution wholly owned by it, (iii) interest arising in China and paid to the German Federal Bank ("Deutsche Bundesbank"), the Development Loan Corporation ("Kreditanstalt für Wiederaufbau") or the German Investment and Development Company ("DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH") and any public credit institution of the Federal Republic of Germany, if the competent authorities of both States have agreed thereto and (iv) interest arising in the Federal Republic of Germany and paid to (a) the People's Bank of China, (b) the China Development Bank Corporation, (c) the Agricultural Development Bank of China, (d) the Export-Import Bank of China, (e) the National Council for Social Security Fund, (e) the China Investment Corporation or (f) any other public credit institution of the Government of China, if the competent authorities of both States have agreed thereto.
14	Royalties - The rate of 10% applies to payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films, and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information (know-how) concerning industrial, commercial or scientific experience. A rate of 10% is applied to 60% of payments of any kind received as a consideration for the use of, or the right to use, any industrial, commercial or scientific equipment resulting in an effective rate of 6%.
15	Double taxation treaty only for shipping and air carriers.
16	Dividends - The rate of 5% applies to dividends paid to a company which directly holds at least 25% of the capital of the distributing company.
17	Dividends - The rate of 5% applies to dividends paid to a company which directly holds at least 10% of the capital of the distributing company.
18	Dividends - The rate of 5% applies if the beneficiary of the dividends is a company (other than a partnership or a German REIT stock corporation) which directly holds at least 10% of the capital in the distributing company.



Footnotes:	
19	Dividends - The rate of 5% applies to dividends paid by a corporation resident in Germany to a corporation resident in France which owns at least 10% of the capital of the German corporation. In case of a dividend paid by a corporation resident in France to a corporation resident in Germany a rate of 0% is applicable if the German corporation owns at least 10% of the capital in the French corporation.
20	Interest - The rate of 0% is applicable to (i) interest arising in Greece and paid to the German Federal Bank ("Deutsche Bundesbank") or to the German Development Loan Corporation ("Kreditanstalt für Wiederaufbau") and to (ii) interest arising in Germany and paid to the Bank of Greece. The rate of 10% applies to all other cases.
21	Interest - Interest arising in (i) the Federal Republic of Germany and paid to the Government of the Republic of India, the Reserve Bank of India, the Industrial Finance Corporation of India, the Industrial Development Bank of India, the Export-Import Bank of India, National Housing Bank and Small Industries Bank of India or (ii) in the Republic of India and paid to the Government of the Federal Republic of Germany, the German Federal Bank ("Deutsche Bundesbank"), the German Development Loan Corporation ("Kreditanstalt für Wiederaufbau") or the German Investment and Development Company ("DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH") and interest paid in consideration of a loan guaranteed by HERMES-Deckung is subject to a rate of 0%. The rate of 10% applies to all other cases.
22	Dividends - The rate of 10% applies if the recipient of the dividends is a company (excluding partnerships) which owns at least 25% of the capital of the company paying the dividends.
23	Interest - Interest arising (i) in the Federal Republic of Germany and paid to the Government or the Central Bank of Indonesia or (ii) in the Republic of Indonesia and paid in consideration of a loan guaranteed by Hermes-Deckung or paid to the Government of the Federal Republic of Germany, the Deutsche Bundesbank, the Kreditanstalt für Wiederaufbau or the Deutsche Finanzierungsgesellschaft für Beteiligungen in Entwicklungsländern is subject to a rate of 0%. In all other cases a rate of 10% applies.
24	Royalties - The rate of 7.5% applies to fees for technical services. The rate of 10% applies to royalties for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience. The rate of 15% applies to royalties for the use of, or the right to use, any copyright of literary artistic or scientific work (including cinematographic films and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process.
25	Dividends - The rate of 10% applies to dividends paid by a corporation resident in Italy to a company in Germany which directly owns at least 25% of the capital in the Italian corporation.
26	Interest - The rate of 0% is applicable to interest paid (i) in connection with the sale of goods or merchandise supplied by one enterprise to another enterprise on credit, (ii) in connection with the sale of industrial, commercial or scientific equipment on credit, (iii) for debt securities or similar obligations of the Government of a Contracting State, of one of its "Länder" or political subdivisions, or (iv) to the Government of a Contracting State or one of its "Länder" or political subdivisions or to the central bank of one of the Contracting States.
27	Royalties - A reduced rate of 0% is applied to royalties for copyright and other similar payments for the creation or reproduction of literary, dramatic, musical or artistic works, including cinematographic films or radio or television recording.
28	Dividends - Reduced rate of 5% applies to dividends paid to a company (other than a partnership) that holds at least 10% of the shares of the distributing company for a period of 6 months prior to the date of the dividend entitlement. Reduction to 0% if the beneficiary of the dividends is a company (other than a partnership) that owns directly at least 25% of the voting rights in the distributing company for a period of 18 months prior to the profit appropriation resolution.



Footnotes:	
29	Dividends - Reduced rate of 5% applies to dividends paid to a company (other than a partnership or an investment company) that holds at least directly 10% of the shares of the distributing company. In case of dividends paid by a real estate investment company which is partly or fully exempted from tax or which can deduct dividends from its profit and in all other cases, the rate of 15% applies.
30	Interest - Maximum rate of 10%. Reduced rate of 0% for interest derived by a Government of a contracting state from the Government of the other contracting state. For the purposes of the 0% rate, the term "Government": a) in the case of Malaysia means the Government of Malaysia and shall include: (i) the governments of the states; (ii) the Bank Negara Malaysia; (iii) the local authorities; (iv) the statutory bodies; and (v) the Export-Import Bank of Malaysia Berhad (EXIM Bank); b) in the case of the Federal Republic of Germany means the Government of the Federal Republic of Germany and shall include: (i) the Federal States; (ii) the political subdivisions or the local authorities; and (iii) the German Federal Bank ("Deutsche Bundesbank"), the German Development Loan Corporation ("Kreditanstalt für Wiederaufbau"), and the "Deutsche Finanzierungsgesellschaft für Beteiligungen in Entwicklungsländern".
31	Royalties - Including Fees for Technical Services.
32	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends. In the case of Malta, the reduced rates shall not apply as long as according to the Maltese tax law the tax chargeable on the profits of a company may be offset against the shareholder's income tax. In such case the Maltese tax on the gross amount of the dividends paid by a company which is a resident of Malta to a resident of the Federal Republic of Germany who is the beneficial owner thereof shall not exceed: (i) that tax which is chargeable on the profits out of which the dividends are paid; or (ii) 15% on the profits out of which the dividends are paid, if the dividends are paid out of gains or profits earned in any year in respect of which the company is in receipt of any benefit under the provisions regulating aids to industries in Malta, and the shareholder submits returns and accounts to the taxation authorities of Malta in respect of his income liable to Maltese tax for the relative year of assessment.
33	Interest - Maximum rate of 10%. Reduced rate of 5% applies on interest from loans granted by a bank. Reduced rate of 0% applies if (i) the beneficial owner is a Contracting State, the Banco de México or the Deutsche Bundesbank, (ii) the interest is paid by any of the entities mentioned in subparagraph (i), (iii) the interest arises in the Federal Republic of Germany and is paid in respect of a loan granted, guaranteed or insured by Banco de México, Banco Nacional de Comercio Exterior, S.N.C., Nacional Financiera, S.N.C., or Banco Nacional de Obras y Servicios Públicos, S.N.C., or by any other institution, as may be agreed from time to time between the competent authorities of the Contracting States, (iv) the interest arises in the United Mexican States and is paid in respect of a loan granted, guaranteed or insured by the Federal Republic of Germany or is paid to the German Development Loan Corporation ("Kreditanstalt für Wiederaufbau") or the German Investment and Development Company ("DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH"), or by any other institution, as may be agreed from time to time between the competent authorities of the Contracting States.
34	Dividends - Maximum rate of 15%. Reduced rate of 10% applies if the beneficial owner is a pension scheme resident in the Netherlands. Reduced rate of 5% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends.
35	Dividends - Maximum rate of 15%. Reduced rate of 0% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
36	Dividends - Maximum rate of 15%. Reduced rate of 10% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends. Reduced rate of 5% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 70% of the capital of the company paying the dividends.



Footnotes:	
37	Interest - Maximum rate of 10%. Reduced rate of 0% applies on interest (i) arising in the Federal Republic of Germany and paid to the Philippine Government and the Bangko Sentral Ng Pilipinas, (ii) arising in the Philippines and paid in consideration of a loan guaranteed by the Federal Republic of Germany in respect of export or foreign direct investment or paid to the Government of the Federal Republic of Germany, the German Federal Bank ("Deutsche Bundesbank"), the German Development Loan Corporation ("Kreditanstalt für Wiederaufbau") or the German Investment and Development Company ("DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH") and (iii) paid (a) in connection with the sale of commercial or scientific equipment on credit or (b) in connection with the sale of goods by an enterprise to another enterprise on credit.
38	Interest - Maximum rate of 5%. Reduced rate of 0% applies if the interest is paid (i) to the government of the Republic of Germany, (ii) on a loan of any kind granted, guaranteed or guaranteed by a public body to promote exports, (iii) in connection with the sale (on credit) of industrial, commercial or scientific equipment, (iv) in connection with the sale (on credit) of goods by one enterprise to another enterprise, and (v) on a loan of any kind granted by a bank.
39	Interest - Maximum rate of 15%. Reduced rate of 10% applies if the interest is paid on a loan of whatever kind granted by a bank. In the case of interest arising in Portugal, the provision of this subparagraph shall only apply if the operation for which loan is given, is considered to be of an economic or social interest for the country of the Portuguese government, which condition is always considered to be fulfilled if it is comprised in development plans approved by this government. Reduced rate of 0% applies on interest arising in (i) the Federal Republic of Germany and paid to the Banco de Portugal and (ii) Portugal and paid to the Deutsche Bundesbank.
40	No own treaty and not covered by tax treaty between Germany and the US.
41	Interest - Maximum rate of 3%. Reduced rate of 0% applies on interest arising in (i) Romania and paid to the Government of the Federal Republic of Germany, the German Federal Bank ("Deutsche Bundesbank"), the German Development Loan Corporation ("Kreditanstalt für Wiederaufbau") or the German Investment and Development Company ("DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH") and interest paid in consideration of a loan guaranteed by HERMES-Deckung and (ii) the Federal Republic of Germany and paid to the Government of Romania if it is derived and beneficially owned by the Government of Romania, an administrative-territorial unit or a local authority thereof or any agency or bank unit or institution of the Government of Romania, an administrative-territorial unit or a local authority or if the debt-claims of a resident of Romania are warranted, insured or financed by a financial institution wholly owned by the Government of Romania.
42	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company which directly holds at least 10% of the share capital or nominal capital of the company paying the dividends and this share/nominal capital amounts to at least EUR80,000 or its equivalent in rubles.
43	Dividends - Rate of 15% only applies to dividends paid by a German resident corporation.
44	Dividends - Maximum rate of 15% if the company paying the dividend is a real estate investment company or trust. Reduced rate of 5% applies if the beneficial owner (other than an individual or a partnership) holds directly at least 10% of the capital of the company paying the dividends. In the Federal Republic of Germany, income of a sleeping partner ("stiller Gesellschafter") from his participation as such or from a "partiarisches Darlehen" or a "Gewinnobligation" that is deductible in determining the profits of the debtor may be taxed in the Federal Republic of Germany according to its laws. A rate of 10% applies in all other cases.
45	Dividends - The rate of 5% applies if the beneficiary of the dividends is a company (other than a partnership or a German REIT stock corporation) which directly holds at least 10% of the capital in the distributing company for a period of 365 days, including the day on which the dividends are paid. In calculating this period, any changes in ownership or ownership structure that would result directly from a reorganisation, such as a merger or division, of the company holding the shares or paying the dividends shall be disregarded.



Footnotes:	
46	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends.
47	Interest - Maximum rate of 5%. Reduced rate of 0% applies on interest arising in (i) the Federal Republic of Germany and paid to the Government of the Republic of Slovenia, the Bank of Slovenia or the Slovenian Export Corporation and interest paid in consideration of a loan guaranteed by the Slovenian Export Corporation and interest paid in consideration of a loan guaranteed by the Republic of Slovenia in respect of export or foreign direct investment, and (ii) the Republic of Slovenia and paid to the Government of the Federal Republic of Germany, the German Federal Bank ("Deutsche Bundesbank"), the German Development Loan Corporation ("Kreditanstalt für Wiederaufbau"), the German Investment and Development Company ("DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH") and interest paid in consideration of a loan guaranteed by the Federal Republic of Germany in respect of export or foreign direct investment.
48	Dividends - Maximum rate of 15% (subject to tax clause). Reduced rate of 7.5% applies if the recipient is a company (excluding partnerships) which owns directly at least 25% of the voting shares of the company paying the dividends.
49	Interest / Royalties - Subject to tax clause.
50	Dividends - Maximum rate of 25% in case of income derived from rights or debt-claims participating in profits (including in the Federal Republic of Germany income derived by a silent partner ("stiller Gesellschafter") from his participation as such, from a "partiarisches Darlehen" and from "Gewinnobligationen") that is deductible in determining the profits of the debtor. Reduced rate of 5% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; otherwise a rate of 15% applies.
51	Interest - Maximum rate of 10%. Reduced rate of 0% applies on interest (i) arising in the Federal Republic of Germany, a Land, a political subdivision or a local authority thereof and paid to the Republic of Korea, the Bank of Korea, the Korea Export-Import Bank, the Korea Development Bank and similar financial institutions as may be specified by mutual agreement between the competent authorities of the Contracting States as well as interest paid in consideration of a loan guaranteed by the Korea Export Insurance Corporation, (ii) arising in the Republic of Korea and paid to the Federal Republic of Germany, the German Federal Bank ("Deutsche Bundesbank"), the German Development Loan Corporation ("Kreditanstalt für Wiederaufbau") or the "Deutsche Finanzierungsgesellschaft für Beteiligungen in Entwicklungsländern" and similar financial institutions as may be specified by mutual agreement between the competent authorities of the Contracting States as well as interest paid in consideration of a loan guaranteed by HERMES-Deckung and (iii) paid (a) in connection with the sale of commercial or scientific equipment on credit, or (b) in connection with the sale of goods by an enterprise to another enterprise on credit.
52	Royalties - Maximum rate of 10%. Reduced rate of 2% applies on royalties which are paid for the use of, or the right to use, industrial, commercial, or scientific equipment.
53	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the recipient company (other than a partnership or real estate investment company) owns, shares representing 10% or more of the share capital of the company paying the dividends.
54	Dividends - Maximum rate of 15%. Reduced rate of 0% applies if the recipient company has owned, shares representing 10% or more of the share capital of the company paying the dividends, for a 12 month period. In the case of income resulting from profit participating rights (incl. silent partnerships, profit participating bonds (Gewinnobligationen) or from profit participating loans) and if these amounts are deductible at the level of the debtor, the domestic rate is applicable (26.375%).



Footnotes:	
55	Dividends - Maximum rate of 30% (only in the case of income resulting from silent partnerships, profit participation rights ("Genussrechte"), profit participating bonds ("Gewinnobligationen") or from profit participating loans and if these amounts are deductible at the level of the debtor). Reduced rate of 15% applies in all cases not specifically mentioned. Reduced rate of 5% applies if paying company is a power plant to exploit the hydropower of the Rhine river between Lake Constance and Basel (border power plant on the Rhine). Reduced rate of 0% applies if the recipient company has owned, shares representing 10% or more of the share capital of the company paying the dividends, for a 12 month period (does not in case of dividends paid by a German real estate stock corporation with listed shares (REIT-AG), a German investment fund or a German investment stock corporation). A rate of 0% does also apply, according to a treaty between the European Union and Switzerland, if the receiving company owns at least 25% of the capital in the distributing company for a period of two years.
56	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
57	Interest - Maximum rate of 10%. Reduced rate of 0% applies to interest arising in (i) the Federal Republic of Germany and paid to the Government of the Republic of Turkey or to the Central Bank of the Republic of Turkey ("Türkiye Cumhuriyet Merkez Bankası") (ii) Turkey and paid to the Government of Germany or to the German Federal Bank ("Deutsche Bundesbank"), (iii) Turkey and paid in consideration of a loan guaranteed by the Federal Republic of Germany in respect of export or foreign direct investment or paid to the German Development Loan Corporation ("Kreditanstalt für Wiederaufbau") or the German Investment and Development Company ("DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH"), (iv) Germany and paid to the Turkish Eximbank ("Türkiye İhracat Kredi Bankası A.Ş").
58	Dividends - Maximum rate of 15%. Reduced rate of 10% applies if the beneficial owner is a pension scheme. Reduced rate of 5% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends.
59	Due to Brexit, the Parent Subsidiary Directive [1] and the Interest and Royalties Directive [2] will not be applicable anymore.
60	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the recipient company owns directly at least 10% of the voting power in the company paying the dividends. Reduced rate of 0% applies if (i) the recipient company has owned, shares representing 80% or more of the voting power of the company paying the dividends, for a 12-month period ending on the date entitlement to the dividend is determined and satisfies certain clauses set forth in Article 28 of the treaty (Limitation on Benefits of the Convention) or (ii) the recipient is a pension fund and the dividends are not derived from the carrying on of a business, directly or indirectly, by such pension fund. Further exceptions apply to certain investment funds as payer.
61	Dividends - Maximum rate of 15%. Reduced rate of 5% applies to dividends paid to a company (other than a partnership) that owns directly at least 15% of the share capital of the payer company.
62	Interest - Maximum rate of 5%. Reduced rate of 0% applies to interest paid to the Venezuelan government, the Fondo de Inversiones de Venezuela, the Fondo de Financiamento de las Exportaciones and the Banco Central de Venezuela.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

The statute of limitations for taxes in Germany is generally four years (unless special circumstances like e.g. tax evasion incur) starting from 1 January of the year following the year in which the tax return was filed. The statute of limitations is suspended if, for example, a tax audit is announced before the expiry of the statutes of limitations.

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Please provide a structure chart of the target group including ownership ratios, legal forms and permanent establishments/representatives.
2	Tax Due Diligence	General	Please describe how the target group controls and manages the tax functions (including a list of the target groups internal tax representatives and external advisors).
3	Tax Due Diligence	General	Please provide (i) tax returns (i.e. corporate income tax including tax balance sheets, trade tax, VAT, transfer tax, WHT) and (ii) tax assessment notices for the target companies for all FYs open to tax audit.
4	Tax Due Diligence	General	Please provide financial statements ("GAAP") for FYs open to tax audit.
5	Tax Due Diligence	Income tax	Please provide (i) a breakdown of deferred tax assets/liabilities and details (including calculation) of reserves/provisions/liabilities for taxes and (ii) an overview on write-offs/ impairments of assets and potential recapture exposure.
6	Tax Due Diligence	Income tax	Please provide an overview of tax losses, tax loss carry forwards and interest/EBITDA carry forwards as of 31 December 2020 and 2021 and describe transactions which could have had an impact on these tax attributes (e.g. due to loss forfeiture rules).
7	Tax Due Diligence	Income tax	Please provide a list of main intangible assets (incl. non-accounted assets) and an overview (calculation) of hidden reserves embedded in these assets.
8	Tax Due Diligence	Income tax	Please provide (i) a list of existing and former tax groups (tax consolidation schemes, fiscal unities) and the respective members for CIT and trade tax purposes and (ii) the corresponding profit and loss transfer agreements.
9	Tax Due Diligence	Income tax	Please provide an overview of taxable income, financial expenses and interest income for interest barrier rule purposes for all FYs open to tax audit (including FY20 and estimate for FY21) and explain any limitations on the deductibility of interest.
10	Tax Due Diligence	General	Please (i) provide tax and social security audit reports for the past and explain main findings and adjustments of taxable income, turnover etc., (ii) quantify the additional tax payments, (iii) explain status of payment of additional taxes from audit and (iv) provide information on tax audits announced or in progress.

GERMANY

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Nº.	Category	Sub-Category	Description of Request
11	Tax Due Diligence	General	Please provide relevant agreements, arrangements and correspondence with the tax authorities (e.g. binding tax rulings, APAs, mutual agreements) and a list of finished, pending and threatening tax appeals, litigations, investigations and major tax proceedings (e.g. criminal proceedings).
12	Tax Due Diligence	General	Please provide an overview of reorganization measures (e.g. mergers, spin offs, hive downs, contributions) and disinvestments/acquisitions within the last seven years including the tax consequences as well as the status of tainted shares/holding periods for tax purposes.
13	Tax Due Diligence	General	Please provide (i) SPAs entered into by the target companies and explain and quantify existing or potential claims or liabilities under the tax guarantee and indemnification clauses and (ii) tax due diligence reports for relevant acquisitions for FYs open to tax audit.
14	Tax Due Diligence	Transfer tax	Please provide a list of real estate owned by target companies (including their fair market values and tax book values as well as the respective German federal states in which they are located).
15	Tax Due Diligence	Transfer tax	Please provide an overview on any open transfer tax transaction not notified or assessed by the tax authorities.
16	Tax Due Diligence	Income tax	Please (i) provide an overview on intercompany agreements/transactions and provide volumes on an entity by entity basis for each FY open to tax audit, (ii) explain TP methods applied and (iii) provide TP documentation.
17	Tax Due Diligence	Income tax	Please provide (i) employment agreements with directors (including shareholding directors) and (ii) an overview on compensations paid on an entity by entity basis for each FY open to tax audit.
18	Tax Due Diligence	VAT	Please provide an overview on (i) the VAT situation including list of non-VATable, VATable and VAT exempt transactions, (ii) the input VAT deductibility of the target companies and (iii) any former and existing VAT groups (including members, commencement, termination) for FYs open to tax audit.
19	Tax Due Diligence	VAT	Have the entities of the target group (i) adjusted any monthly or annual VAT returns during fiscal years open to tax audit or (ii) undergone internal reviews of the VAT position? If so, please explain the reasons and quantify relevant VAT payments/refunds.
20	Tax Due Diligence	WHT	Please provide an overview on withholding tax relevant transactions (e.g. dividends, interests, royalties) and explain whether the requirements for reduced or 0% rates have been fulfilled (e.g. valid exemption certificates, substance and activity requirements).



Nº.	Category	Sub-Category	Description of Request
21	Tax Due Diligence	Income tax/WHT	Please provide an overview of cross border (open or hidden) profit distributions and contributions and explain potential tax implications for the parties involved.
22	Tax Due Diligence	Wage tax/social security	Does the target group engage independent contractors/freelancers? If so, please provide an overview of such freelancers/other individuals including information on (i) the amounts paid to/for the person, (ii) the monthly working hours, (iii) the period of time for which the person worked for the group entity, and (iv) where applicable, if the person is a temporary worker deployed by a temporary employment agency.
23	Tax Due Diligence	Income tax	Please provide an overview of potential foreign permanent establishments/ representatives and information on the allocation of income between permanent establishment and head office.
24	Tax Due Diligence	General	Please provide (i) an overview on business specific tax issues/risks of the target group and (ii) a list of transactions outside the ordinary course of business (e.g. impairments, disputes regarding receivables, disposals of shares, transactions (partly) free of charge) with a volume greater than EUR150,000 per transaction including extraordinary transactions (cf. Sec. 90 para. 3 German Tax Code).

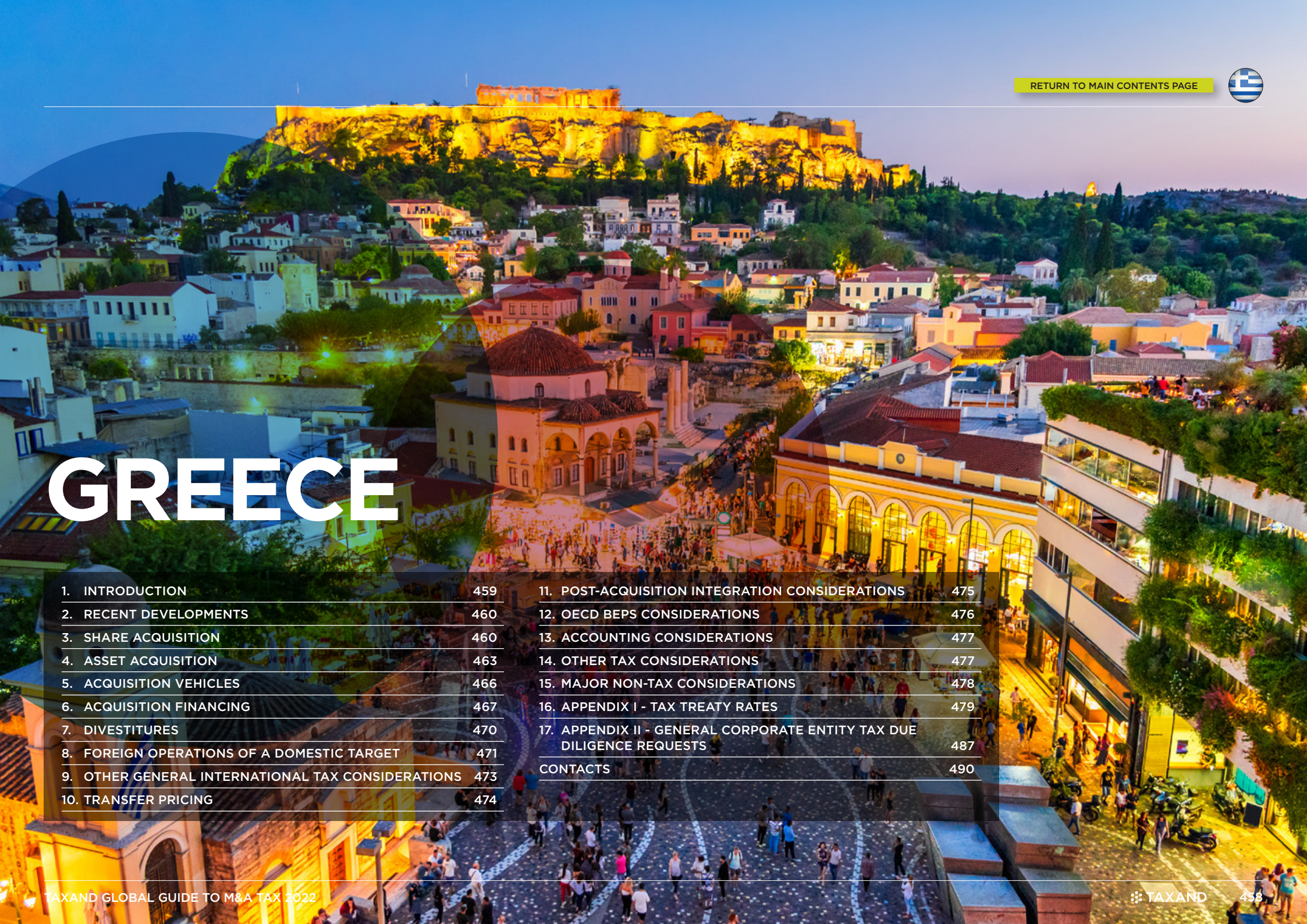
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1. INTRODUCTION

a. Forms of Legal Entity

Businesses in Greece most commonly adopt the forms of a société anonyme ("Ανώνυμη Εταιρεία" or "AE"), limited liability company ("Εταιρεία Περιορισμένης Ευθύνης" or "EPE") or a private company ("Ιδιωτική Κεφαλαιουχική Εταιρεία" or "IKE"), all of these forms of companies being referred to as "corporations" ("κεφαλαιουχικές εταιρείες"). One of the common features of corporations, as opposed to partnerships, is that the liability of their shareholders or members is in principle limited to the capital contributed. Large companies most commonly take the form of an AE, which unlike the EPE and IKE is subject to a minimum capital requirement (i.e. EUR25,000 as of 1 January 2019). The EPE constitutes a corporate vehicle of choice for small and medium sized businesses. However, the popularity of the IKE form has risen in recent years in view of the fact that it offers a more flexible structure compared to an EPE.

Small and medium sized enterprises engaged in services activities and family businesses often take the form of a general partnership ("Ομόρρυθμη Εταρεία" or "OE") or limited partnership ("Ετερόρρυθμη Εταιρεία" or "EE"). Corporations and partnerships alike are taxed as separate legal entities.

b. Taxes, Tax Rates

Resident companies are subject to corporate income tax on their worldwide income while permanent establishments of foreign companies are subject to corporate tax on the income attributed thereto. All revenues derived by companies are considered business income and are subject to corporate income tax. The corporate income tax rate that was originally set at 29% for income arising within fiscal years starting as of 1 January 2015 until 31 December 2018 has been reduced to 24% for the income of fiscal years 2019 onwards and to 22% for the income of the fiscal years 2021 onwards. Credit institutions that have opted to apply a scheme available for enhancing capital adequacy which consists of conversion of deferred tax assets into deferred tax credits against the Greek State are subject to 29% tax rate in respect of the fiscal years of the scheme.

Under the domestic dividend withholding tax system, dividends/profits distributed by resident companies are subject to withholding tax at a rate of 5% for dividend/profits distributed as from 1 January 2020, which is reduced under the applicable treaty for the avoidance of double taxation or eliminated under the EU Parent Subsidiary Directive. No withholding tax applies on profits distributed by partnerships maintaining single entry books, which is the case for taxpayers with turnover that is lower than EUR1.5 million.

c. Common divergences between income shown on tax returns and local financial statements

The accounting treatment forms the basis for the determination of taxable profits, except where the tax rules state differently, as is the case with respect to non-tax deductible expenses, excess depreciation and/or provisions not provided for in the tax law, including as regards the legal classification of a transaction.

2. RECENT DEVELOPMENTS

- The generally applicable corporate income tax rate has been reduced from the 29% that was applicable for fiscal years starting up to 31 December 2018 down to 22% starting from the fiscal year 2021.
- The rate of capital accumulation tax, which is payable on certain equity contributions, including share capital increases, to companies, branches of non-EU companies and certain other entities and organisations defined in the law, has been decreased from 1% to 0.5% as of 1 October 2021.
- On 26 January 2021 Greece ratified the OECD Multilateral Instrument implementing the tax treaty related BEPS measures ("MLI") and the MLI came into force on 1st July 2021. In this respect Greece has opted for changes in its Double Tax Treaties which include the adoption of the principal purpose test preventing arrangements and transactions whose main purpose is to obtain the benefits of the tax treaty and the introduction of treaty dispute resolution mechanisms including a mandatory binding arbitration mechanism.

Coronavirus Aid Relief related tax changes

The Greek Government introduced, starting from March 2020, a series of temporary measures to financially support enterprises whose business was being disrupted by the COVID-19 crisis. Such measures included extensions of various tax payment deadlines, granting of discounts for timely payment of taxes, acceleration of tax refunds, financing measures, tax prepayment reductions etc. As the rules were very detailed and constantly changing, careful review of relevant compliance is required as part of any due diligence processes covering the relevant periods.

3. SHARE ACQUISITION

a. General Comments

Most M&A transactions are structured as share acquisitions. Share acquisitions are exempt from indirect taxes (VAT and stamp duty), real estate transfer taxes and transfer taxes with an exception of a 0.2% sales tax that applies exclusively in case of transfer of shares admitted for trading on a regulated market (see below in section 3.f.).

Share transactions are also preferred by non-resident corporate sellers since capital gains earned on the sale of shares in local companies are not subject to tax, provided that the shares are not held through a permanent establishment in Greece. As regards Greek corporate sellers, gains from the sale of shares are either exempt from tax in case of transfer of shares in qualifying subsidiaries or are included in the selling resident company's or permanent establishment's income and taxed at the ordinary corporate income tax rate. As from 1 January 2020 Greek legal persons are exempt from tax on capital gains arising from the disposal of shares in EU qualifying subsidiaries insofar as they hold at least 10% participation in those subsidiaries for a minimum holding period of 24 months.



b. Tax Attributes

Tax losses carried forward are forfeited in case of a direct or indirect change of the shareholders participation by more than 33% within a fiscal year resulting also to a change of the company's business activity within the same or the next fiscal year in a way that affects more than 50% of its turnover as compared to the turnover prior to the change. Change in control may render some non-taxable reserves taxable depending on the special incentive framework that has been applied for their formation and the classification of the purchaser as micro, small, medium and large sized enterprises in accordance with the Commission Regulation (EU) No 651/2014.

c. Tax Grouping

There is no consolidated tax grouping regime in Greece.

Subject to anti-abuse rules, in certain circumstances tax losses of transferring (i.e. absorbed) entities in mergers can be offset with profits of the acquiring company, including post-merger profits.

d. Tax Free Reorganisations

There are several frameworks for achieving a tax neutral restructuring in Greece. Greek laws providing for a tax neutral restructuring are the Greek tax incentive laws (i.e. 2166/1993 or 1297/1972), Law 2578/1998 on cross border mergers among EU entities and Law 4172/2013 introducing the provisions of the EU Merger Directive for both domestic and cross border restructurings among EU entities. Available options are mergers, demergers, partial demergers, spin offs, contributions of businesses or business sectors, share exchanges, and conversions in the legal form of the company.

The requirements, procedure and impact (e.g. entitlement to carry forward tax losses, restrictions upon future sale of assets, legal and economic effects of the merger) vary depending on the legal framework to apply. Therefore, an analysis is to be made prior to opting for the tax framework to apply in each merger taking into account the background of the companies involved.

e. Purchase Agreement

Share purchase agreements for the transfer of shares in Greek Societe Anonymes ("AEs") and Greek Private Companies ("IKEs") are most commonly in the form of a private agreement. On the other hand the transfer of parts in Limited Liability companies ("EPE") should be vested in a notarial deed. Prior to the execution of the purchase agreement buyers of parts in Private Companies ("IKEs") and Limited Liability companies ("EPEs") should obtain a Greek tax identification number with the Greek Tax Authorities which requires the filing of legalisation documents, certificates of good standing and tax certificates as well as the appointment of a tax representative in Greece. The common structure for holding Greek businesses or Greek real estate is through Greek corporations.

Tax representations & warranties and tax indemnifications are commonly included in the share purchase agreement. Particular attention should be paid to the time limitation of the tax indemnification clauses in view of the various statutes of limitation ("SOL") that apply for fiscal years before and after 2014, as well as for different types of taxes, e.g. property taxes, indirect taxes, gift taxes. The current SOL in certain defined circumstances, such as in cases where there are considered to be infringements that are classified as tax evasion and that were committed in fiscal years up to 2017 is ten years.



f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

There are no transfer taxes on share transfers with an exception of a sales tax at the rate of 0.2% which is levied on sales of shares admitted for trading on a regulated market or multilateral trading facility operating in Greece . The tax is also levied on sales, effected by Greek residents, of shares listed on foreign stock exchanges or equivalent institutions. The tax is paid by the seller.

No transfer taxes or registration duties are applicable on shares transfers of companies holding real estate assets.

g. "Purchase accounting" applicable to share acquisitions

Purchase accounting is not prescribed per se in Greek law. Applicable Greek accounting rules (prescribed under L. 4308/2014 "Greek Accounting Standards") provide for guidelines in relation to consolidation methodology of entities subject to consolidation requirements which under conditions could be similar to purchase accounting.

h. Share Purchase Advantages

In cases of stock purchases there are limited opportunities to increase the tax basis of the assets or other attributes of the target. An increase may be possible, under specific requirements, in the context of an internal corporate restructuring (e.g. merger, demerger, spin off) to be implemented post acquisition by means of Greek tax incentive law 1297/1972 which provides for a valuation of the assets and liabilities of the entity being restructured and a formation of an untaxed reserve to be taxed upon the dissolution of the company.

There is no procedure for finalising entities' tax exposure prior to acquisition, as taxpayers cannot request the initiation of the conduct of a tax audit. Tax audits are prioritised based on an automated objective assessment model following the application of risk analysis criteria that are determined by the Tax Authorities and are not disclosed.

i. Share Purchase Disadvantages

Contrary to asset deals, the buyer is not entitled to allocate the purchase value to the underlying assets of the target, to depreciate the acquisition value of the shares and to deduct business expenses incurred for the acquisition of the shares. In addition interest expenses and other financing costs to finance the shares purchase are not deductible against dividend income earned from the company that qualifies for dividend participation exemption. Pre-existing liabilities of the target remain with the target while relevant risks can be mitigated through contractual terms of the stock purchase agreement.

4. ASSET ACQUISITION

a. General Comments

Asset transactions and/or transfer of business as a going concern are subject to indirect taxes (either VAT or stamp duty) as well as to real estate transfer tax in case of transfer of real estate. In many cases relevant transaction have to be vested in a notarial deed (e.g. in cases of real estate transfers and/or transfer of businesses or business units) and therefore the buyer incurs additional fees and registration duties. The buyer is entitled to deduct for corporate income tax purposes interests and financing costs as well as any other business expense incurred for the acquisition of the assets.

In cases of transfers of real estate real estate transfer tax is paid before the execution of the notarial deed and the relevant real estate transfer tax return is filed by the Notary through an electronic platform captioned "My Property". Land registration duties are paid to the land registry or the Cadastre for the registration of the deed. In cases of transfers of business as a going concern stamp duty is paid to the tax authorities within five days from the execution of the purchase agreement.

Gains from the transfer of assets are included in the selling Greek company's or permanent establishment income and taxed at the ordinary corporate income tax rate.

b. Purchase Price Allocation

The purchase price is allocated to the assets (tangibles and intangibles). In cases of transfer of a business as a going concern purchase price allocation corresponds to the book value of the assets and liabilities transferred plus goodwill.

c. Tax Attributes

In an asset deal the tax attributes (tax losses, reserves, interests) remain with the selling company and are not transferred to the buyer. In cases of transfer of business as a going concern reserves that form part of the business are also transferred to the purchaser along with the business's assets and liabilities.

d. Tax Free Reorganisations

Regarding the tax free reorganisation regimes, please refer above to Section 3.d.

e. Purchase Agreement

Asset purchase agreements may be in the form of a private agreement. However a notarial deed is required in case of real estate acquisition or in case of the acquisition of a business as a going concern. As regards tax related warranties and indemnities in a purchase agreement, they are usually limited as compared with a share deal, as in general tax liabilities of the seller are not transferred to the buyer as a result of an asset acquisition. Since, under Greek Civil Law, the buyer shall be liable, along with the seller, for debts existing as at the time of the acquisition and therefore capable of being quantified, the liability as to these debts may be a factor influencing the agreed acquisition price.

f. Depreciation and Amortisation

Goodwill may be realised in the context of either an acquisition of business as a going concern or as an acquisition of standalone intangible assets (such as IP rights, clients lists, etc) or as a result of a merger to take place following the acquisition of shares of the target company to be merged. According to Greek GAAP, goodwill with indefinite useful economic life ("UEL"), is not subject to amortisation but should be annually tested for impairment. In case the UEL cannot be reliably estimated, goodwill is amortised equally within ten years. Tax wise, in case of asset/transfer of business transactions goodwill is amortised at a 10% rate annually. The same rules also apply for similar intangible assets (e.g. development costs, capitalised repair and maintenance costs etc.).

In cases of mergers, goodwill reflects the difference between the shares acquisition cost and the net asset value of the assets and liabilities of the merged company. If that difference is positive, it represents goodwill, which should be recorded in a special account and be subject to amortisation depending on its UEL. For tax purposes, relevant goodwill is not deductible for tax purposes. If the difference is negative, it constitutes a gain from bargain purchase, which should be recorded as profit in the Income Statement of the respective consolidated accounts.

g. Transfer Taxes, VAT

Asset deals are subject to indirect taxes. Transfer of business as a going concern transactions are subject to stamp duty at a 2.4% rate which is computed on the higher of the business net asset value or the consideration agreed and is deductible for corporate income tax purposes. Stamp tax is commonly paid by the acquiror, although the parties may freely negotiate the party to undertake relevant tax cost. Transfers of single assets are in principle subject to VAT at 24%, which is recoverable. Transfer of real estate is subject to real estate transfer tax at a rate of 3.09% on the higher value between the consideration agreed or the statutory value (i.e. a value determined on the basis of specific coefficients and zones values determined by the Tax Authorities).

Exceptionally transfers of new buildings (i.e. buildings with building permit following 1 January 2016 which have not been used prior to their transfer) are subject to VAT at 24%. Nevertheless, sales of new buildings within the period 2020-2022, can be exempt from VAT, if the Seller opts not to apply VAT on relevant sale and waives its right to deduct the VAT on the construction cost.

h. Asset Purchase Advantages

The buyer is entitled to deduct for corporate income tax purposes the business expenses incurred for the acquisition of the assets, including interests and other financing costs and to perform depreciations on the assets' acquisition costs.



i. Asset Purchase Disadvantages

In cases of transfer of business as a going concern or business units the purchaser can be held jointly liable with the seller for pre-existing obligations of the business, up to an amount equal to the value of the assets acquired according to Civil Code rules (Article 479). The purchaser of a real estate property can be held jointly liable with the seller for property taxes corresponding to the real estate (see below).

Asset deals trigger higher indirect taxes and transaction costs compared to stock purchase transactions. Namely, asset deals are subject to indirect taxes as well as to real estate transfer taxes when real estate assets are transferred. Asset deals are often required to be vested in a notarial deed and therefore for the purchaser to incur additional fees and costs. By way of example purchasers of real estate are subject to real estate transfer tax at 3.09% and to notary fees and land registration duties which are roughly in the range of 2.5% of the transfer value of the real estate (see above, regarding the deadline and competent authority for the payment of the real estate transfer tax and the registration duties). In Greece the taxable basis for property taxes are the statutory values of the properties which are computed on the basis of specific formula on the basis of predetermined factors including zone values per locations. Zone values are supposed to be adjusted every two years for the purpose of reflecting market values. Therefore asset transactions do not reset the value of the specific real estate for property taxation purposes. However, real estate values evidenced through transactions are taken into account upon the readjustment of the zone values.



5. ACQUISITION VEHICLES

a. General Comments

The most commonly used acquisition vehicle is a Greek corporate entity in the legal form of an AE to be held by a non-Greek resident entity and to be financed through bond loans (see below in section 6e). The other corporate entity that is commonly used in an IKE. Holding the Greek investment/business through a separate entity grants flexibility upon future exit. Notwithstanding the above, Greek investments/assets/ businesses can be held also by foreign entities directly through a corporate branch.

b. Domestic Acquisition Vehicle

Regarding the different types of domestic acquisition vehicle, please refer to Section 1. The most commonly used domestic acquisition vehicle is an AE and for US investors that opt for check the box entities an EPE or IKE.

c. Foreign Acquisition Vehicle

A foreign acquisition vehicle may be used as the acquisition vehicle depending on the asset to be acquired and the envisaged business activities to be carried out in Greece. The foreign acquisition vehicle shall establish a formal presence in Greece through the incorporation of a branch.

Similarly a foreign acquisition vehicle can act as shareholder of a Greek corporate entity. Dividend withholding tax applies at the rate of 5% for authorised dividend distributions by Greek corporate entities from 1 January 2020. Relevant withholding tax can be reduced or eliminated in case of distributions to foreign residents qualifying under the EU Parent Subsidiary Directive. In particular, no tax is imposed if the receiving EU parent company has a minimum 10% shareholding participation in a Greek company for an uninterrupted two year period and has a legal form qualifying for application of the Parent Subsidiary Directive. On the other hand, there is no profit withholding tax upon the remittance of profits from the permanent establishment to the head office. In terms of exiting a Greek holding structure, foreign companies disposing their shares in Greek companies are not subject to Greek corporate income tax on their gain, provided that the shares were not held through a Greek permanent establishment of such foreign companies. Therefore, share deals work more efficiently from a tax perspective for foreign tax resident sellers.

d. Partnerships and joint ventures

Joint ventures are commonly used in Greece as acquisition vehicles for facilitating, inter alia, large scale investments in infrastructure projects. Under the general corporate income tax rules, Greek partnerships in the form of a general partnership or a limited partnership and joint ventures are treated as opaque and are taxed similar to local corporations. Partnerships with revenues not exceeding EUR1.5 million and which partners do not include corporations are taxed only at company level and are not subject to dividend and/or profits withholding taxes.

e. Strategic vs Private Equity Buyers

Both strategic and private equity acquirors commonly invest through Greek corporate entities.

6. ACQUISITION FINANCING

a. General Comments

There are no specific restrictions in Greece applicable to importation of foreign funds. The opening of a local bank account may take one to two months and is subject to standard customer KYC checks which require the delivery of documents and certificates by the company, the directors and all signatories.

b. Equity

Greece recently introduced a special tax regime for holding entities providing for dividends and capital gains participation exemption applicable only to EU qualifying subsidiaries. There is a dividend participation exemption regime applicable only with respect to dividends from EU based subsidiaries falling within the scope of the EU Parent-Subsidiary Directive (i.e. minimum 10% shareholding participation, for an uninterrupted two year period and subsidiary having the legal form of the Annex of the Parent Subsidiary Directive. Moreover, as from 1 January 2020, Greek legal persons are exempt from tax on capital gains arising from the disposal of shares in EU Parent Subsidiary Directive qualifying subsidiaries insofar as they hold at least 10% participation in those subsidiaries for a minimum holding period of 24 months. Under a grandfathering clause, losses arising from the transfer of shares realised until 31 December 2022 shall be deductible for tax purposes to the extent that losses had been reflected in financial statement valuations having occurred until 31 December 2019.

Dividends received by Greek companies from EU-based subsidiaries that do not fulfil the conditions of application of the EU Parent Subsidiary Directive are subject to the generally applicable corporate income tax rate. A tax credit is granted in this respect for withholding taxes as well as for corporate income tax corresponding to the amount of the paid dividends (underlying tax credit). Dividends received by Greek companies from non-EU-based subsidiaries are subject to the generally applicable corporate income tax rate and a tax credit is granted in this respect for withholding taxes.

Capital gains by Greek companies from the disposal of shares that do not fall within the capital gains participation exemption are treated as business income and are taxed at the standard corporate income tax rate.

Greek tax law does not provide for a tax deferral regime for capital gains on transfer of shares or assets. Tax deferral regimes are only available in case of qualifying corporate restructurings (see section 3.d. above).

Equity financing is subject to 0.5% capital accumulation tax while there is an exemption from said tax for newly incorporated entities. Relevant exemption was introduced back in 2014 as an incentive for stimulating the set up of newly formed companies. In addition, payment of share capital into an AE is subject to a duty of 0.1% payable to the Greek Competition Committee.

A legal entity is considered as a Greek tax resident according to domestic tax residence rules if it is incorporated, seated or effectively managed at any time of the year in Greece.

c. Debt

i Limitations on use of debt

This section is left intentionally blank.

ii Limitations on interest deductions

There are no thin capitalisation rules in Greece. Interest on debt financing of the acquisition of business assets are deductible subject to the earnings stripping rules. In particular, subject to a de minimis exemption of up to EUR3 million, otherwise excess borrowing costs are deductible provided that they do not exceed 30% of the company's EBITDA. EBITDA is assessed under the Greek accounting principles following the readjustments for tax purposes. Excess borrowing costs are defined as the amount by which interest expenses on loans and other financing arrangements and relevant financing costs exceed interest income. Interest which exceeds the said thresholds may be carried forward indefinitely. Entities defined in the law, such as credit institutions, insurance companies, Undertakings for Collective Investment in Transferable Securities ("UCITS"), Alternative Investment Funds ("AIFs") under conditions, certain pension schemes etc. are exempt from the scope of the earnings-stripping rules.

There are also restrictions on the deductibility of interest payable to tax residents (individuals or legal entities) in non-cooperative or preferential tax regimes.

The definition of "non cooperative" jurisdictions refers to States that are not members of the EU and which have been considered by the OECD as not being compliant with transparency and exchange of information standards. Similarly, such jurisdictions have not signed a mutual assistance agreement with Greece in Tax Matters or the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters, nor have they committed themselves to the automatic exchange of financial information starting in 2018 the latest. The definition of "preferential tax regime" refers to states applying a tax rate that is lower than 60% of the tax rate applicable in Greece. Non cooperative and preferential tax regimes are to be defined by the Governor of the Independent Authority of Public Revenues annually.

In the case of share deals and based on the guidelines of the Ministry of Finance, interest on loans for the financing or the acquisition of the shares in entities qualifying for the dividend and capital gains participation exemption is not tax deductible.

Withholding Tax on interest payments

Greek source interest payments are subject to 15% withholding tax based on domestic tax rules. Relevant withholding tax may be reduced on the basis of the applicable DTT between Greece and the country of the beneficiary of the income as well as to be eliminated for interest payments qualifying under the Interest Royalty Directive (i.e. interest payments between qualifying entities, holding a minimum participation of 25% for an uninterrupted period of 24 months).

Interest payments effected as of 1 January 2020 towards non-resident individuals and legal entities which do not maintain a permanent establishment in Greece, are exempt from interest withholding tax insofar as such interest is on corporate bonds that are admitted for trading on a trading venue, as defined in EU Council Directive 2014/65 ("MiFID II") within the EU, or on a regulated market outside the EU supervised by an authority accredited by the International Organisation of Securities Commission ("IOSCO").

iii Related Party Debt

Interest on related party loans is subject to transfer pricing rules, whereas interest expenses on third party loans, other than interest on loans by banks, inter-bank loans, as well as corporate bond loans, derived from the application of a rate exceeding the interest rate for credit lines to non-financial corporations referred to in the most recent Bulletin of Conjunctural Indicators of the Bank of Greece (as at the time of the loan) are not deductible. For corporate law purposes, the granting of loans to affiliated entities is subject to prior corporate approvals and publications in the Companies Registry.

iv Debt Pushdown

Following the introduction of the new Income Tax Code effective as of 2014 and the limitation of the interest deduction on borrowing for financing the acquisition of shares it is still not entirely clear whether interest on debt incurred to acquire shares would be deductible if the entity holding the shares were to be merged with the target/operating entity. Moreover, the tax neutrality of a merger can be achieved only if the merger is carried out for valid commercial reasons. Therefore, a merger to be implemented for the sole purpose of facilitating a debt push down might not meet the business purpose test.

d. Hybrid Instruments

Corporate law on AE provides both for preference shares entitled to interest payments without any voting and dividend right as well as for profit participation bond loans. The Greek Tax Authorities have taken the position that interests paid to the holders of preference shares without voting and profit participation rights are not deductible from companies' gross revenues for tax purposes since they are treated as dividends. This position has recently been endorsed by the Supreme Court.

Greece has transposed the anti-hybrid rules of the EU Parent Subsidiary Directives according to which the exemption from Greek corporate income tax on dividends received by Greek legal entities from EU subsidiaries will henceforth only apply to the extent that such profits are not deductible by the subsidiary. This amendment targets hybrid loans and aims at preventing situations of double non-taxation due to mismatches in the tax treatment of profit distribution between the state of the subsidiary and of the parent company.

Greece implemented rules in relation to hybrid mismatches in the context of the transposition of the EU Anti-Tax Avoidance Directives into Greek law. The relevant rules aim to prevent hybrid mismatches arising from differences between two jurisdictions in the legal characterisation of payments (financial instruments), or entities which give rise to a deduction in both states, a so called double deduction ("DD"), or to a deduction of the income in one state without inclusion in the tax base of the other, so called deduction non-inclusion ("DNI").

e. Other Instruments

Bond loans are commonly used for financing purposes. In particular bond loans issued by Greek AEs in accordance with a special framework (previously Law 3156/2003 and currently Law 4548/2018) benefit from a wide scope of tax exemptions and reduced registration duties. Relevant tax exemptions include the exemption from Greek stamp tax applicable in certain circumstances at 2.4% on the amount of principal and interest on loan and the special banking contribution at 0.6%, otherwise applicable in case of bank financing.

f. Earn-outs

Earn-out clauses may be agreed between the parties in the context of acquisition agreements. The Greek Tax Authorities have recently clarified that where the parties in share deals agree an additional price which is made contingent upon the occurrence of future and uncertain events, such additional price is taxed in the fiscal year when such events occur and not, retroactively, in the fiscal year of the initial sale transaction.

7. DIVESTITURES

a. Tax Free

There are no transfer taxes on transfers of non-listed shares issued by Greek companies.

Certain spin off and demerger transactions can benefit from tax neutral reorganisation regimes which allow for the deferral or permanent exemption of capital gains arising from such operations.

b. Taxable

Profits acquired in general by Greek tax resident corporate taxpayers or Greek branches from the disposal of shares or business assets concur to form the taxable basis of the transferor for income tax purposes. Greek tax resident individuals selling shares are taxed at 15% on the gains derived from the sale, with minimum gains being calculated in an imputed manner. Capital gains from selling shares in non-listed start-up companies purchased through the exercise of stock option rights acquired within a period of five years as of company establishment are subject to 5% capital gains tax on the condition that a minimum period of 36 months shall have lapsed between the stock options grant and the disposal of the relevant shares. Profits from the liquidation of Greek companies are subject to tax to the extent in principle they exceed the capital contributions of shareholders into such companies.

As per new legislation incorporating the ATAD exit taxation rules, applicable in respect of transfers occurring from 1 January 2020 onwards, an exit tax liability shall in principle arise over unrealised gains upon the transfer of assets between a permanent establishment ("PE") and its head office, the transfer of tax residence of a company or entity or the transfer of activities of a PE, towards an EU member state or third country, to the extent that Greece essentially loses its right to tax the assets/taxpayers involved.

A taxpayer shall be subject to corporate income tax on the amount of such gains calculated as per the market value of the transferred assets, as at the time of exit, less their value for tax purposes. The tax rate to be applied shall be the one applicable to business profits as at the financial year of the exit.

A deferral option is granted to taxpayers involved in the transfer towards EU or EEA member states; the deferral shall entail the payment of the amount over five interest free instalments. The first instalment needs to be paid at the time of filing of the exit tax return.

Sales tax on listed shares at the rate of 0.2% is levied on sales of shares admitted for trading on a regulated market or multilateral trading facility operating in Greece.

c. Cross Border

Gains from the transfer of shares in Greek companies by non-resident companies are not taxable in Greece, provided they are not attributable to a permanent establishment in Greece.



8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

Greek resident corporations are taxed on their worldwide income. Foreign tax residents maintaining a permanent establishment in Greece are taxed in Greece under a territorial system, (i.e. they are only taxed on Greek-source income). Profits distributed by EU qualifying subsidiaries to their Greek parent companies are exempt from corporate income tax in Greece, subject to specific requirements under the rules transposing the EU Parent Subsidiary Directive. In such cases, apart from the generally applicable interest deductibility limitations, interest incurred as a result of financing the relevant participations is not deductible.

b. CFC Regime

Local corporations can be taxed on the so called passive income of their non-local subsidiaries or branches as earned under CFC rules. In accordance with such rules, undistributed profits earned by a CFC are added to the taxable profits of the local corporation, under the following conditions:

- The local corporation directly or indirectly controls the foreign corporation by itself or together with associated enterprises (i.e. holds directly or indirectly more than 50% of the voting rights or owns directly or indirectly more than 50% of the capital or is entitled to receive more than 50% of the profits);
- The actual corporate tax paid on the CFC's profits is less than 50% of the corporate tax that would have been charged on such profits in Greece
- More than 30% of the income accruing to the CFC falls within the following categories (the "passive income" approach):
  - Interest or any other income generated by financial assets,
  - Royalties or any other income generated from intellectual property,
  - Dividends and income from the disposal of shares,
  - Income from financial leasing and income from insurance, banking and other financial activities and
  - Income from invoicing companies that earn sales and services income from goods and services purchased from and sold to associated enterprises, adding no , or little economic value.

In the case of subsidiaries established in EU/EEA member states, the relevant subsidiaries are outside the scope of the CFC rule, provided that such entities carry on a substantive economic activity supported by staff, equipment, assets and premises, as evidenced by relevant facts and circumstances. In such cases, the tax authorities bear the burden to prove the absence of a substantive economic activity.



c. Foreign branches and partnerships

Local branches of foreign corporations and partnerships are taxed similarly, in respect of their Greek profits, to Greek corporations and partnerships. Profits remitted to the head office are not subject to Greek dividends withholding tax. In practice, the deductibility of interest payments to the head office may sometimes be challenged by the tax authorities.

Foreign branch profits of Greek companies are in principle, subject to the provisions of any applicable treaty for the avoidance of double taxation, included in taxable profits for Greek income tax purposes.

Tax losses incurred through a foreign permanent establishment can neither be used to determine taxable profit in the same fiscal year nor carried forward, with the exception of tax losses arising from the conduct of business through permanent establishments in EU/EEA member states, provided that under the applicable treaty for the avoidance of double taxation the relevant profits are not exempt from Greek income tax.

d. Cash Repatriation

Cash can be repatriated as dividend distribution or as interest or other business expense payment and/or as return of share capital.

Capital controls were introduced in Greece in 2015 and have been lifted since September 2019.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

The new Greek Income Tax Code ("ITC") that has been in force since 1 January 2014 introduced a specific provision for real estate rich companies, (i.e. companies deriving more than 50% of their value from real estate). Based on relevant provision, capital gains from the transfer of shares of real estate rich companies are treated similarly to the capital gains from the transfer of the real estate. Relevant provision has been under suspension since 1 January 2015 and up until 31 December 2022 and thus no guidelines regarding its application exist so far. Nevertheless, even if such rules were applicable to non-resident corporate sellers under domestic rules in cases of foreign tax resident corporate sellers that are tax residents in a country that has a DTT with Greece one would need to review relevant treatment on the basis of the applicable DTT.

Foreign investors acquiring Greek real estate need to review in advance whether the holding structure for the investment is exempt from the 15% Special Real Estate Tax ("SRET"). Relevant tax is a special anti-avoidance rule enacted as a mean to tackle tax avoidance achieved through the use of non-transparent corporate schemes put in place to hold Greek real estate. SRET is imposed annually at a 15% rate on the statutory value of the properties, unless the owners qualify for one of the applicable exemptions (e.g. business income exemption, the disclosure exemption, the listed entity, the regulated entity exemption etc.). Foreign investors should similarly undertake a targeted SRET due diligence prior to acquiring Greek real estate or shares in companies holding Greek real estate. This is because both shareholders and purchasers of real estate are jointly liable with the seller for any SRET liability of the company holding the property.

Purchasers of real estate are jointly liable with the Sellers for the property tax liabilities corresponding to the property with reference to the annual unified real estate tax and the municipality tax. Nevertheless, in the context of sales of real estates that are vested in a notarial deed Seller shall submit to the Notary Public certificates evidencing the duly payment of relevant taxes for the most recent five years. On the other hand no such certificates are required for the purpose of a share deal of corporate entities holding real estate. Thus compliance with property taxation is to be reviewed only in the context of the tax due diligence.

b. CbC and Other Reporting Regimes

Greece has enacted legislation introducing the automatic exchange of country-by-country reports among EU member states and OECD Multilateral Competent Authority Agreement signatory jurisdictions, as well as with the US. Country by country reporting obligations apply to multinational enterprise groups of an annual consolidated turnover exceeding the amount of EUR750 million. The first reporting year was the one starting after 1 January 2016. It should be noted that, an ultimate parent entity which is a tax resident in Greece (and falls within the scope of CbC reporting) is always responsible for submitting the CbC Report. Surrogate reporting has also been adopted. A group entity which is tax resident in Greece yet not obliged to file the CbC report for the group, should still notify the Greek tax authorities of the identity of the group reporting entity and its tax jurisdiction by the end of the reporting fiscal year.

Provided that a Greek entity is required to file a CbC report in Greece, a penalty of EUR20,000 shall be imposed in case of non-filing, whereas a penalty of EUR10,000 shall be imposed in case of inaccurate or late filing. No penalties are prescribed for failure or delay in complying with the notification requirement.

10. TRANSFER PRICING

The Greek transfer pricing framework fully endorses the arm's length principle, as defined in Article 9 of the OECD Model Tax Convention and interpreted by the OECD Transfer Pricing Guidelines, following updates pursuant to BEPS Actions 8 to 10. The arm's length principle is to be respected in all types of domestic and cross border related party transactions, dealings and business restructurings. Any individual or legal entity directly or indirectly holding 33% in the capital or voting rights of an enterprise is to be treated as a related party for transfer pricing purposes. The exercise of managerial control or decisive influence over an enterprise is also an element to define related parties, irrespective of any participation in the controlled enterprise's capital or voting rights, and is to be assessed on a case by case basis.

Transfer pricing documentation requirements for corporate taxpayers, including permanent establishments, adopting a two tier approach have not been explicitly revised in the light of the Action 13 recommendations, save for the CbC reporting which was implemented in 2017. Enterprises and permanent establishments operating in Greece must report and document intragroup transactions or dealings on an annual basis, provided certain quantitative thresholds are satisfied. The deadline for drafting the transfer pricing file and for filing the summary information table is concurrent with the one for filing of the annual corporate income tax return. Violation of the arm's length principle leads to an adjustment of the taxable profits of the audited enterprise, for the purposes of assessment of taxes and to the imposition of penalties for having filed inaccurate corporate income tax return. Without prejudice to the penalties for inaccuracy of tax returns filed, documentation related penalties also apply.



11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

The use of hybrid entities is not common in Greece. Greece has implemented the measures set forth in the Anti-Tax Avoidance Directive (EU) 2016/1164 ("ATAD I"), as modified by Council Directive (EU) 2017/952 ("ATAD II") in relation to hybrid mismatches with third countries.

b. Use of Hybrid Instruments

As regards the hybrid instruments and relevant considerations, please refer to Section 6.d. Greece has implemented the measures set forth in ATAD I, as modified by ATAD II in relation to hybrid mismatches with third countries.

c. Principal/Limited Risk Distribution or Similar Structures

Limited risk distributors and/or toll manufacturers are commonly used arrangements for the Greek activities of multinationals. Relevant arrangements are examined in the context of transfer pricing audits, focusing primarily on whether the return of the local entity can be considered consistent with the arm's length principle taking into account its functional and risk profile.

d. Intellectual property (licensing, transfers, etc.)

Intragroup business restructurings, including the transfer of intangible assets between associated enterprises are subject to Greek transfer pricing rules and shall comply with the arm's length principle.

Special tax incentives apply for profits derived by the exploitation of international patents developed by the undertaking. The relevant tax incentive provides for an exemption of the respective profits from corporate income tax for a period of three years subject to a connection with R&D expenses incurred for the patents' development determined pursuant to a nexus ratio. Relevant profits are recorded in non- taxable reserves until they are distributed or capitalised.

Specific incentives apply for expenses for scientific and technological research. Such expenses, including depreciation expenses in respect of instruments and equipment used for such research are subject to a 200% super-deduction under specific requirements.



e. Special tax regimes

Greece has special tax regimes for certain types of activities and business sectors, namely:

- The cost plus regime applicable to licensed Greek companies and permanent establishments of foreign entities whose exclusive activities in Greece are the provision to their head offices or to other associated companies of qualifying services including consulting services, software development, IT support, data management and storage, HR management and training, supply chain management and computer-based call centres;
- The tonnage tax regime applicable to vessels and shipping enterprises;
- The venture capital companies and funds regimes;
- The family office cost-plus regime for managing and administering the wealth and assets of Greek tax resident individuals and their families and
- A special regime for projects in connection with constructions and engineering works outside Greece undertaken by Greek companies or foreign companies licensed to maintain an office in Greece.

12. OECD BEPS CONSIDERATIONS

Greece is already largely compliant with the principles developed and the measures recommended by the OECD/G20 BEPS action plan. In addition, being an EU member state, Greece was bound to transpose into domestic law the EU Directives that implement OECD/G20 BEPS conclusions at EU level. Greek legislation thus contains CFC rules, anti-hybrid mismatch rules, interest deduction limitations, rules providing for automatic exchange of information on cross border tax rulings, advance pricing agreements and information on potentially aggressive tax-planning arrangements between EU member states, country-by-country reporting obligations as well as a nexus ratio in relation to its patents' regime. Also Greece has updated its domestic legal framework regarding the mutual agreement procedure under tax treaties through the introduction of special rules in the Tax Procedures Code and the publication of administrative guidelines whereas mandatory binding arbitration mechanisms for resolving issues under MAP shall be available through the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI"). Also, the current legal framework fully endorses the arm's length principle, as defined in Article 9 of the OECD Model Tax Convention and interpreted by the OECD Transfer Pricing Guidelines, following the revisions introduced as a result of Actions 8–10.

Having ratified the MLI, Greece adopted measures relevant inter alia to the (a) prevention of treaty abuse (principal purpose test), (b) improvement of the mutual agreement procedure and (c) introduction of measures related to the arbitration procedure. On the other hand, Greece has not opted in for measures relevant to permanent establishment status.

13. ACCOUNTING CONSIDERATIONS

a. Combinations

Purchase accounting is not prescribed per se in Greek law. Applicable Greek GAAP (prescribed under L. 4308/2014 "Greek Accounting Standards") provide guidelines in relation to consolidation methodology of entities subject to consolidation requirements which could be similar to purchase accounting. Greek GAAP are in principle based on relevant IFRS rules (in a more simplified version). Greek entities applying IFRS either on a mandatory basis (public interest entities) or optionally are subject to IFRS accounting rules for business combinations.

Goodwill is the positive difference of the total consideration over the net value of the assets which are being acquired. According to Greek GAAP, goodwill is recorded under intangible assets account and is in principle not subject to depreciation. Nevertheless, following initial recognition, goodwill is subject to annual test for impairment.

As regards valuation matters, whether a valuation is required under combination transactions is a matter governed by corporate law which in principle requires a valuation to be undertaken in cases where reorganisations entail an increase of the share capital of the receiving company.

b. Divestitures

Divestitures involving the transfer of assets instead of shares entail the allocation of the consideration to each of the assets to be transferred including goodwill (if any) and must be accounted for accordingly.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Refunds of previously injected capital authorised by means of a corporate resolution approving a share capital reduction are not subject to tax. On the other hand profit distributions of earnings, retained earnings and/or reserves are subject to corporate income tax at the standard corporate income tax rate, if not previously taxed, as well as dividend withholding tax unless a reduced or a nil withholding tax applies based on a DTT or the PSD.

Exceptionally non-taxed reserves formed on the basis of specific tax incentive laws may be subject under specific requirements to reduced corporate income tax rates provided that they are capitalised against issuance of new shares and they are not returned to the shareholders through a share capital reduction within a five-year period following their capitalisation.

b. Substance Requirements for Recipients

There are no uniform rules related to the substance of non-local recipients. Guidelines can be found on a case by case basis with respect to certain specific anti-avoidance provisions. Factors which can be taken into account are physical presence, full-time employees, active VAT number and taxation. Financial statements and information about the business organisation can also be taken into account along with the other factors.



c. Application of Regional Rules

Greece has transposed into domestic legislation the rules of the Anti-Tax Avoidance Directive (EU) 2016/1164 ("ATAD I"), as modified by Council Directive (EU) 2017/952 ("ATAD II") in relation to hybrid mismatches with third countries ("ATAD"). ATAD I introduced five anti-abuse measures against corporate tax avoidance, (i.e. CFC rules, the general anti-avoidance rule, the interest barrier rules, the exit taxation rules and the rules on hybrid mismatches).

d. Tax Rulings and Clearances

With the exception of the Advance Pricing Agreement ("APA") procedure that is available in Greece since 1 January 2014 there is no other specific procedure for the submission of tax rulings in Greece. As regards the APA procedure related parties, as well as head offices and PEs, can obtain an advance ruling that their pricing policies are regarded as being at arm's length. Taxpayers are eligible to apply either for unilateral APAs that protect against a transfer pricing readjustment in Greece only or for bilateral APAs that would require both countries to reach an agreement on that the prices charged between the PE and the head office are at arm's length.

15. MAJOR NON-TAX CONSIDERATIONS

Business restructurings are to be implemented on the basis of the corporate framework that provides both for the eligible reorganisations and for the procedure to be followed. It is noted that the corporate framework on business restructurings (Law 4601/2019) provides for a broader scope of reorganisations than the respective tax framework see Section 3.d. for more information). Business restructurings that do not qualify for tax neutral restructuring are subject to income tax on the gain resulting from the valuation of the assets being transferred as well as to indirect taxes depending on the type of assets transferred (e.g. real estate transfer tax at 3.09%).

Greek antitrust legislation reflects predominantly EU competition law principles. Notification obligations in the antitrust context are triggered in the event of contemplated concentrations (i.e. mergers, acquisitions of control) that are likely raise competition law concerns.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Albania	5	5 / 0	5	[1]
Argentina *	5	15	20	
Armenia	5	10	5	[2]
Australia *	5	15	20	
Austria	5	8	7	[3] [4] [5]
Azerbaijan	5	8 / 0	8	[6] [7]
Belgium (revised version)	5	5 / 10	5	[3] [4] [8] [9]
Bosnia and Herzegovina	5	10	10	[10]
Brazil*	5	15	20	
Bulgaria	5	10	10	[3] [4] [11]
Canada	5	10	10	[12]
Chile *	5	15	20	
China	5	10	10	[13]
Colombia *	5	15	20	
Croatia	5	10	10	[3] [4] [14]
Cyprus	5	10	0	[3] [4] [15]
The Czech Republic	5	10	10	[3] [4]
Denmark	5	8	5	[3] [4] [16]
Egypt	5	15 / 0	15	[17] [18]
Estonia	5	10 / 0	5 / 10	[3] [4] [19] [20] [21]
Finland	5	10	0 / 10	[3] [4] [22] [23]
France	5	10	5	[3] [4]
Georgia	8	8	5	
Germany	5	10	0	[3] [4] [24]
Hungary	5	10	0 / 10	[3] [4] [25] [26]
Iceland	5 / 15	8 / 0	10	[27] [28]
India	5	15	0	
Indonesia*	5	15	20	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Ireland	5	5	5	[3] [4] [29]
Israel	5	10	10	[30]
Italy (revised version)	5	10	0 / 5	[3] [4] [31] [32]
Japan*	5	15	20	
Kuwait	5	5	15	[33]
Latvia	5	10 / 0	5 / 10	[3] [4] [34] [35] [36]
Lithuania	5	10 / 0	5 / 10	[3] [4] [37] [38] [39]
Luxembourg	5	8	5 / 7	[3] [4] [40] [41]
Malaysia*	5	15	20	
Malta	5	8	8	[3] [4] [42]
Mauritius*	5	15	20	
Mexico	5	10	10	[43]
Moldova	5	10	8	[44]
Morocco	5	10 / 0	10	[45] [46]
The Netherlands	5	8 / 10	5 / 7	[3] [4] [47] [48] [49]
Norway	5	10	10	[3] [4] [50]
Philippines*	5	15	20	
Poland	5	10	10	[3] [4]
Portugal	5	15	10	[3] [4] [51]
Puerto Rico*	5	15	20	
Qatar	5	5 / 0	5	[52]
Romania	5	10	5 / 7	[3] [4] [53] [54]
Russia	5	7	7	[55]
San Marino	5	10	5	[56]
Saudi Arabia	5	5	10	
Serbia	5	10	10	[57]
Singapore**	5	15	20	
Slovakia	5	10	10	[3] [4]
Slovenia	5	10	10	[3] [4] [58]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
South Africa	5	8	5 / 7	[59] [60]
South Korea	5	10	10	[61]
Spain	5	8	6	[3] [4] [62]
Switzerland	5	7	5	[63]
Tunisia	5	15	12	[64]
Turkey	5	12	10	[65] [66]
U.A.E.	5 / 0	5 / 0	5	[67] [68]
UK	5	0	0	[2] [3] [69]
Ukraine	5	10 / 0	10	[70] [71]
U.S.A.	5	0 / 15	0	[72]
Uzbekistan	5	10	8	
Venezuela*	5	15	20	

* No tax treaty for the avoidance of double taxation has been signed between Greece and the other State. Tax rates apply according to Greek domestic legislation.

** A tax treaty has been signed; however ratification instruments are yet to be exchanged in order for the tax treaty to enter into force. The table reflects the domestic law rates.

Footnotes	
1	Interest - Maximum rate 8%. Interest shall be exempt from tax if the payer of the interest is the Government of Greece or a local authority thereof or if the interest is paid to the Government of Albania or local authority thereof or any agency or instrumentality (including a financial institution) wholly owned by the State of Albania or local authority thereof or if the interest is paid to any other agency or instrumentality (including a financial institution) in relation to loans made in application of an agreement concluded between the Governments of the Contracting States.
2	Dividends- 5% rate applies according to Greek domestic legislation, since the Treaty provides for a higher rate of 10%.
3	Pursuant to the provisions of the EU Parent Subsidiary Directive, the 0% rate applies to dividends paid by a resident subsidiary to its parent company resident in an EU Member State if the parent company has held at least 10% of the capital or the voting rights of the subsidiary continuously for at least 24 months, provided the parent company takes one of the forms listed in the Annex of the Directive and is subject to one of the taxes listed in the Directive, without the possibility of being exempt.
4	Pursuant to the provisions of the Interest & Royalties Directive, the 0% rate applies to interest/royalties payments to a recipient company being an associated company of the paying company and resident in another EU Member State. Two companies are “associated companies” if (a) one of them holds directly at least 25% of the capital or voting rights of the other or (b) a third EU company holds directly at least 25% of the capital or voting rights of the two companies. A continuous minimum holding period of 2 years is required. The recipient company must have a legal form listed in the Annex of the Directive and be subject to a corporate income tax.



Footnotes	
5	Dividends - 5% applies according to Greek domestic legislation since the Treaty provides for a higher rate of 15% or 5% when the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends.
6	Dividends - 5% rate applies according to Greek domestic legislation, since the Treaty provides for a higher rate of 8%.
7	Interest - Maximum rate 8%. Interest shall be exempt from tax if paid to the Government of the Republic of Azerbaijan
8	Dividends - 5% applies according to Greek domestic legislation since the Treaty provides for a higher rate of 15% or 5% when the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends
9	Interest - Reduced rate of 5% applies only to bank loans.
10	Dividends - 5% applies according to Greek domestic legislation since in the Treaty provides for a higher rate of 15% or 5% when the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends.
11	Dividends - 5% rate applies according to Greek domestic legislation, since the Treaty provides for a higher rate of 40%.
12	Dividends - 5% applies according to Greek domestic legislation since the Treaty provides for a higher rate of 10% or 5% when the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends.
13	Dividends - 5% applies according to Greek domestic legislation since the Treaty provides for a higher rate of 10% or 5% when the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends.
14	Dividends - 5% applies according to Greek domestic legislation since the Treaty provides for a higher rate of 10% or 5% when the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends.
15	Dividends - 5% rate applies according to Greek domestic legislation, since the Treaty provides for a higher rate of 25%.
16	Dividends - 5% rate applies according to Greek domestic legislation, since the Treaty provides for a higher rate of 38%
17	Dividends - 5% rate applies according to Greek domestic legislation, since the Treaty provides for a higher rate of 10%
18	Interest - Maximum rate 15%. Interest shall be exempt from tax if the payer of the interest is the Government of Egypt or a local authority thereof or if the interest is paid to the Central Bank of Egypt.
19	Dividends - 5% applies according to Greek domestic legislation since the Treaty provides for a higher rate of 15% or 5% when the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends.
20	Interest - Maximum rate 10%. No tax is applicable when the interest is derived and beneficially owned by the Government of Estonia including its local authorities and the Central Bank.
21	Royalties - 5% rate applies to royalties paid for the use of industrial, commercial, or scientific equipment and 10% rate applies to all other cases.
22	Dividends - 5% rate applies according to Greek domestic legislation, since the Treaty provides for a higher rate of 47%.
23	Royalties:10% rate applies if the payments are related to the usage of any patent, trademark, design or model, industrial, commercial or scientific equipment and for information concerning industrial, commercial or scientific experience.
24	Dividends - 5% rate applies according to Greek domestic legislation, since the Treaty provides for a higher rate of 25%.
25	Dividends - 5% rate applies according to Greek domestic legislation, since the Treaty provides for a higher rate of 45%.



Footnotes	
26	Royalties - 10% rate applies to any payments of any kind received as consideration for the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use industrial, commercial, or scientific equipment, or for information concerning industrial, commercial, or scientific experience.
27	Dividends - 5% applies according to Greek domestic legislation since the Treaty provides for a higher rate of 15% or 5% when the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends.
28	Interest - Maximum rate 8%. Interest shall be exempt from tax if the debtor of such interest is the Government of Greece, a political or administrative subdivision or a local authority thereof or if interest is paid to the Government of Iceland, a political or administrative subdivision or a local authority thereof or an institution or body (including a financial institution) wholly owned by the State of Iceland in connection with any financing granted by them under an agreement between the Governments of the Contracting States.
29	Dividends - 5% applies according to Greek domestic legislation since case the Treaty provides for a higher rate of 10% or 5% when the beneficiary is a company which holds directly at least 25% of the voting rights of the company paying the dividends.
30	Effectively 5% applies in respect of dividends since the relevant tax treaty allows for dividends to be taxed in Greece.
31	Dividends - 5% rate applies according to Greek domestic legislation, since case the Treaty provides for a higher rate of 15%.
32	Royalties - 5% rate applies to payments are “received as a consideration for the use of or the right to use, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use industrial, commercials, or scientific equipment, or for information concerning industrial, commercial, or scientific experience”.
33	Dividends and interest – Maximum rate 5%. Dividends paid by a company which is a resident of Greece shall not be taxable in Greece if the beneficial owner of the dividends is the State of Kuwait, a political subdivision or a local authority thereof or the Central Bank of Kuwait or other governmental agencies or financial institutions as may be specified and agreed to in an exchange of notes between the competent authorities of the Contracting States.
34	Dividends - 5% applies according to Greek domestic legislation since the Treaty provides for a higher rate of 10% or 5% when the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends.
35	Interest – Maximum rate 10%. Interest arising in Greece, derived and beneficially owned by the Government of Latvia, including its local authorities and the Central Bank, shall be exempt from tax in Greece.
36	Royalties - 5% rate applies to royalties paid for the use of industrial, commercial, or scientific equipment and 10% rate applies to all other cases.
37	Dividends - 5% applies according to Greek domestic legislation since the Treaty provides for a higher rate of 15% or 5% when the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends.
38	Interest - Maximum rate 10%. No tax is applicable when the interest is derived and beneficially owned by the Government of Lithuania including its local authorities and the Central Bank.
39	Royalties - 5% rate applies to royalties paid for the use of industrial, commercial, or scientific equipment and 10% rate applies to all other cases.
40	Dividends - 5% rate applies according to Greek domestic legislation, since the Treaty provides for a higher rate of 38%.
41	Royalties - Maximum rate 7%. Reduced rate of 5% is applicable, if the royalties consist of payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematograph films and films or tapes for television or radio broadcasting.

Footnotes	
42	Dividends - 5% applies according to Greek domestic legislation since the Treaty provides for a higher rate of 10% or 5% when the beneficial owner is a company (other than a participating company) which holds directly at least 25% of the capital of the company paying the dividends.
43	Dividends - 5% rate applies according to Greek domestic legislation, since the Treaty provides for a higher rate of 10%.
44	Dividends - 5% applies according to Greek domestic legislation since the Treaty provides for a higher rate of 15% or 5% when the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends.
45	Dividends - 5% applies according to Greek domestic legislation since the Treaty provides for a higher rate of 10% or 5% when the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends.
46	Interest - Maximum rate 10%. Interest shall be exempt from tax if paid to the Government or to the Central Bank of Morocco.
47	Dividends - 5% rate is applicable when the distributing company is a Greek tax resident, since the Treaty provides for a higher rate of 35%.
48	Interest - Maximum rate 10%. Reduced rate of 8% is applicable when the interest is paid to a bank or a financial institution.
49	Royalties - Maximum rate is 7%. Reduced rate of 5% is applicable, if the royalties consist of payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematograph films and films or tapes for television or radio broadcasting.
50	Dividends - 5% rate applies according to Greek domestic legislation, since the Treaty provides for a higher rate of 40%.
51	Dividends - 5% rate applies according to Greek domestic legislation, since the Treaty provides for a higher rate of 15%.
52	Interest - Maximum rate 5%. Interest shall be exempt from tax if paid to the Government of the State Qatar, to Qatar Investment Authority, to local authorities and subdivisions, to statutory bodies, to Qatar Central Bank, to Qatar Development Bank and to any other financial institution fully owned or financed by the Government of the State Qatar, as may be agreed from time to time between the competent authorities of the contracting states.
53	Dividends - 5% rate applies according to Greek domestic legislation, since the Treaty provides for a higher rate of 45%.
54	Royalties - Maximum rate 7%. Reduced tax rate of 5% is applicable, if the royalties consist of payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematograph films and films or tapes for television or radio broadcasting.
55	Dividends - 5% applies according to Greek domestic legislation since the Treaty provides for a higher rate of 10% or 5% when the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends.
56	Dividends - 5% applies according to Greek domestic legislation since the Treaty provides for a higher rate of 10% or 5% when the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends.
57	Dividends - 5% rate applies according to Greek domestic legislation, since the Treaty provides for a higher rate of 10%.
58	Dividends - 5% applies according to Greek domestic legislation since the Treaty provides for a higher rate of 15% or 5% when the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends
59	Royalties - Maximum rate of 7%. Reduced tax rate of 5% is applicable, if the royalties consist of payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematograph films and films or tapes for television or radio broadcasting.

Footnotes	
60	Dividends - 5% applies according to Greek domestic legislation since the Treaty provides for a higher rate of 15% or 5% when the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends.
61	Dividends - 5% applies according to Greek domestic legislation since the Treaty provides for a higher rate of 15% or 5% when the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends.
62	Dividends - 5% applies according to Greek domestic legislation since the Treaty provides for a higher rate of 10% or 5% when the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends
63	Dividends - 5% applies according to Greek domestic legislation since the Treaty provides for a higher rate of 15% or 5% when the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends. The 0% rate applies if (a) the Swiss company holds directly at least 25% of the capital of the Greek company, or vice versa, or (b) a third EU/Swiss company holds directly at least 25% of the capital of both companies; a 2-year holding period is required [EU-Switzerland Savings Agreement article 15].Further, according to the 2010 signed amendment on Art. 10 par. 3 - " Notwithstanding the provisions of paragraph 1 & 2 dividends paid by a company which is resident of a Contracting State to a resident of the other Contracting State shall be taxable only in that other State if the beneficial owner of the dividends is - a) the other Contracting State, a political subdivision or a local authority of that other Contracting State; b) any pension fund or other pension scheme."
64	Dividends - 5% rate applies according to Greek domestic legislation, since the Treaty provides for a higher rate of 35%.
65	Dividends - 5% rate applies according to Greek domestic legislation, since the Treaty provides for a higher rate of 15%.
66	Interest - Maximum rate 7%.The 0% rate applies if (a) the Swiss company holds directly at least 25% of the capital of the Greek company, or vice versa, or (b) a third EU/Swiss company holds directly at least 25% of the capital of both companies; a 2 year holding period is required [EU-Switzerland Savings Agreement article 15].
67	Dividends - Maximum rate 5%. Dividends shall not be taxable if the beneficial owner thereof is the Government of the UAE or its political subdivisions, or local authorities, local government or their financial institutions, to the UAE Central Bank, to the Abu Dhabi Investment Authority, to the Abu Dhabi Investment Council, to the Abu Dhabi Fund for Economic Development , to Mobadalah, to Dubai Holding, to Dubai World, to the Abu Dhabi International Petroleum Company, to the UAE Investment Authority, to any other such government financial institution as may be agreed from time to time between the competent authorities of the contracting states.
68	Interest - Maximum rate 5%. Interest shall not be taxable if the beneficial owner thereof is the Government of the UAE or its political subdivisions, or local authorities, local government or their financial institutions, to the UAE Central Bank, to the Abu Dhabi Investment Authority, to the Abu Dhabi Investment Council, to the Abu Dhabi Fund for Economic Development , to Mobadalah, to Dubai Holding, to Dubai World, to the Abu Dhabi International Petroleum Company, to the UAE Investment Authority, to any other such government financial institution as may be agreed from time to time between the competent authorities of the contracting states.
69	Dividends - 5% rate applies according to Greek domestic legislation, since the Treaty does not include any provision for dividends.
70	Dividends - 5% applies according to Greek domestic legislation since the Treaty provides for a higher rate of 10% or 5% when the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends.

Footnotes	
71	Interest - Maximum rate 10%. Interest shall be exempt from tax if the payer of the interest is Greece or its political subdivision or a local authority thereof or if interest is paid to Ukraine, or its political subdivision or local authority thereof or any agency or instrumentality (including a financial institution) wholly owned by Ukraine, its political subdivision or local authority thereof or if the interest is paid to any other agency or instrumentality (including a financial institution) in relation to loans made in application of an agreement concluded between the Contracting States
72	Interest - As regards interest received from sources within Greece, the nil rate is applicable to the extent that the rate of interest does not exceed 9% per annum. The portion of interest exceeding 9% is taxable at a 15% rate (as per the Greek tax legislation). Moreover, the 15% rate is applicable to interest paid to a US corporation controlling, directly or indirectly, more than 50% of the entire voting power in the Greek paying corporation. As regards interest received from sources within the US, the nil rate is not applicable to interest paid to a Greek corporation controlling, directly or indirectly, more than 50% of the entire voting power in the US paying corporation.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Tax contact person available to discuss income and non-income tax matters.
2	Tax Due Diligence	General	A current organisation chart, including all entities by full legal name, jurisdiction, date and place of formation, entity type, class of shares, and ownership percentages. Include a full history of each entity in the structure.
3	Tax Due Diligence	General	Certificate of the tax authorities (along with any amendments) for the Company's tax registration.
4	Tax Due Diligence	General	A summary of all audits (including status), assessment acts and reports, acts imposing penalties for tax infringements, settlements of tax assessments/ penalties with the tax authorities and pending tax refund claims. Provide all significant audit correspondence and individual replies obtained from the tax authorities.
5	Tax Due Diligence	General	Copies of any tax certificates issued for the previous five years (based on the standard applicable Statute of Limitations period) from certified auditors.
6	Tax Due Diligence	General	Details of any preliminary restructuring necessary to effect the proposed acquisition of the Company, including any plan to remove cash/settle intercompany balances. Include any related tax analysis.
7	Tax Due Diligence	General	A schedule of any significant recent acquisitions or dispositions or indemnities. Include copies of acquisition agreements. In addition, provide any related tax due diligence reports, structure slide presentations, and a description of the manner in which the basis of any asset was stepped-up.
8	Tax Due Diligence	General	Copies of any tax sharing or indemnity agreements. Include a description of any other arrangement pursuant to which tax liabilities could be inherited or have been indemnified against (including several liability).
9	Tax Due Diligence	General	A summary description of any significant tax incentives or negotiated tax arrangements granted to the Company or an affiliate.
10	Tax Due Diligence	General	Copies of memoranda, opinions, ruling requests, or other documentation regarding tax positions taken by the Company and its affiliates relating to any material transactions or tax planning ideas.
11	Tax Due Diligence	General	Financial Statements (Balance sheet, P&L account, Appropriation account, Operating Statement, trial balances, journal entries) and notes to the Financial Statements for the previous five years.
12	Tax Due Diligence	General	Currently applicable tax and social security clearance certificates, proving that the Company does not have any overdue/not settled amounts of taxes and social security contributions.

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Nº.	Category	Sub-Category	Description of Request
13	Tax Due Diligence	General	Copies of the lists of agreements filed with the tax authorities for the previous five years.
14	Tax Due Diligence	Corporate Income Tax	Annual Corporate Income Tax returns for the previous five years and respective E3 forms.
15	Tax Due Diligence	Corporate Income Tax	Analysis of corporate income tax adjustments per trial balance account for the above Corporate Income Tax returns.
16	Tax Due Diligence	Corporate Income Tax	Copy of the Company's calculations for its interest expense limitations, if any for the previous five years.
17	Tax Due Diligence	Corporate Income Tax	"Current estimate of taxable income for YTD 20xx (if such tax return has not been filed).
18	Tax Due Diligence	Corporate Income Tax	Access to the tax workpapers used in preparing the Company's income tax returns for the previous five years.
19	Tax Due Diligence	Corporate Income Tax	Description of the Company's significant tax accounting policies. Include a description of the tax accounting method used with respect to deferred or unearned revenue (including deposits) recorded in the financial statements.
20	Tax Due Diligence	Value Added Tax	Monthly VAT returns for the previous five years.
21	Tax Due Diligence	Value Added Tax	Monthly VIES and Intrastat returns for the previous five years.
22	Tax Due Diligence	Value Added Tax	Reconciliation of input/output VAT and taxable basis against the expenses and revenues included in the Company's financial statements for the previous five years.
23	Tax Due Diligence	Value Added Tax	Analysis of applicable VAT regime (i.e. if the Company operates under the normal VAT regime or under a special VAT regime or is exempt from VAT)
24	Tax Due Diligence	Value Added Tax	"Analysis of the Company's VAT exempt revenues and the reason for such exemption.
25	Tax Due Diligence	Withholding taxes / Salary withholding tax	Monthly salary withholding tax returns, annual salary certificates and lists of benefits in kind to employees.
26	Tax Due Diligence	Withholding taxes / Royalty withholding tax	Royalty withholding tax returns and relevant supporting material in case of application of a Double Tax Treaty or of the Interest Royalties Directive.
27	Tax Due Diligence	Withholding taxes / Dividends withholding tax	Dividends withholding tax returns and relevant supporting material in case of application of a Double Tax Treaty or of the Parent Subsidiary Directive.
28	Tax Due Diligence	Withholding taxes / Other	Other monthly withholding tax returns (freelancers withholding tax returns, contractors withholding tax returns etc.).
29	Tax Due Diligence	Stamp tax returns	Stamp tax returns and supporting material for the relevant filings (e.g. loan agreements etc.).
30	Tax Due Diligence	Capital Accumulation tax returns	Capital accumulation tax returns for capital increases in the Company for the previous five years.



Nº.	Category	Sub-Category	Description of Request
31	Tax Due Diligence	Returns to Social Security Fund	Monthly returns for payment of Social Security Contributions, list of personnel employed with the Company and working relationship.
32	Tax Due Diligence	Transfer Pricing	Copy of Summary Information Table filed with the tax authorities for the previous five years.
33	Tax Due Diligence	Transfer Pricing	Copies of Transfer Pricing Documentation File and Group Master File for the previous five years.
34	Tax Due Diligence	Real Estate Tax	"In case of owned property, copies of E9 form reporting the taxpayer's real estates, copies of the annual property tax assessment statements (ENFIA), copies of the statutory values computation sheets, copies of the Special Real Estate Tax returns filed and the supporting documentation, in case of exemption there from for the previous five years.
35	Tax Due Diligence	Tax Litigation	Description (in the form of a report by the lawyer handling the case) of pending or threatened court or administrative proceedings involving the company in relation to tax claims by the State or the company.

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1. INTRODUCTION

a. Forms of Legal Entity

Form	Liability of shareholders	Minimum capital (HUF)	Minimum of founders and shareholders	Registration in commercial register
Limited liability company (Kft.)	Limited	3 million	One	Required
Joint stock company (Zrt. / Nyrt.)	Limited	5 million (private) 20 million (public)	One legal entity or at least two individuals	Required
Limited partnership (Bt.)	Unlimited and Limited		At least two (general and limited)	Required
Unlimited partnership (Kkt.)	Unlimited		At least two	Required
Sole proprietorship (Ec.)	Unlimited or Limited		One only	Required

Foreign investors may also engage in business in Hungary by establishing a branch office ("fióktelep"). A branch office is the Hungarian registered part of a foreign undertaking that operates in Hungary with economic independence but without legal personality. A branch office may carry on business activities, acquire property, exercise certain rights and assume liabilities in its own name.

b. Taxes, Tax Rates

i Taxes generally applicable for businesses

Tax	Taxable person	Subject	Tax base	Tax rate
Corporate income tax ("CIT")	Enterprise or partnership with a seat or place of management in Hungary; Hungarian PE of foreign entities	Business activity	Pre-tax profit ± adjusting items	9% (a minimum CIT is levied on the tax base amounting to 2% of the total adjusted income, which may be avoided by submitting a special declaration to the tax authorities)
Local business tax	Entrepreneur, enterprise	Business activities performed on the territory of a local municipality	Adjusted sales revenues (decreasing items: material costs, subcontractor costs, COGS, intermediated services, direct R&D costs)	Maximum rate: 2% (defined by the respective municipality)



Tax	Taxable person	Subject	Tax base	Tax rate
Small-sized enterprise tax ("KIVA")– optional	Small-sized domestic enterprises with an annual income or balance sheet total up to HUF 1 billion (approximately EUR 2.8 million) and less than 50 employees	Business activity	Adjusted cashflow balance increased by disbursement of personal costs	10% (if chosen, it replaces CIT, social contribution tax and vocational training contribution)
Value added tax ("VAT")	Individuals and entities (with or without legal personality) that carry on business activities	Supply of goods and services	Consideration received for the supply of goods and services	27% standard VAT rate 18% reduced VAT rate 5% reduced VAT rate

ii Employment taxes

Tax	Taxable person	Subject	Tax base	Tax rate
Taxes to be withheld from the individual				
Personal income tax	Private person	Income	Private individual's income (salaries, dividends etc.)	15% (tax allowances are available)
Social security contributions	Employee	It is an employment tax	Gross salaries	18.5%
Taxes payable by the employer				
Social contribution tax	Employer	It is an employment tax	Gross salaries	13 % (tax allowances are available)
Rehabilitation contribution	Companies employing more than 25 persons	It is an employment tax if the number of employees with disabilities does not exceed 5% of the total labour force	A lump-sum applies	Up to HUF1.8 million (EUR5,000) per year, per person below the required level



iii Surtaxes and other sectoral taxes

Hungary applies other small or sector specific taxes in the following fields (please contact us for the details):

- Property taxes : building taxes and land plot taxes are payable at local level based on the volume or value of the real property.
- Transfer tax : due for the acquisition of immovable or movable property, or a shareholding in a real estate holding company; and motor vehicles and trailers also create tax obligations.
- Company car tax : payable by the owner or lessee of a passenger car, depending on the power and emission classification of the vehicle.
- Green tax : relevant for items (packaging material, advertising paper, batteries, tires, electrical equipment etc.) which become waste in the territory of Hungary, the tax subject is the person first placing the product on the domestic market or utilising it for their own use.
- Public health tax ("chips tax") : payable over certain products (snacks, energy drinks, syrup, jam etc.); in addition, tobacco and alcohol products are subject to excise taxes.
- Surtaxes are payable in the following sectors : retail, financial and bank sector, insurance, energy suppliers, telecommunication, public utilities, pharmaceuticals, advertisement.

iv Administrative obligations

Hungary places heavy administrative obligations such as (these are only examples, in practice other obligations may apply) :

- Online invoice data submission in real time : applicable to each and every outgoing invoice directly by the invoicing software automatically without manual intervention;
- EKAER : reporting of transportation of products categorised as risky (e.g. food, clothing, construction materials, etc.) into, within and out of Hungary is an obligation prior to the transportation; and
- BIREG : reporting and verification of international transportation is also obligatory.

c. Common divergences between income shown on tax returns and local financial statements

Taxable income for corporate income tax is based on the financial statements prepared in accordance with the Hungarian accounting standards. The CIT base is then calculated by adjusting the accounting pre-tax profit by various increasing and decreasing items specified by the Hungarian Act on CIT. In case of opting for IFRS based accounting instead of the Hungarian accounting standards, specific tax base adjusting items apply, examples are included in the following table.



Pre-tax profit according to the financial statements

Tax base increasing items	Tax base decreasing items
Non-business expenses	Business expenses
Accounting depreciation	Tax depreciation
Provisions as expenses	Provisions as revenues
Impairment	Bad debts
Waiver of claims	Dividend income
Limitation of interest deduction	Development reserve
Penalties	R&D costs
Negative tax audit findings	Positive tax audit findings
Exchange losses on long-term foreign currency monetary items	Exchange gains on long-term foreign currency monetary items
Preferential exchange of shares	Preferential exchange of shares
Losses under the preferential transformation scheme	Gains under the preferential transformation scheme
Losses under the reported participation scheme	Gains under the reported participation scheme
Gains realised on reported intangibles	Losses realised on reported intangibles
Positive after-tax profit of CFCs	Development reserve for intangibles
	Royalty income
	Maintenance of listed historical buildings
	Employment of disabled persons
	Initial costs of electric service stations
	Donations

Following the above adjustments this provides the Tax base, subject to 9% CIT, decreased by tax allowances, as follows:

- Up to 80% : development tax allowance.
- Up to 70% (of the remaining tax liability) : investments aimed at increasing energy efficiency; subsidies to film production and certain team sports; tax allowance for SMEs; live music services.

Resulting in the after-tax profit.



2. RECENT DEVELOPMENTS

a. 2019 tax amendments

As of 1 January 2019, 'corporate group taxation' became available in Hungary for domestic taxpayers further details are included in Section 3 below.

In the system of Hungarian CIT, companies are entitled to set up a tax-deductible reserve (so called "development reserve") of up to 50% of the pre-tax accounting profit by transferring the amount from the retained earnings into the tied-up reserve, which shall be used for investments within four financial years. Development reserve has an effect of accelerated depreciation, as assets acquired using this reserve may not be depreciated for tax purposes up to the value of the reserve used. As of 1 January 2019, the amount of development reserve granted as a tax base benefit increased from HUF0.5 billion to HUF10 billion (from approximately EUR 1.56 to EUR 31.25 million).

In line with the expectations of the European Union, the rules on limitation of interest deductions were also amended, further details are included in Section 6.

The utilisation deadline of losses carried forward from periods before 2015 was modified from 2025 to 2030 (i.e. extension of grandfathering provisions). For losses generated on or after 1 January 2015, a five tax year limitation rule applies.

New rules apply to transfer pricing documentation as of 1 January 2018 further details are included in Section 10 below.

b. 2020 tax amendments

The concept of Asset management foundations was introduced into the legislation as a new type of taxpayer.

For small and medium sized enterprises, the investment thresholds required to qualify for the development tax allowance were decreased. Furthermore, from 1 January 2020, headcount criteria for supported investments became easier.

In line with the harmonisation of ATAD legislation, the taxation of capital withdrawal (exit tax) was implemented in Hungary, in cases where the right of taxation is transferred abroad. The application of anti-hybrid mismatch agreements resulted that costs, expenditures and pre-tax profit reductions on the tax base cannot be applied if this practice results in tax avoidance due to differences in the legal classification of different member states and affiliated companies are involved in the transaction.

c. COVID-19 changes

During the COVID pandemic, several repeated and postponed state of emergency rules were in place in Hungary. During this period special measures were introduced to support maintenance of employment, to motivate new investments with the aim of increasing competitiveness and to create new jobs. After the emergency period, the majority of the measures were implemented also on a long-term basis too. The below summary provides an overview.

Employment supports included sector-specific tax and contribution reliefs to reduce employment related tax burden for selected sectors that were most affected by the corona virus crisis and breakdown. Similar measures were also available for small taxpayers operating in the selected sectors too. State supports were also available to improve employment in case of reduced working hours (Kurzarbeit), the employment of R&D specialised staff, and to employ former unemployed persons.



The reduction of social contribution tax from 17.5% to 15.5% over employment income as from 1 July 2020 ongoing was a measure affecting all employers without sector specific.

Tourism as another preferred area was supported with tax exemptions and with the increase of attractivity to tourism oriented benefits in kind. State aid programs were available to facilitate investments into this area.

Investments were motivated with the extension of development reserves, which is a form of accelerated depreciation for taxes. During the pandemic, the limits for development reserves had been extended up to the amount of the total pre-tax profit with a yearly cap of HUF10 billion (EUR28.5 million). After the emergency period the former 50% limit returned. State aid and preferential loan programs got a significant place to support and facilitate additional investments.

Surtaxes were also levied to finance the economic package. Retail surtax was reintroduced with a permanent and long term character, while banking surtax was temporarily increased with the potential to offset the additional burden in the next five years.

Tax administration enlightening included quicker refund of VAT, the maintenance of reliable taxpayer status despite of potential financial difficulties during the pandemic, the automatic return of EKAER deposits to businesses.

The deadline for disclosure of 2019 financial statements, together with the yearly tax reporting was extended (not available for so called companies of public interest; e.g. corporations traded on the stock exchange of the European Economic Area, financial institutions, insurance companies, etc.), from 31 May to 30 September. Tax advance payment deadlines were also postponed to this date (30 September).

d. 2021 changes in taxation

The LBT rate for SMEs meeting certain conditions reduced from maximum 2% to 1% as a de minimis state aid. Electronic tax return forms are introduced and widened for local taxes through the central tax administration, meaning that the taxable persons shall only submit one LBT return to the HTA, instead of submitting the LBT returns to each local government according to its permanent establishment.

e. 2022 tax amendments

- Taxes on labour: social tax was reduced by 2.5 percentage points, from 15.5% to 13% as of 1 January 2022 and at the same time the obligation to pay the vocational training contribution of 1.5% was eliminated. Both were payable by the employer over gross salaries, so a total decrease of 4% was introduced.
- Other personal income tax advantages entered into force : for example, refund of taxes paid in 2021 by families with children and a tax exemption for young people under the age of 25.
- At the same time the retail Surtax for an annual turnover of over HUF100 billion (approximately EUR278 million) were increased from 2.5 % to 2.7%. Moreover; these large retail companies are obligated to deliver the near-maturity food products (48 hours prior the quality retention period) to the established state owned Food Rescue Centre.
- To limit the effects of increasing inflation, certain price limits were introduced for specific basic foods and fuel.

For updated information please contact your Taxand team in Hungary at:
https://www.leitnerleitner.hu/hungary/hu/about-us



3. SHARE ACQUISITION

a. General Comments

- No VAT is due on a share deal.
- Transfer tax only applies if due on a transaction of a shareholding of at least 75% in a real estate holding company. A company qualifies as a real estate holding company if at least 75% of total assets in the balance sheet are represented by real estate located in Hungary, further details are included in 3.f. below.
- In a domestic transaction, capital gains deriving from the share sale are subject to the 9% Corporate Income Tax ("CIT"), which may be offset by the losses carried forward up to 50% of the tax base.
- A reported participation scheme is available in local transactions to achieve exemption from future capital gains at exit (for details see 7.a.).
- The Corporate Income Tax ("CIT") liability over capital gains may arise for the sale of real estate holding companies even in an international scenario (for details see 9.a.).
- Limitation on loss carry-forwards at the level of the target may apply (see 3.b.i.).

b. Tax Attributes

Restricting regulations are in place in Hungary limiting the loss carry forwards in the case of the entrance of new owner(s) via quota/share sale and purchase. In this case, the losses of the company are only available if the activity of the target company is continued without significant changes in nature in the next two years following the acquisition, and the taxpayer realises revenues from this activity. Carried forward losses of the company can only be utilised in proportion to the revenues realised from its former activity.

c. Tax Grouping

Corporate group taxation is available in Hungary for domestic taxpayers. Even two Hungarian companies may form a group, but the number of participants is not limited. A strict ownership concentration (75% direct or indirect business relationship) is the prerequisite of the creation of a tax group for Corporate Income Tax ("CIT") purposes. The group members shall have the same balance sheet date, their books and records shall be kept in the same currency and they shall prepare their financial statements under equal principles (i.e. Hungarian GAAP or IFRS).

Advantages of the creation of a tax group for CIT purposes in Hungary are as follows:

- Transfer Pricing ("TP") documentation only needs to be prepared at the group level, (i.e. transactions within the domestic tax group members will be exempt from TP documentation and related price adjustment obligations for transactions commencing on or after creating the group).
- The tax bases of the group members may be consolidated (i.e. actual losses may offset actual profits).



d. Tax Free Reorganisations

Under the preferential transformation scheme, the reorganisation is basically a tax neutral transaction. However, the transformation qualifies as preferential only if the transaction is supported by real business and commercial reasons, the owners of the predecessor obtain shares in the successor and cash of up to a maximum of 10% of the nominal value of the acquired shares is paid, (i.e. a pay out to the sellers is not possible within the merger under the preferential scheme). As a consequence of the preferential scheme, the difference between tax and accounting depreciation and also a potential revaluation difference realised at the acquiring entity, will not be subject to CIT immediately at the time of the reorganisation, but can be deferred.

Please note that loss carry forward limitations apply in terms of corporate reorganisations as well.

e. Purchase Agreement

In the case of a share deal concluded between a Hungarian resident private person (as a seller) and a Hungarian resident corporation (as buyer), it may be advisable to add some special provisions to the agreement, as the income tax liability arising on the capital gain realised by the private individual seller is taxable based on Hungarian tax law. Regarding the capital gain deriving from the purchase price received from the Hungarian corporate buyer, it is liable to calculate and withhold taxes and social security contributions due as a disburser. After withholding the taxes from the payment executed to the private individual, the buyer will have to pay the taxes to the Hungarian tax authority and only the net amount will be transferred to the private individual seller. The buyer is required to obtain numerous pieces of information concerning the individual seller (e.g. personal data, detailed data on the acquisition price of the shareholding, etc.), that is why inserting the special provision referred to above into the Purchase Agreement is highly advisable.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

According to the Hungarian legislation, a share deal is subject to a real estate transfer tax in Hungary (similarly to the transfer of the real estate itself), provided that the shares transferred are held in a real estate company. For transfer tax purposes a company qualifies as a real estate company if the balance sheet value of the real estate located in Hungary exceeds 75% of the balance sheet value of the total assets or this company holds at least (directly or indirectly) a participation amounting to 75% in a company where 75% of the balance sheet value of the total assets are domestic real estate. The transfer tax base is the market value of the real estate owned by the company. The tax rate is 4% (on the market value of the acquired property) up to a value of HUF1 billion (approximately EUR2.8 million) and 2% above this threshold. The tax will be capped, however, at HUF200 million (approximately EUR555,500) per property. The transfer of the shares held in a real estate company between related parties is, however, free from transfer tax.

As the acquisition of a share in a real estate holding company is not subject to any real estate registration proceedings, it shall be reported by the contracting parties directly to the Hungarian Tax Authority within 30 days after the transaction. An order for payment (decision) by the tax authority will be issued about the payment obligation, which shall be paid within 30 days from the notification of the decision.

g. “Purchase accounting” applicable to share acquisitions

Purchase accounting in Hungary is not applicable. According to Hungarian GAAP, the assets and liabilities of the target company in a business combination may be consolidated on book value or on a revalued amount. Similarly, it is also the entity’s choice (which prepares the consolidated financial statements), whether they apply the values of assets and liabilities as of the acquisition date or the balance sheet date.



h. Share Purchase Advantages

In the case of a transfer there might be changes in the circumstances of the company that can lead to the reversal of impairment losses recognised earlier and the revision of depreciation and amortisation policies. These revisions do affect the CIT base.

In Hungary, a tax certificate may be obtained to show that all reported taxes are paid and there is no tax underpayment at the tax accounts held by the Hungarian Tax Authority. Moreover, taxpayers are also qualified based on their previous operations and tax compliance into categories as reliable, normal or risky (depending on the years of operation, taxpayer's tax position, tax shortages and outstanding tax liabilities in the past, history of penalties and enforcement proceedings against the company, etc.).

i. Share Purchase Disadvantages

- The buyer may not recognise goodwill on a share deal in their standalone financial statements.
- There is potential restriction of the utilisation of loss carry forwards in the target company, further details are noted in Section 3.b. above.

4. ASSET ACQUISITION

a. General Comments

- Gains deriving from an asset deal are part of the tax base and as a consequence, they are taxable for the seller.
- Asset deals are subject to VAT at a rate of 27%.
- Goodwill can only arise in connection with an asset deal.
- Preferential schemes are available for gains realised on reported intangibles and the development reserve for intangibles may be exempted from Corporate Income Tax ("CIT") if certain conditions are met.
- If the transferred asset is immovable property located in Hungary or real estate related rights, the transaction triggers a transfer tax liability (for details see 4.g.).

b. Purchase Price Allocation

The purchase price shall be distributed amongst the assets purchased, as these assets are to be recorded separately in the accounting entries of the buyer. Together with the purchase price, the value allocation also has to be agreed between buyer and seller within the sale and purchase agreement and can it be disputed by the tax authorities.



c. Tax Attributes

As the seller, any gain from the sale of assets is taxable. As a Hungarian seller, the gain is part of the tax base and subject to 9% CIT. The seller's tax attributes, such as losses carried forward, should be taken into account and may offset the taxable gain up to 50% of the tax base. Transfer pricing rules also apply to sales of assets between related parties.

The buyer is not entitled to any of the acquired entity's tax attributes since only the assets are being purchased, (i.e. losses carried forward do not transfer to the buyer in an asset deal). In case of asset deal the buyer values the purchased assets according to the purchase price applied, so the buyer may benefit from a potentially higher volume of depreciation that can be applied in the future periods.

In an international transaction the treaty provisions and local rules in the selling country should be considered.

d. Tax Free Reorganisations

The transfer of a going concern ("TOGC") may not have the legal effect of the supply of goods, (i.e. the transaction may be treated as out of the scope of VAT if certain conditions are met); for example, the aim of purchase is the ongoing operation of the going concern, the acquiror is a domestic taxpayer and the business activity carried out by the going concern is subject to VAT etc.

For Corporate Income Tax ("CIT") purposes, it is possible to treat an asset transfer as a tax neutral transaction under the scheme of preferential asset (business line) transfer. In this scheme, the seller receives a shareholding in the acquiror in consideration for the assets. Special rules apply to the utilisation of carried forward losses generated by the business line prior to the transfer.

e. Purchase Agreement

If an asset deal qualifies as tax exempt under the transfer of a going concern regime ("TOGC"), it is recommended to include this fact in the purchase agreement, along with the declarations of the transferee required by the Hungarian VAT Act (i.e. the transferee is subject to and registered under Hungarian VAT and ready to assume certain liabilities in connection with the purchase). In the absence of the mentioned declarations, the TOGC regime cannot be applied.

f. Depreciation and Amortisation

Goodwill cannot be accounted for in share acquisitions, even if the majority of the shares are bought. Goodwill is the difference between the consideration paid for a given branch, (i.e. business unit of a company and the market price of the acquired assets less the value of the acquired liabilities). A branch / business unit (going concern) is a functional part of the company that entails the necessary assets and all of the linked liabilities. Consequently, goodwill can only arise in the case where there is an asset deal.

If the useful life cannot be estimated, goodwill shall be amortised over at least five but up to a maximum of 10 years. If the future profit expectations are continuously and substantially below the market price due to negative circumstances, extraordinary amortisation shall be accounted for. Reversal of such extraordinary amortisation is not allowed. In case of negative goodwill, the amount shall be accounted for as a deferred income. Deferred income related to negative goodwill shall also be eliminated (and other income recognised) over five to 10 years. However, reversal of deferred income over more than five years shall be justified.

For Corporate Income Tax ("CIT") purposes the accepted amortisation key for goodwill is 10% if the taxpayer encloses a declaration to the tax return stating that the recognition and derecognition of goodwill was conducted according to the proper exercise of rights. Extraordinary amortisation is not recognised at the CIT base (i.e it is not tax deductible).



g. Transfer Taxes, VAT

An asset deal in general is subject to VAT. A building and land on which it stands might be VAT exempt if it is not the first sale of the building, before the issuance of the occupation permit, or the date of sale does not fall within two years of the issuance of the permit. Transfer of the entirety of assets by the going concern may be out of the scope of VAT (please see more details about such TOGC regime above).

If the transferred asset is an immovable property located in Hungary, a motor vehicle, a trailer or related rights, the transaction triggers a transfer tax liability payable by the buyer. In the case of real estate and related rights, a tax rate of 4% of the market value up to HUF1 billion (approximately EUR2.8 million) applies and 2% on the exceeding amount in case of real estate and related rights. However, transfer tax payable by the buyer cannot exceed HUF200 million (approximately EUR555,500) per property. Preferential rates apply (3% or 2%) in case of acquisition of land plots for building residential properties. For motor vehicles, the tax rate depends on the age and the power (kW) and on total weight in case of trailers.

h. Asset Purchase Advantages

A reported scheme is available to intangibles as well, providing a capital gain exemption after a one year holding period. However, the reporting must be done within 75 days of acquisition or creation of the intangible asset and the tax base shall be increased if capital losses occur. The intangible asset to be reported shall qualify as a royalty generating intangible asset, otherwise the preferential tax treatment is not available.

Capital gains realised on the alienation of royalty generating intellectual property and pecuniary rights may also be exempt from CIT provided that a special development reserve is created in the tied-up reserves in the amount of the capital gain (if not reported as an intangible asset). The special reserve must be used within five tax years for the acquisition of similar royalty generating intangibles; otherwise the unpaid tax at the tax rate of the year of generating the special reserve, along with respective late payment interest is due.

i. Asset Purchase Disadvantages

During the acquisition of assets, the purchaser cannot be held liable for any historical tax liabilities of the seller. There might be certain assets financed at least partially from tax incentives or state aid, where a prohibition of disposal may be in force, this is however an issue for the seller.

There is no central property taxation (i.e net worth taxation) in Hungary. Local municipalities may introduce land and building tax, which are based either on physical attributes (net floor area) or market value (adjusted). The market value is calculated based on the statistical database of the Tax Authorities. The market price approach applies also on transfer taxes, where the actual purchase price may be overridden by the market price for transfer pricing purposes.



5. ACQUISITION VEHICLES

a. General Comments

If a holding company intends to decrease its Corporate Income Tax ("CIT") base by any costs incurred at the level of the holding, further, if it intends to deduct input VAT, real economic activity should be performed. An active holding company, if it is actively engaged in performing economic activities (e.g. by providing management services to its subsidiaries), may be able to deduct costs and recover input VAT. An active holding company is expected to have its own fixed assets, as well as a sufficient number of personnel to perform economic activities.

Neither the wording of the law, nor any publicly available tax authority guidelines provide guidance on the level of substance requirements; however, we may rely on an old guideline that was applicable to substance requirements for CFCs. Specific review is recommended on a case by case basis.

b. Domestic Acquisition Vehicle

Potential advantages of interposing a Domestic Acquisition Vehicle in the company structure:

- In case of a domestic acquisition a reported participation scheme is available that may result in a tax neutral outcome for the acquisition and sales of shares at the level of the Domestic Acquisition Vehicle (for details see Section 7.a.)
- Corporate group taxation is available only for domestic taxpayers (see Section 3.c.).
- Establishing a Hungarian special purpose vehicle ("SPV") might be recommended for debt pushdown purposes, provided that the purchase of the shares is financed mostly with foreign capital; however, debt pushdown might be considered as tax abusive practice by the Hungarian Tax Authority under certain circumstances.

c. Foreign Acquisition Vehicle

Interposing a Foreign Acquisition Vehicle in transactions aimed at acquiring a Hungarian target company with significant real estate assets may be advantageous and should be reviewed on a case by case basis. Hungary has a wide network of tax treaties and also signed the OECD Multilateral Convention ("MLI") on 7 June 2017. According to a couple of tax treaties, the income from alienation of shareholdings in Hungarian entities deriving their income principally from real estate is taxable solely in the country where the entity alienating the shareholding is resident.

Further, the Hungarian government released its list of Reservations and Notifications to the MLI. As far as Article 9 of the MLI is concerned, which deals with Capital Gains from Alienation of Shares or Interests of Entities Deriving their Value Principally from Immovable Property, Hungary reserved the right not to apply Article 9 on its Double Tax Treaty Agreements covered by the MLI. Consequently, no changes are expected to the current approach of taxation regarding the alienation of shareholdings held in 'real estate companies' (see Section 9.a.). The MLI entered into force as of 1 January 2022, which need to be investigated in all cross border cases.

Moreover, based on the domestic legislation, Hungary does not levy withholding tax on dividends, royalties and interests paid to foreign companies; however, withholding tax liability may apply on income paid to private individuals or transparent partnerships, unless exempted or reduced by the respective tax treaties.



d. Partnerships and joint ventures

Domestic Hungarian partnerships (i.e. Bt. and Kkt.) are treated as non-transparent taxable persons in Hungary and taxed quite similarly to corporations.

Joint Ventures are not regulated and are not considered to be a separate legal entity in Hungary. Therefore, when establishing JVs, the general legal principles of corporate law and civil law need to be taken into account.

JVs are generally established by setting up a separate target company (corporate JV). The participants can decide which legal entity or corporate form they use for this purpose. The participants to the corporate JV can regulate their business co-operation within the established target company by an agreement. Generally, it is preferable to establish the corporate JV as a private joint stock company (Zrt.) because special rights and obligations can be attached to the shares in such.

e. Strategic vs Private Equity Buyers

The Hungarian economy is open and thereby greatly exposed to foreign investments; therefore, most of the acquirors, either a strategic or a private equity acquiror, are foreign persons. Top economic players are usually foreign multinational corporations with their supplier networks. Only a few domestic companies could reach the level of these foreign companies. The number of successful mid-sized corporations or start-ups who could act as acquirors is limited. A great number of successful mid-sized corporations are family businesses who consider M&A to be an unknown field. There are examples for both strategic and private acquisitions; nevertheless, this market is relatively small from the viewpoint of Hungarian domestic acquirors.



6. ACQUISITION FINANCING

a. General Comments

There are no particular administrative requirements to note relating to the transfer of funds either to the country or out of the country.

b. Equity

In Hungary, there are no tax incentives aimed at supporting equity financing. From a Hungarian point of view, besides having lots of indirect business advantages, equity financing may decrease or eliminate the adverse tax consequences deriving from the interest deduction limitation rules.

However, we note that based on domestic legislation, Hungary applies no withholding taxes over distributed dividends, interest payments, service charges and royalties.

c. Debt

i Limitations on use of debt

The Hungarian tax legislation does not include safe harbour provisions providing guidance for the optimal debt/equity ratio of an entity. The former 3:1 debt to equity ratio under thin capitalisation rules was replaced in 2019 by the interest deduction limitation rules. Nevertheless, there are some general rules that shall be considered in connection with the company's capital structure. As per the Hungarian Civil Code, certain legal requirements shall be met regarding the capital of the entity:

- Minimum capital requirements : see Section 1.
- Short term capital loss : If (1) the entity's own equity drops less than the half of the registered capital due to a loss, or (2) the entity's own equity falls under the level of the statutory minimum capital requirement, an extraordinary general meeting shall be convened without delay. This situation may require additional cash contribution or decrease of the registered capital by the owners.
- Long term capital loss : If the entity's own equity does not reach the statutory minimum level of registered capital in two consecutive business years and the shareholders do not grant the required equity within 3 months after the approval of the annual financial statements of the 2nd business year, the shareholders shall decide upon the transformation or liquidation of the entity in 60 days after the above deadline.
- Besides the above, when deciding about the financing of an acquisition, interest deduction limitation rules and the general approach of the Hungarian Tax Authority concerning debt pushdown should be taken into account.



ii Limitations on interest deductions

As of 1 January 2019, interest limitation rules have been applied in Hungary. If the amount of net financing costs (i.e. interest expenses less interest revenues) exceeds 30% of EBITDA or HUF939.81 million (approximately EUR3 million), whichever is higher, the excess part will not be acknowledged in the CIT base of the given tax year. However, the excess borrowing costs which are not acknowledged may be carried forward for future periods without any time limitation and in the subsequent tax years a tax base decrease is available in the amount of 30% of the EBITDA of that tax year. The positive difference between the 30% of the EBITDA and the net financing costs may be carried forward for a period of five tax years to offset the potentially non-deductible net financing costs of the subsequent tax years. These provisions are basically applicable to interests deriving from all kinds of loans, including loans from financial institutions, irrespective of the related party status of the lender. Special exemption rules apply to companies belonging to company groups drawing up consolidated financial statements.

iii Related Party Debt

According to the CIT rules, transfer prices applied between related parties must be in line with the arm's length price, (i.e market interest rate should be defined on related party debt in the calculation of CIT liability), otherwise the necessity of adjusting the Hungarian tax base emerges.

Please note that transfer pricing adjustments should be applied on top of any other tax base adjustments even in parallel.

iv Debt Pushdown

Leveraged buyout is a possible strategy that may be accepted from a debt pushdown perspective. In the case of a leveraged buyout, the financial institute providing the loan is required to have a holding company which is merged into an acquisition company, assuming that more than one investor is planning the acquisition.

The holding company acquires the target company and after that the two entities merge in order to decrease administration burdens. However, debt pushdown and the consideration of related interest expenses as tax base decreasing items might be challenged by the tax authority, if the reorganisation is not adequately supported by sound business and commercial reasons.

d. Hybrid Instruments

Hungarian tax legislation already contains some anti-hybrid provisions mainly on the level of general taxation principles. According to the currently applicable anti-hybrid rule, the Hungarian CIT regulation grants the participation exemption of dividends only if the disbursing entity cannot account for a cost or expenditure concerning the amount disbursed as a dividend (i.e. the scenario of double non-taxation is already avoided).

Hungary is subject to the EU Anti-Tax Avoidance Directive I and II ("ATAD"). ATAD I and II include provisions on hybrid mismatches too, which are implemented into the domestic law as of 2020, 2021 and 2022. Accordingly, the avoidance provisions about hybrid mismatch agreements were also introduced.

e. Other Instruments

This section is left intentionally blank.



f. Earn-outs

The accounting treatment for earn-outs is not specifically regulated under Hungarian GAAP; therefore, there are some uncertainties among professionals on this topic. According to publicly available guidance of the Ministry of Finance, the earn-out may only be taken into account in the initial cost of the shareholding or transferred assets at the time of the purchase if the amount can be estimated reliably. In the case where there is a lack of reliable estimation, the earn-out only affects the initial cost of the asset when the future conditions are fulfilled, and the seller is entitled to the earn-out. In this case; however, the initial cost of the shareholding or other asset, the depreciation, the amount of goodwill etc. shall be modified retroactively. The accounting treatment varies upon the amount of the earn-out. If it is significant, self-revisions should be carried out on the respective financial statements (i.e. the numerical impact shall be presented in the current financial year in so called three column financial statements). On the other hand, should the effect of the modification qualify as insignificant, the total effect of the modification may be accounted for in the current financial year, as a simplification allowed by law.

The accounting treatment of earn-outs also has tax consequences through the potential modification of previous depreciation, amortisation, impairment and even if the total effect is accounted for in the current financial year. However, self-revision of tax returns should be performed based on the tax legislation and that might differ from the accounting rules.

7. DIVESTITURES

a. Tax Free

Under the "reported participation scheme" (which is available to Hungarian corporate tax residents), capital gains realised upon the alienation of domestic and foreign shareholdings (including contributions in kind) are tax exempt, provided that the participation is held for at least one year and the acquisition of the shareholding is reported to the tax authorities within 75 days after the acquisition is registered by the Court of Registration (or after the contract on the acquisition takes effect, if no registration is required by the Court). Although capital gains under the scheme are tax exempt, capital losses are not deductible.

b. Taxable

If the acquiror does not opt for the reported participation scheme, the gains realised by a Hungarian corporate taxpayer on the alienation of shares are subject to CIT with a flat rate of 9%.

c. Cross Border

Hungary had to adopt the exit taxation provisions of the EU Anti-Tax Avoidance Directive ("ATAD") into the domestic legislation until 31 December 2019.

According to numerous Hungarian double tax treaties, gains from the alienation of any property (with a few exceptions) shall be taxable only in the state of which the alienator is resident.

Contrary to this, taxation may be shifted to Hungary for real estate holdings assuming that both domestic and treaty rules allow such inclusion.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

A corporation or partnership having its statutory seat or place of effective management in Hungary is subject to unlimited CIT liability here, which provides for a taxation of the worldwide income (subject to the applicable tax treaties). Where there is no tax treaty, proportional offsetting of the foreign corporate tax liability against the domestic tax liability is possible.

b. CFC Regime

A foreign entity taxed with a lower effective tax rate as computed with the Hungarian rules may only qualify as a Controlled Foreign Company if:

- A Hungarian resident taxpayer holds a direct or indirect participation of 50% or more in such foreign corporation (together with the participation held by related party entities); and
- Non-genuine transactions are performed, which means that the principal aim of the transactions performed by the foreign corporation is to gain tax advantages and at the same time the important functions are performed and the risks are assumed by a Hungarian entity for the purposes of the foreign entity, while the foreign corporation formally holds both assets and personnel for the purposes of conducting business activities.

Regardless of the above, the foreign entity does not qualify as a CFC if:

- The pre-tax profit established according to the law of the foreign person's state of tax residence or of the foreign business establishment's state of location represents profits of no more than HUF243,952,500 (approximately EUR677,645) and its non-trading income represents profits of no more than HUF23,495,250 (approximately EUR65,265), or
- If the pre-tax profit established according to the law of the foreign persons state of tax residence or of the foreign business establishment's state of location amounts to no more than 10% of its operating costs.

c. Foreign branches and partnerships

- CFC rules as detailed above apply to a non-Hungarian branch/permanent establishment ("PE") of a Hungarian resident company if the actual CIT (or similar tax) paid by this non-Hungarian branch/PE is less than half of what its theoretical tax liability would have been if it were located within Hungary. If a PE of a Hungarian corporation is located outside the EU / EEA and there is a double tax treaty concluded between that state and Hungary that would apply exemption on the income of the foreign PE in Hungary, then the CFC status of the PE is excluded.

d. Cash Repatriation

- Dividends, royalties, interests and service fees : the Hungarian tax legislation provides for a widely applicable domestic withholding tax exemption for outgoing payments distributed to corporate recipients.
- The cash repatriation of equity elements is also tax neutral in Hungary; however, it is subject to strict provisions and administration requirements (including the registration by Corporate Court).

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Non-resident organisations being a shareholder in a company owning real estate located in Hungary ("real estate holding company") qualify as taxable persons for CIT purposes if they derive income from the withdrawal (i.e. reduction of the registered capital) or alienation (sale, free transfer or in-kind contribution) of shares in the real estate company. An organisation qualifies as a real estate company for CIT purposes if the value of the real estate located in Hungary exceeds 75% of the book value of the total assets as per consolidated financial statement (including related Hungarian companies and related foreign companies with a permanent establishment in Hungary).

Should a foreign corporation acquire at least 75% of the participation of a Hungarian company, transfer tax obligation may also arise if the Hungarian acquired company holds real estate in a value of more than 75% of its balance sheet total.

b. CbC and Other Reporting Regimes

In order to avoid tax evasion at an international level, the OECD states set up an action plan (BEPS Project), which resulted in the obligation of multinational companies to produce a country-by-country report (CbCR) from 2016 onwards. The administrative burden related to the country-by-country reporting ("CbCr") concerns taxpayers who are members of a multinational group of companies over EUR750 million in consolidated annual sales revenue. This obligation was implemented by Hungary in 2017 too. In many cases the country-by-country report is performed by a foreign group member, but the Hungarian group members also have obligation concerning notification to the Hungarian Tax Authority.

i Council Directive (EU) 2018/822 ("DAC 6")

- In May 2018, the ECOFIN Council adopted Council Directive (EU) 2018/822 ("DAC6"), which amends Directive 2011/16/EU by introducing a mandatory and automatic exchange of information obligation in the field of taxation in relation to reportable cross border arrangements. DAC6 imposes on intermediaries the obligation to report cross border arrangements that meet at least one of the hallmarks specified in the Directive. DAC6 is widely drafted with certain hallmarks being subject to a main benefit test, where one of the main benefits of the arrangement is the obtaining of a tax advantage, whilst others do not have this main benefit test.
- Member states, including Hungary, have enacted DAC6 into their local legislation with the rules taking effect from 1 July 2020. However, the rules apply retrospectively to cross border arrangements which meet the disclosure conditions and are implemented from 25 June 2018 onwards. Therefore, it applies to arrangements implemented since 25 June 2018 with the first reporting due by 28 February 2021 (deferred from 31 August 2020 due to Covid-19). Reportable arrangements between 1 July 2020 and 31 December 2020 must be reported within 30 days beginning on 1 January 2021. Reportable arrangements from 1 January 2021 onwards must be reported within 30 days of the earlier of; the date when the arrangement is made available, the date it is ready for implementation or the date when the first step is implemented.
- Should there be a reporting obligation, the information to be reported includes details of the taxpayers and intermediaries, outline of the arrangements and date of first implementation, relevant local law and applicable hallmarks, identification of the member states that the arrangements affect or relate to and the value of the arrangements. It should be noted that the information reported will be exchanged between the relevant member country tax authorities.



ii Participation exemption for dividends

The Hungarian tax legislation provides for a widely applicable domestic participation exemption for dividends. In general, dividend income earned by Hungarian companies is deductible from the tax base, except for the dividends received from a controlled foreign company (notional dividend distributions from controlled foreign companies are also an exception).

iii Royalty exemption scheme and R&D incentives

Royalties: Under special legislation, a 50% tax base decreasing item is available on royalty income, capped at 50% of the pre-tax accounting profit. The benefit for old IP assets may be taken into account according to the grandfathering provisions until 30 June 2021 at the latest. Special restrictions apply to intangibles acquired from a related party entity in the period of 1 January to 30 June 2016. However, these royalty exemption rules, were amended to new IP assets acquired or developed beginning from July 2016. Instead of the 50% decreasing item on the royalty income as described above, a certain proportion of royalty profits is available as a tax base decreasing or reducing item, whereby the Hungarian implementation of the Nexus ratio shall be applied for calculating the amount of the tax base decreasing item.

By performing own R&D activities with own assets and personnel at group level, the nominator of the Nexus ratio may be increased by 30%; however, the ratio itself shall not exceed 100%. The application of the tax base deduction is capped at half of the positive pre-tax accounting profit as well. A reversal of the above reduction is necessary if the respective intangible asset generates a loss in the next tax year, (i.e. 50% of the loss would increase the tax base then).

10. TRANSFER PRICING

Hungary has already adopted the BEPS Action 13 pertaining to Master Files/Local Files in its legislation, which requires a more complex presentation of the transfer pricing ("TP") related information in the documents. Taxpayers had to prepare their TP documentation based on the new requirements since the 2018 financial year. The preparation of proper transfer pricing documentation is of high importance, especially in the light of the high non-compliance penalties.

This area of taxation triggers high risks to taxpayers : the international information exchange, the three-tiered TP documentation system and the CbC reporting obligation provides sufficient database for the effective risk assessment of the authorities.

The revision of TP documentations is always a focal point during tax audits. Moreover, the penalties are rather high, a HUF2 million (approximately EUR5,555) default penalty may be levied for non-compliance per related transaction per year, which might be doubled or even quadrupled in case of repeated infringements.



11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

Hungary regards their own partnerships (Bt., Kkt.) as non-transparent for corporate tax, while some other countries regard these entities as transparent, from which company groups may benefit, according to the foreign rules.

At the same time, Hungary regards foreign entities as transparent or non-transparent subject to the rules applicable to that entity abroad. This is unfortunately not clearly regulated, the Hungarian Ministry of Finance plans to introduce detailed regulations concerning Hybrid Entities in the future in order to tackle uncertainties.

b. Use of Hybrid Instruments

Hungarian tax legislation already contains some anti-hybrid provisions. In certain cases the Hungarian GAAR rules do not allow the exemption of foreign source income. Furthermore, Hungary has amended its domestic legislation addressing (downward) transfer pricing adjustments to include a linking rule Moreover, there are conditions associated with Hungary's participation exemption, which checks that payment should not be considered as an expense element at the distributing entity.

Hungary is subject to the EU Anti-Tax Avoidance Directive I and II ("ATAD"), which include provisions on hybrid mismatches too. The respective provisions were implemented into domestic law.

c. Principal/Limited Risk Distribution or Similar Structures

In Hungary, contract manufacturing and limited risk distribution is often used due to the economic advantage, derived from lower employment costs. From a transfer pricing perspective these are low risk/function services, which entitles the low risk/function party to a relatively low but positive income. As such the losses realised by the principal cannot be divided between the principal and the limited risk distributor/manufacturer. Considering the frequent use of such entities, the Hungarian Tax Authority focusses its investigations on screening out entities overperforming the pure low risk/function schemes.

d. Intellectual property (licensing, transfers, etc.)

Should a Hungarian corporation offshore any kind of intangibles held, the gain deriving from the alienation is taxable in Hungary. In the case of a lack of an appropriate tax base (e.g. in case of gratuitous transfers) the Hungarian tax authority may challenge the transaction and assess a consideration usually close to an arm's length price. If a transfer is aimed at a related party entity and the inter-company pricing is not at arm's length, tax base adjustments may apply, this applies not only to cross border, but also to domestic transactions. The transfer pricing adjustment may apply irrespective of any other tax base adjustments for CIT purposes (i.e. a double upward adjustment of the tax base cannot be excluded.)



e. Special tax regimes

i R&D incentives

The expenses in relation to Research and Development ("R&D"), are treated as accounting cost that decrease the accounting profit before tax. Furthermore, it is an item that decreases the tax base for CIT purposes. A double tax deduction is available in relation to R&D costs, associated to a taxable person's own activities, which includes sub-contractor R&D expenditure.

These expenses are deductible as incurred, or in the year of taking into account the depreciation based on capitalised costs for experimental development were capitalised.

The above R&D advantages could be shared among Hungarian related parties; moreover, the tax base allowance could also be shared even between the domestic R&D service provider and the customer; however, this later allowance could not be forwarded to related parties.

A four-fold R&D cost deductibility is also available (up to HUF50 million, or approximately EUR140,000) for projects carried out jointly with universities or scientific institutions.

ii Development tax allowance

Development tax allowances (80% from CIT payable for 12 years) may be granted for investment projects (depending on the investment volume, the geographical location and also the status of the investor), research and development activities, independent environmental projects, investments in the film industry and creating new jobs.

iii Energy efficiency tax allowance

A tax credit scheme that is connected to investments aiming at increasing energy efficiency in a certain portion (30 - 45%) of eligible costs of the investment may be deducted from the CIT payable, depending on the geographical location of the investment (a higher rate by 10% or 20% may be applied for SMEs). The tax allowance is capped at EUR15 million (its HUF equivalent) and 70% of the CIT payable.

iv Tax allowances relating to supporting sports or film productions

Further CIT allowances (70%) and other in-cash credits may also be available in the case of granting support to film productions and certain team sports such as soccer, handball, basketball, water polo, ice hockey, and volleyball.



12. OECD BEPS CONSIDERATIONS

OECD BEPS actions are generally supported in Hungary. Certain issues covered by BEPS actions had already been regulated in Hungarian tax law before the BEPS action plan was finalised, (e.g. tax rules relating CFC or anti-hybrid provisions). As Hungary is a member of the European Union, any directions followed by the Member States may be decisive also for Hungary.

13. ACCOUNTING CONSIDERATIONS

a. Combinations

Purchase accounting in Hungary is not applicable. According to Hungarian GAAP, the assets and liabilities of the target company in a business combination may be consolidated based on book value or on a revalued amount. Similarly, it is also the entity's choice (who prepares the consolidated financial statements), whether they apply the values of assets and liabilities as of the acquisition date or the balance sheet date.

In Hungary, deferred tax assets and liabilities may only be accounted for in consolidated financial statements.

b. Divestitures

If the parent company provided significant loan facilities to its subsidiary in excess of the total assets of the subsidiary, then in case of withdrawing funds from the entity to be dissolved, the difference of the liabilities owned to the parent company and that of the total assets will be accounted for as other income at the subsidiary and becomes taxable. This is due to the fact that the excess liabilities have to be waived by the parent company upon dissolution of the Hungarian entity. Certain tax effective solutions may exist even under these scenarios.



14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

In Hungary there is no withholding tax for dividends thus dividend can be paid to the parent company without incurring a tax liability in Hungary even if the tax treaty allows taxation rights for Hungary in the case of dividends.

Another solution for cash distribution from reserves is decreasing the subscribed capital. Where the subscribed capital is higher than the statutory limit and other limitations it is possible to decrease the subscribed capital. In this case other capital elements (capital reserve and the profit reserve) must be decreased proportionally with the subscribed capital.

Further information on these limitations is included in Section 6 above.

Other means of cash repatriation methods might be:

- Royalties (no withholding taxation in Hungary for corporate recipients);
- Management service fee (CFC rules may apply); or
- Inter-company loans (interest limitation rules shall be observed).

All of these transactions fall under the strict transfer pricing rules.

b. Substance Requirements for Recipients

In the case of received services, it has to be investigated if the services provider has the material and personal means to provide the service; further if the service is indeed for the economic interest of the recipient. Burden of proof lies with the taxpayer over HUF200,000 (approximately EUR555).

c. Application of Regional Rules

As an EU Member State, Hungary had to adopt the Parent Subsidiary Directive and the Interest and Royalty Directive into its domestic law.

EU Anti-Tax Avoidance Directives ("ATAD") provisions on exit taxation and hybrid mismatches are also implemented into Hungarian domestic law.



d. Tax Rulings and Clearances

i Tax rulings

It is possible to apply for guidance from the Hungarian Tax Authority and Ministry of Finance (even anonymously), which can either be a binding or a non-binding ruling.

Non-binding rulings cannot assure a taxpayer that the Tax Authority would not change the legal interpretation described in the guidance. If a taxpayer is in possession of a guidance, the consequences of an improper tax handling of a transaction (default penalty and tax penalties) can be avoided or mitigated, with the exception of the unpaid tax itself. Contrary to other types of ruling, a non-binding ruling may be anonymous and could equally cover future and past transactions. Asking for a non-binding ruling is free from procedural charges.

A taxpayer may also apply for binding ruling in case of its future transactions or on-going transactions until the deadline for filing the respective tax return (CIT, PIT, LBT). A binding ruling is issued for five years that can be extended by two years. Where there is a change in the legal system or in the background facts of the transaction the non-binding ruling becomes inapplicable. The deadline for issuing a binding ruling is 90 days with maximum 60 days extension. The payable fee for such procedures depends on the nature of the ruling and the urgency (HUF5-11 million, approximately EUR 14,000-31,000) for binding rulings.

ii Advance Pricing Agreement

For transfer pricing purposes, Hungary has had a good working APA (Advanced Pricing Agreement) system in place since 2007. The taxpayer has the possibility to request the Finance Authorities to determine the applicable transfer pricing method and the arm's length price or price range (fair market value) in connection with the related party transaction for future years.

The procedure may be unilateral, bilateral or multilateral. The official filing fees for an APA, payable to the Hungarian Finance Authorities , are HUF2 million (approximately EUR 5,555) for a unilateral statement. In the case of a multilateral statement, the fee is HUF2 million multiplied by the number of competent authorities involved. APA procedure should be conducted within 120 days, this time limit can be extended twice by 60 days. The fair market value set by the tax authorities is valid for a period of three to five years. This period may be extended by an additional three years upon request, provided that the facts and the circumstances of the transaction are unchanged or affected by minor changes only.

Before submitting the application, the taxpayer can request a preliminary personal consultation for a fee of HUF500,000 (approximately EUR1,400), where the taxpayer and the tax authority will discuss and clarify the scope of the APA, the transfer pricing issues, the time schedule and whether an APA can be executed or not.



15. MAJOR NON-TAX CONSIDERATIONS

Foreign Investment Regulations ("FIR") are regulated under Act LVIII. of 2020 on certain temporary rules after the coronavirus crisis, where the relevant section includes the economic protection of Hungarian enterprises by regulating foreign investments in connection with "strategic" Hungarian firms. The rules are applicable for transactions between 26 May 2020 and 30 June 2021.

The FIR covers the acquisition of shares, capital increases, divestitures, the issuance of bonds and the constitution of beneficiary rights in and the merger and restructuring of, strategic Hungarian companies by companies (including EU-based companies) that are controlled by companies / natural persons from non-EU countries if the buyer is to acquire over 10% of the shares and the value of the investment exceeds HUF350 million (approximately EUR970,000). Such transactions must be notified to the Minister, who may approve or prohibit it.

Strategic companies are companies operating in the following sectors: Energy, Transport, Communications and media, Finance, Insurance, Water supplies, Healthcare, Data processing or storage, Aerospace, Defence, Dual use items, Food security.

Within the procedure, the Minister has 30 working days to make a decision on the application, which might be prolonged by 15 days. The Minister considers the following factors when making its decision:

- The national interests and the public order of Hungary (with special attention paid to the safety of the essential services to the public);
- Whether the buyer is directly or indirectly controlled or funded by the government of a non-EU country or an organisation owned by such government;
- Previous cases in which the buyer endangered public interest in other EU countries; and
- The risk that the buyer is engaged in illegal / criminal activities.

An appeal against a decision that prohibits the transaction may be filed with the Metropolitan Court of Budapest. The Court will decide the case within 30 days in a non-litigious procedure.

The failure to give notification about the transaction may lead to a fine. The maximum amount of the fine is twice the value of the transaction, whereas the minimum amount is 1% of the net revenue of the target company realised in the latest business year.



16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Albania	10 / 5	0	5	[1] [2]
Armenia	10 / 5	10 / 0	5	[1] [2] [3] [4]
Australia	15	10	10	[1]
Austria	10	0	0	[1]
Azerbaijan	8	8 / 0	8	[1] [3]
Bahrain	5 / 0	0	0	[1] [5]
Belarus	15 / 5	5	5	[1] [2]
Belgium	10	0 / 15	0	[1] [6]
Bosnia and Herzegovina	10	0	10	[1]
Brazil	15	10 / 15 / 0	15 / 25	[1] [3] [7] [8]
Bulgaria	10	10 / 0	10	[1] [3]
Canada	15 / 5	10	0 / 10	[1] [9] [10]
China	10	10 / 0	10	[1] [3]
Croatia	10 / 5	0	0	[1] [2]
Cyprus	15 / 5	10 / 0	0	[1] [2] [3]
Czech Republic	15 / 5	0	10	[1] [2]
Denmark	15 / 0	0	0	[1] [11]
Egypt	20 / 15	15 / 0	15	[1] [2] [3]
Estonia	15 / 5	10 / 0	0	[1] [2] [3]
Finland	15 / 5	0	0 / 5	[1] [2] [12]
France	15 / 5	0	0	[1] [2]
Georgia	5 / 0	0	0	[1] [2]
Germany	15 / 5	0	0	[1] [13]
Greece	10	10 / 0	10	[1] [3]
Hong Kong	10 / 5	5 / 0	5	[1] [3] [13]
Iceland	10 / 5	0	10	[1] [2]
India	10	10 / 0	10	[1] [3]
Indonesia	15	15 / 0	15	[1] [3]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Iran	0	0 / 5	5	[1] [3]
Ireland	15 / 5	0	0	[1] [13]
Israel	15 / 5	0	0	[1] [13]
Italy	10	0	0	[1]
Japan	10	10	0 / 10	[1] [14]
Kazakhstan	15 / 5	10 / 0	10	[1] [3] [15]
Korea (Rep.)	10 / 5	0	0	[1] [2]
Kosovo	5 / 0	0	0	[1] [2]
Kuwait	0	0	10	[1]
Latvia	10 / 5	10 / 0	0 / 5 / 10	[1] [2] [3] [16] [17]
Liechtenstein	10 / 0	0	0	[1] [13]
Lithuania	15 / 5	10 / 0	0 / 5 / 10	[1] [2] [3] [16] [17]
Luxembourg	10 / 0	0	0	[1] [13]
Macedonia	15 / 5	0	0	[1] [2]
Malaysia	10	15 / 0	15	[1] [3]
Malta	15 / 5	10 / 0	10	[1] [2] [3]
Mexico	15 / 5	10 / 0	10	[1] [3] [13] [17]
Moldova	15 / 5	10 / 0	0	[1] [2] [3]
Mongolia	15 / 5	10 / 0	5	[1] [2] [3]
Montenegro	15 / 5	10	10	[1] [2]
Morocco	12	10 / 0	10	[1] [3]
Netherlands	15 / 5	0	0	[1] [2]
Norway	10	0	0	[1]
Oman	0 / 10	0	8	[1] [18]
Pakistan	20 / 15	15 / 0	15	[1] [2] [3]
Philippines	20 / 15	15 / 0	15	[1] [2] [3] [17]
Poland	10	10 / 0	10	[1] [3]
Portugal	15 / 10	10 / 0	10	[1] [2] [3]
Qatar	0 / 5	0	5	[1] [5]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Romania	15 / 5	15 / 0	10	[1] [3] [19]
Russia	10	0	0	[1]
San Marino	0 / 5 / 15	0	0	[1] [20]
Saudi Arabia	5	0	5 / 8	[1] [21]
Serbia	15 / 5	10	10	[1] [2]
Singapore	10 / 5	5 / 0	5	[1] [2] [3]
Slovak Republic	15 / 5	0	10	[1] [2]
Slovenia	15 / 5	5 / 0	5	[1] [2] [3]
South Africa	15 / 5	0	0	[1] [2]
Spain	15 / 5	0	0	[1] [2]
Sweden	15 / 5	0	0	[1] [2]
Switzerland	15 / 0	0	0	[1] [22]
Taiwan	10	10 / 0	10	[1] [3]
Thailand	15 / 20 / domestic rates	10 / 25 / 0	15	[1] [2] [3] [23]
Tunisia	12 / 10	12 / 0	12	[1] [2] [3]
Turkey	15 / 10	10 / 0	10	[1] [2] [3]
Turkmenistan	15 / 5	10 / 0	10	[1] [2] [3]
Ukraine	15 / 5	10	5	[1] [2]
United Arab Emirates	0	0	0	[1]
United Kingdom	10 / 15 / 0	0	0	[1] [24]
USA	15 / 5	0	0	[1] [25]
Uruguay	15	15 / 0	15	[1] [3]
Uzbekistan	10	10 / 0	10	[1] [3]
Vietnam	10	10	10	[1]



Footnotes:	
1	Hungary does not levy any withholding tax on dividends, interest or royalties paid by Hungarian companies to non-resident corporate recipients according to the domestic legislation, even if a treaty allows a withholding tax.
2	Dividends - The lower rate applies to corporate recipients with a direct shareholding of minimum 25% in the Hungarian company. (Special rules on the minimum holding period or the industry may apply.)
3	Interest - Exemption applies to certain interest types (e.g. interest paid to the other contracting state, local authorities, central bank or credit institutions owned or controlled by the state). Special rules may apply.
4	Interest - Reduced rate of 5% is applicable to interest paid on loans or credits provided by banks.
5	Dividends - The lower rate applies if the beneficial owner is a company.
6	Interest - Exemption applies to interest on bank deposits, current accounts between banks and interest on trade credits.
7	Interest - Reduced rate of 10% is applicable to loans or credits granted by banks with a maturity of at least 8 years in relation to the sale of industrial equipment, the study, installation or transportation of industrial or scientific units or to public works.
8	Royalties - The higher rate applies to trademarks.
9	Dividends - Reduced rate of 5% applies to corporate recipients with voting rights of at least 25% (directly or indirectly) in the Hungarian company
10	Royalties - Reduced rate applies to copyright royalties (excluding films).
11	Dividends - Reduced rate of 0% applies to corporate recipients with a direct shareholding of minimum 10% in the Hungarian company for at least 1 year; this rate applies to pension funds as well.
12	Royalties - Reduced rate of 5% applies to royalties on trademarks, patents and on information concerning industrial, commercial and scientific experience.
13	Dividends - The lower rate applies to corporate recipients with a direct shareholding of minimum 10% in the Hungarian company.
14	Royalties - Reduced rate applies to copyright royalties.
15	Dividends - The lower rate applies to corporate recipients with a direct or indirect shareholding of minimum 25% in the Hungarian company. (Special rule on the minimum holding period may apply.)
16	Royalties - Reduced rate of 5% applies to royalties on industrial, commercial and scientific rentals and on transmission by satellite, cable, optic fibre etc.
17	Royalties - A “most favoured nation clause” may be applied.
18	Dividends - The higher rate applies if the beneficial owner is an individual.
19	Dividends - The lower rate applies to corporate recipients with a direct shareholding of minimum 40% in the Hungarian company.
20	Dividends - 0% rate applies to corporate recipients with a direct shareholding of at least 25% in the Hungarian company; 5% applies if the direct shareholding is less than 25%; a tax rate of 15% applies in every other case.



Footnotes:	
21	Royalties - Reduced rate of 5% applies to royalties on industrial, commercial and scientific rentals.
22	Dividends - The lower rate applies to corporate recipients with a direct shareholding of minimum 10% in the Hungarian company, to dividends paid to the central bank and to pension funds.
23	Interest - A reduced rate of 10% is applicable if the interest is paid to a financial institution.
24	Dividends - A higher rate of 15% applies to dividends distributed by real estate investment trusts. Exemption applies if the beneficial owner is a company (excluding a REIT) with voting rights of at least 10% (directly or indirectly) in the Hungarian company, and to pension schemes.
25	Dividends - Reduced rate applies if the corporate recipient directly or indirectly controls at least 10% of the voting stock in the Hungarian company.
26	Please note that the OECD Multilateral Instrument entered into force from 1 January 2022 may affect the application of the various bilateral tax treaties depending on the choice of the affected countries; thus careful advisory is suggested for all international tax issues.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

The usual tax due diligence period in a Red Flag investigation is 3 years; however, a Full Scope investigation is advisable to be extended, also depending on the findings, to the statutory limitation period which is in practice six years in Hungary.

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Financial statements: BS, PL, Notes and Business Report for the reviewed period.
2	Tax Due Diligence	General	Year-end G/L of the company for the reviewed period.
3	Tax Due Diligence	General	Tax account reports for the reviewed period and as at the current time.
4	Tax Due Diligence	General	Core data from the tax account.
5	Tax Due Diligence	General	Significant investments, restructurings, business changes, etc.
6	Tax Due Diligence	General	Tax authority/Ministry of Finance history (i.e. tax audits and their results in the reviewed period, tax rulings, tax allowances or state subsidies).
7	Tax Due Diligence	General	Any special tax treatments, difficulties in taxation and administration.
8	Tax Due Diligence	General	Introduction of the company and its business fields.
9	Tax Due Diligence	General	Summary of the financial and tax administration methods, management (internal- external).
10	Tax Due Diligence	CIT	CIT returns for the review period.
11	Tax Due Diligence	CIT	Supporting documents and calculations for the significant tax base adjustments in the review period.
12	Tax Due Diligence	CIT	Summary of related party transactions, pricing of the typical transactions: core business, purchase of good and materials, supplies of goods, service provisions and received, management activities, financing, guarantees, any other.
13	Tax Due Diligence	CIT	Transfer pricing documentation for the review period.
14	Tax Due Diligence	CIT	Are there any R&D activities?
15	Tax Due Diligence	Local taxes	LBT returns for the review period.
16	Tax Due Diligence	Local taxes	Supporting documents and calculations for the significant tax base adjustments in the review period between.
17	Tax Due Diligence	Local taxes	Division of the tax base between tax authorities (if relevant).
18	Tax Due Diligence	Local taxes	Allowances, R&D in local business taxes.
19	Tax Due Diligence	Local taxes	List of establishments within Hungary, how many local tax authorities are affected within the reviewed period.
20	Tax Due Diligence	Local taxes	Any tax audits from local governments, correspondences with local authorities.
21	Tax Due Diligence	Local taxes	Any other local taxes: property taxes, etc.

HUNGARY

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Nº.	Category	Sub-Category	Description of Request
22	Tax Due Diligence	Employment taxation	Type of employments: own workers, rented workers, students, etc.
23	Tax Due Diligence	Employment taxation	What is the typical remuneration package for employees: fixed wages, performance wages, premiums, bonuses, in-kind benefits.
24	Tax Due Diligence	Employment taxation	Expatriates, posted workers. Business trips inland and abroad. Home office workers.
25	Tax Due Diligence	VAT and Customs	Introduction of typical transactions and their VAT treatment within the company e.g. import, export, IC-acquisition, IC-supply, service acquisitions, service supplies, domestic transactions. sample set of documents for significant transactions (invoices, contracts, transport documentation, etc.).
26	Tax Due Diligence	VAT and Customs	What is the typical VAT position of the entity.
27	Tax Due Diligence	VAT and Customs	Tax authority relations, audits, consultations, etc.
28	Tax Due Diligence	VAT and Customs	Special transactions e.g. triangulations, chain transactions, call-off stock, consignments, stock or tooling outside, special services.
29	Tax Due Diligence	VAT and Customs	Typical price reductions.
30	Tax Due Diligence	VAT and Customs	Introduction of customs procedures (if any), sample set of documents for significant transactions (invoices, contracts, customs declarations, customs decisions, etc.).
31	Tax Due Diligence	VAT and Customs	Introduction of the EKAER handling – brief description of workflow, sample of electronics notifications performed.
32	Tax Due Diligence	VAT and Customs	Invoicing e.g. own invoicing, self-billing, paper or electronic invoices.
33	Tax Due Diligence	VAT and Customs	Online invoice data reporting, invoicing software, plug-in software.
34	Tax Due Diligence	Other taxes	Green taxation – introduction of scope of products that are within the liability, tax returns and calculations.

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INDIA

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1. INTRODUCTION

The guide introduces a number of key aspects relating to mergers and acquisitions, based on the current tax and regulatory environment in India.

a. Forms of Legal Entity

An overview of available types of legal entities used for investment in India are as follows:

i Company

A company is an artificial jurisdictional person having a separate legal entity. It is incorporated and regulated by the provisions of Companies Act, 2013 (CA 2013) and governed by the Ministry of Corporate Affairs. A company is permitted to carry out only those activities that are specified in its memorandum of association.

Funding options available for a company inter alia include equity shares, preference shares, other forms of permitted borrowings (local and overseas as per prescribed norms) or internal accruals. Foreign investments in a company are subject to Foreign Direct Investment ("FDI") Regulations. The income of a company is liable to tax based on domestic tax rates. Dividends received from a company are liable to tax in the hands of shareholders.

ii Limited Liability Partnership ("LLP")

An LLP is a form of business entity through which individual partners are shielded from the liabilities created by another partner's business decision or misconduct. An LLP is a body corporate existing as a legal person separate from its partners. LLPs are incorporated and regulated by the Limited Liability Partnership Act, 2008 and they are governed by the Ministry of Corporate Affairs. An LLP is permitted to carry out those activities which are agreed between the partners in the LLP Agreement.

An LLP is generally funded with partner's capital. Foreign Direct Investments ("FDI") are permitted in an LLP engaged in activities/sectors for which 100% FDI is allowed under the automatic route (i.e. without prior approval of the Government or the Reserve Bank of India ("RBI") and there are no sector specific conditions for receiving foreign investment). The profits of an LLP are liable to tax based on domestic tax rates. Profits after tax in the hands of the LLP, are freely distributable to the partners as their share in the profit of the LLP and are not liable to any further tax in India in the hands of the LLP or the partner.

iii Partnership

A partnership is created by two or more persons, by entering into an agreement to share the profits of a business carried on by them. The ownership and liability of all partners of the partnership is joint, unlimited and several. Partnerships are created and regulated by the Indian Partnership Act, 1932 and are governed by the regional registrar of firms. A partnership agreement forms the constitutive documents of a partnership and lays down the manner in which the partners would operate the business. A partnership is generally funded through the partners' capital contribution. Any investment by foreign entities is permitted in Indian partnerships subject to prior approval of the RBI. Profits of a partnership are liable to tax based on domestic tax rates. Such profits after tax in the hands of the partnership, are freely distributable to the partners as their share in profit of the partnership and are not liable to any further tax in India in the hands of the partnership or the partner.



iv Liaison Office ("LO")

The LO functions as a representative office of a foreign company and it has no separate legal existence in India. A LO can undertake only liaison activities and the role of such offices is thus, limited to representing, promoting export/import, promoting technical/ financial collaborations, and acting as a communication channel. A LO can be set up with prior consent of an Authorised Dealer ("AD") banker in a sector in which 100% FDI is allowed. For the remaining sectors, RBI approval may be required.

Generally, a LO does not constitute a permanent establishment ("PE")/business connection in India. However, this issue has been a subject matter of litigation and depends on the facts of each case. If a LO is held to be constituting a PE/ business connection in India, then the profits attributable to such PE/business connection in India shall be subject to tax in India.

v Branch Office ("BO")

A BO represents a foreign company in India and is generally not treated as a separate legal entity. The operations of a BO are restricted in India due to limitations under exchange control regulations. The activities permitted for a BO in India are limited to export/import of goods, rendering of professional/consultancy services, carrying out research work, promoting technical and financial collaborations, acting as a buying/selling agent, rendering services like information technology, development of software, technical support to the products supplied. Accordingly, a BO is generally set up where the activities carried out in India are limited. The BO is permitted to remit surplus revenues to its foreign head office subject to applicable taxes being discharged in India. A BO is treated as a PE/business connection of the foreign enterprise and profits attributable to the BO are taxed at 40% (plus applicable surcharge and education cess). A BO of foreign company can claim only limited tax deductions for general administrative expenses incurred by the BO. These expenses should not exceed 5% of the annual income of the BO or the actual payment of head office expenses attributable to Indian business, whichever is lower.

vi Project Office ("PO")

A foreign company preferably engaged in one off turnkey or installation project, generally sets up a PO in India. A PO does not constitute a separate legal entity in India. A PO can be set up with approval from the AD Banker. A PO is permitted to operate a bank account in India and may remit surplus revenue from the project to the foreign company. Like the LO, if a PO is held to be constituting a PE/business connection in India then the profits attributable to such PE/business connection shall be subject to tax in India.



b. Taxes, Tax Rates

Tax rates in India are subject to change every year. The applicable effective rates of tax proposed for tax year 2022-23 are as follows:

Particulars	Taxable income below INR10 million	Taxable income between INR10 million to INR100 million	Taxable income exceeding INR100 million
Domestic Company - if turnover or gross receipt does not exceed INR4 billion in the FY 2020-21)	26.00%	27.82%	29.12%
Domestic company - Other cases	31.20%	33.38%	34.94%
Other domestic companies not availing incentives (optional regime)	25.17%	25.17%	25.17%
New manufacturing companies set up and registered on or after 1 October 2019 and has commenced manufacturing and production on or before 31 March 2024 not availing incentives (optional regime)	17.16%	17.16%	17.16%
LLP/ Partnership firm	31.20%	34.94%	34.94%
Foreign company	41.60%	42.43%	43.68%

The effective tax rate is a basic tax rate plus applicable surcharge and health and education cess ("cess") representing an additional levy that is computed on the basic tax and surcharge liability.

2. RECENT DEVELOPMENTS

The following key recent changes to the Indian tax and regulatory framework may affect the mergers and acquisition landscape in India.

a. Taxation of Virtual Digital Asset

The Finance Act, 2022, introduced taxation on virtual digital assets ("VDA"). As per the proposed definition, VDA would include any information or code or number or token (not being Indian currency or any foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value which is exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account and includes its use in any financial transaction or investment, but not limited to, investment schemes and can be transferred, stored or traded electronically. Non fungible tokens and any other token of similar nature are included in the definition.

From 1 April 2022, 30% tax shall be charged on the incomes arising from the transfer of any VDA, whether in cash or kind. Cess and surcharges, if any applicable, would be charged over and above that tax. The Finance Act, 2022 clearly enunciates that no deduction would be allowed from the income except the cost of acquisition thereof. Nor would the losses, if any, be allowed for set off of any losses or other income(s), in any manner. Withholding tax at source at 1% of the payment amount and directly depositing with the government has also been incorporated. Exceptions for small transactions have also been proposed from withholding tax requirements.

b. Tax on bonus stripping

Bonus stripping refers to a concept wherein an artificial capital loss is created by the taxpayers by way of purchase of cum-bonus securities and their disposal immediately after the allotment of bonus shares. Bonus stripping in the case of units of mutual funds was not permissible in India and any artificial loss created using such method would be reversed for taxation purposes. Finance Act, 2022 extended the applicability of such provisions to securities and units of Infrastructure Investment Trust ("InvIT"), Real Estate Investment Trust ("REIT") and Alternative Investment Funds ("AIFs"). This would discourage investors in such securities from wallowing in investment practices that previously provided them with unintended tax benefits.

c. Capping of Surcharge on Long Term Capital Gains

Currently, Individuals and Hindu Undivided Families ("HUFs") are subject to a maximum rate of surcharge at 37% in respect of entire income, other than capital gains on listed shares and dividends, wherein surcharge is capped at 15%. The Finance Act, 2022 extended capping of surcharge at the rate of 15% for long term capital gains arising on sale of any capital asset. The proposal reduces the maximum effective tax rate on long term capital gains from 28.5% to 23.92%.



d. Chargeability to Equalisation Levy ("EL")

The Finance Act, 2016 introduced EL with effect from 1 June 2016, to be levied at 6% on the gross consideration received by non-residents for online advertisement and related services from specified persons. Further, the Finance Act, 2020 which came into effect from 1 April 2020 extended the scope of EL to charge a 2% levy on gross consideration received from online sale of goods or provision of services (including facilitation) by a non-resident operator of a digital facility or platform. The Act provided for an exemption from income tax where the amount was subject to EL (i.e. mutual exclusion as well). The Finance Act, 2021 provided as follows:

- Taxation as royalty or fee for technical services under the income tax law would have priority over EL.
- In order to be regarded as "online sale of goods" and "online provision of services" for e-commerce supply or service, one or more of the following activities need to be undertaken online. These are, namely: a) acceptance of offer for sale; b) placing purchase order; c) acceptance of purchase order; d) payment of consideration or e) supply of goods or provision of services, partly or wholly.
- Consideration received/receivable for sale of goods and provision of services will be included for computation of gross consideration regardless of whether the e-commerce operator owns the goods or provides the service.

Based on the Multilateral Convention, all jurisdictions are required to remove all Digital Services Taxes and other relevant similar measures and provide a commitment to refrain from introducing such measures in the future. In view of this, no newly enacted Digital Services Taxes or other relevant similar measures will be imposed on any company from 8 October 2021 and until the earlier of 31 December 2023, or the coming into force of the MLC.

On 8 October 2021, India and the US joined 134 other members of the OECD/G20 Inclusive Framework (including Austria, France, Italy, Spain, and the UK) in reaching agreement on the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. India and the US have agreed that the same terms that apply under the 21 October Joint Statement shall apply between the US and India with respect to India's charge of 2% equalisation levy on e-commerce supply of services and the US's trade action regarding the said Equalisation Levy. However, the interim period that will be applicable will be from 1 April 2022 until implementation of Pillar One or 31 March 2024, whichever is earlier. The final terms of the Agreement shall be finalised in 2022.

e. Abolition of dividend distribution tax

Previously, domestic companies paying dividends to shareholders were required to pay dividend distribution tax ("DDT") at 20.56% and such dividend was tax exempt in India in the hands of the shareholders. Finance Act, 2020 abolished DDT and shifted the taxability of dividends to the classical system wherein the shareholders are taxed on dividend income. New provisions have been introduced to remove the cascading effect of tax on dividends received by a holding company from its subsidiary company on payment of a dividend to the shareholders of the holding company. Dividends distributed to non-resident shareholders are liable to withholding at 20% or the respective Double Tax Treaty ("DTT") rate, whichever is more beneficial. Non-resident shareholders may, subject to the domestic laws of their jurisdiction, be eligible to avail credit of taxes withheld on dividend which was a disputed issue under the existing regime. Further, the Finance Act provided that dividends paid to Foreign Institutional Investors ("FII") from certain securities shall be subject to withholding tax at the rate of 20% or the DTT rate, whichever is lower, subject to the FII furnishing a Tax Residency Certificate to the payer.

Presently, dividend income received by an Indian company from a specified foreign company is eligible to claim concessional tax at 15% plus surcharge and cess. Finance Act, 2022 withdrew the benefit of concessional rate of tax on the dividend income received by the Indian company from a specified foreign company on or after 1 April 2023.



f. Clarifications on the interpretation of Most Favoured Nation ("MFN") clause

Tax treaties entered into by India with certain jurisdictions including France, the Netherlands, and the Swiss Confederation ("MFN jurisdictions") contain a MFN clause. By virtue of the MFN clause, India has restricted its right to tax certain income (i.e. interest, dividends, fees for technical services, etc), on the basis of a scope more restricted or a reduced rate as India may have agreed in its tax treaty or protocol to such treaty with a third state. Recently, the Central Board of Direct Taxes ("CBDT") has issued a Circular clarifying the applicability of the MFN clause. The CBDT issued the following clarifications regarding interpretation of tax treaties in the circular:

- Unilateral interpretation does not represent India's understanding on the MFN clause;
- There is a requirement for the third state to be an OECD member on the date of conclusion of the tax treaty;
- Concessional tax rates/restricted scope applies from the entry into force of the tax treaty with the third state; and
- The MFN clause benefit cannot be availed as India has not issued any notification in the Official Gazette.

Further, the Circular restricts the applicability of the MFN clause in a tax treaty between India and another country (the second State) to cases where all the following conditions are satisfied:

- The second tax treaty (with the third state) is entered into after entry into force or signature of India's tax treaty with the first state;
- The third state is an OECD member at the time of signing of tax treaty with India;
- India limits its taxing rights in the tax treaty with the second jurisdiction in relation to rate/scope of taxation in respect of relevant income; and
- A separate notification has been issued by India for importing benefits of second tax treaty into India's tax treaty with First State.

g. General Anti-Avoidance Rules ("GAAR")

GAAR provisions were first introduced in India by Finance Act, 2012. However, after its introduction, the GAAR's applicability was deferred and finally, it came into force from FY 2017/18. Further, the CBDT via circular 7 of 2017 dated 27 January 2017 issued certain clarifications in the form of frequently asked questions ("FAQs") on the provisions of the GAAR. One of the key clarifications in the circular was that GAAR will not apply to an arrangement where the Court/National Company Law Tribunal ("NCLT") has explicitly and adequately considered the tax implications while sanctioning such arrangement.

CBDT via letter dated 7 April 2021 has notified the composition of the Approving Panel for making references under GAAR. Further CBDT, via letter dated 11 February 2022 has notified that GAAR Secretariat has been set up in Delhi and all the references need to be sent directly to the GAAR Secretariat. GAAR reference can be made to the Approving panel, in cases where a taxpayer objects to a notice issued declaring an arrangement as an impermissible avoidance arrangement and determining the consequences thereof and where the taxpayer's explanation is found unsatisfactory.

h. Benefits available to International Financial Service Centre ("IFSC") in India

In 2015, the Government of India announced establishment of Gujarat International Financial Tech-City, in Gujarat as India's first IFSC. The purpose of setting up the IFSC is to develop a world class smart city that becomes a global financial hub. The IFSC seeks to bring to the Indian shores, those financial services transactions that are currently carried on outside India by overseas financial institutions and overseas branches /subsidiaries of Indian financial institutions. The IFSC is an emerging clean and transparent offshore finance jurisdiction for international financial services. Special benefits, exemptions and deductions are allowed to the units located in an IFSC. Some of the key tax benefits provided to units located in an IFSC are:

- Relaxations in Long Term Capital Gains ("LTCG") and short term capital gains : LTCG on transfer of Equity Share in a Company or units of an equity-oriented fund or units of a business trust on which Securities Transaction Tax ("STT") is paid, is usually taxable at 10%. However, the LTCG on transfer of the above mentioned capital asset through a stock exchange located in IFSC is totally exempt even if STT is not paid. Further, short-term capital gains in certain situations, where the transaction is undertaken on a stock exchange situated in IFSC, the concessional rate of 15% will be available on such transaction, even if STT is not paid.
- Lower minimum alternate tax : concessional minimum alternate tax regime for a company and certain persons other than a company located in an IFSC.
- Transactions not regarded as transfer : Any transfer of below capital assets, made by a non-resident on a recognised stock exchange located in any IFSC and where the consideration for such transaction is paid or payable in foreign currency is not considered as a transfer and hence not liable to Capital Gain Tax. These capital assets include:
  - Bond or Global Depository Receipt;
  - Rupee denominated bond of an Indian company;
  - Derivatives; and
  - Such other securities as may be notified by the Central Government in this behalf.
- Concessional rate to bonds listed in stock exchanges in IFSC : The tax shall be withheld and 5% on interest paid to non-residents, in respect of monies borrowed by it from a source outside India by way of issue of any long term bond or rupee denominated bond which is listed only on a recognised stock exchange located in any IFSC, on or after 1 April 2020 but before 1 July 2023.
- Relaxations in certain conditions for relocation of eligible fund manager : The Government shall make a public notification of certain conditions that shall not apply, or apply with modifications, in case of an eligible investment fund and its eligible fund manager, if such fund manager is located in an IFSC and has commenced its operations on or before 31 March 2024.
- Exemption to investment division of offshore banking unit : An exemption shall be provided to specified funds in case of any income accrued, arising to, or received by the investment division of an offshore banking unit, to the extent attributable to it and computed in the prescribed manner.
- Exemption to non-resident on transfer of non-deliverable forward contracts and on royalty income by way of lease of an aircraft : An exemption shall be provided in the hands of non-residents on any income accrued, arising to, or received by a non-resident as a result of transfer of non-deliverable forward contracts entered into with an offshore banking unit of IFSC which commenced operations on or before the 31 March 2024 and fulfils prescribed conditions.



Subject to same date of commencement of operations as above, royalty/interest income by way of lease of an aircraft paid by a unit of an IFSC shall be exempt in the hands of non-residents. In this regard, both the nature of lease shall qualify operating as well as finance lease for the exemption (i.e. income in the form of royalty or interest). Further, an aircraft is defined as "an aircraft or a helicopter, or an engine of an aircraft or a helicopter, or any part thereof".

- Exemption of capital gains and carry forward and set off of losses, as a result of relocation of a fund : An exemption shall be provided to any income of the nature of capital gains, arising or received by a non-resident, which is as a result of relocation from the original fund to the resultant fund. This exemption shall be available to Category-III Alternative Investment Fund for only when qualifies as a specified fund, only to the extent of income attributable to units held by non-resident (not being a permanent establishment of a non-resident in India) in such specified fund.

In respect of the carry forward and set off of losses, Indian tax laws provide that benefit of carry forward and set off of loss will be available only if 51% or more of voting power is common in the year in which loss was incurred and the year in which set off is sought. The Finance Act, 2021 specified that this restriction pertaining to the carry forward and set off of losses will not apply wherein the change in shareholding pattern has taken place on account of relocation between original fund and resultant fund, which are defined as below:

For the meanings of original fund, relocation and resultant fund, please refer to Section 2.h.

- Extension of income based tax holiday for units located in an IFSC : It is proposed that income arising from transfer of an asset, being an aircraft or aircraft engine which was leased by any unit of the IFSC from its business for which it has been approved for setting up in such a Centre in a Special Economic Zone to a domestic company engaged in the business of operation of aircraft before such transfer shall also be eligible for 100% deduction subject to condition that the unit has commenced operation on or before 31 March 2024.
- Exemption extended to investment division of offshore banking unit : The exemption provisions have been extended to income attributable to the investment division of an Offshore Banking Unit ("OBU").
- Taxation of Income from Global Depository Receipts ("GDRs") issued by Overseas Depository Bank situated outside India or IFSC : Where an Indian company distributes dividends in respect of GDRs issued to its employees under an Employees' Stock Option Scheme, the dividend is taxable at a concessional tax rate of 10% in the hands of the employee, provided the employee is a resident in India and GDRs are purchased in foreign currency. The long term capital gains arising from transfer of such GDRs shall also be taxable at concessional rate of 10%. The Finance Act, 2021 has amended the definition of GDRs to provide that they can be created by the Overseas Depository Bank in an IFSC as well. Further, GDRs can also be issued against ordinary shares of issuing company, being a company incorporated outside India, if such depository receipt or certificate is listed and traded on any IFSC.

Further, the Finance Act, 2022 included the below amendments in respect of IFSC:

- Income accruing or arising to or received by a non-resident as a result of transfer of non-deliverable forward contracts entered into with an OBU of an IFSC is exempted from tax. Such exemption is not extended to income accrued or arisen to or received by a non-resident as a result of transfer of 'offshore derivative instruments' or 'over-the-counter derivatives' entered into with an OBU of an IFSC.
- Royalty and interest income of a non-resident on lease of an aircraft if it is paid by a unit in IFSC is exempt from tax. Such tax exemption is also extended to royalty and interest income of a non-resident on the lease of a "ship" if it is paid by a unit of IFSC. Further, a ship is defined to mean a ship or an ocean vessel, an engine of a ship or an ocean vessel, or any part thereof.



- Further, certain incomes of an IFSC Unit are allowed as a deduction for 10 years out of the 15 years. Such deduction is proposed to be extended to income arising from the transfer of an asset being a 'ship' which was leased by a unit of IFSC to any person.
- It is proposed to provide an exemption for income of a non-resident from a portfolio of securities or financial products or funds, managed or administered by any portfolio manager on behalf of such non-resident, in an account maintained with an OBU in an IFSC, to the extent that such income accrues or arises outside India and is not deemed to accrue or arise in India.
- Deemed gift rules shall not apply to excess share premium received by an Indian Company from a Category I or Category II Alternate Investment Fund regulated under the International Financial Services Centres Authority Act, 2019.
- Proposals for opening of an International Arbitration Centre in the GIFT City and providing state of art education facilities by allowing world-class foreign universities and institutions in the GIFT City to offer courses in Financial Management, FinTech, Science, Technology, Engineering and Mathematics free from domestic regulations.

i. Overseas listing

Presently, Indian companies are allowed to access overseas equity markets only through American depositary receipts ("ADR"), Global depositary receipts ("GDR"), foreign currency convertible bonds and masala bonds on foreign markets. Section 23 of CA 2013 allows listing of shares of companies in permitted stock exchanges. Ministry of Corporate Affairs and Securities Exchange Board of India ("SEBI") are yet to announce norms for overseas listing. Previously, the SEBI had suggested that only financially stable companies would be allowed to list in the overseas markets.

j. Carry forward and set-off losses of a public sector company

In respect of carry forward and set off of losses, the Indian tax laws provide that benefit of carry forward and set off of loss will be available only if 51% or more of voting power is common in the year in which loss was incurred and the year in which set off is sought. The Finance Act, 2022, provides for set off and carry forward of losses of a former public sector company ("PSU") if the ultimate holding company of such a company, immediately after the completion of strategic disinvestment, continues to hold either directly or through its subsidiary or subsidiaries, a minimum of 51% of the voting power in aggregate. This allows the buyer of loss making PSUs after its strategic disinvestment (by the Government) to carry forward and set-off of losses. Such proposal is brought to make disinvestment of loss-making PSUs deals (such as Air India, NINL, etc.) more attractive to the investors.



k. COVID-19 response

The Prime Minister of India announced an economic relief package of INR20 trillion with the moto of "Atmanirbhar Bharat". This covers a gamut of economic, financial and social measures with a vision of self-reliant India and development of Global Supply Chain originating in India. The finance minister also announced certain tax measures like extension of compliance timelines, reduction in the rates of withhold taxes on payments made to residents. Though such measures were introduced during the height of the Covid-19 pandemic and certain timelines have since expired, they should still be considered for the calculation of the limitation period in the context of M&A transactions when performing tax due diligence.

The Finance Act, 2022 included the following measures in light of COVID-19 scenario:

- Any sum paid by the employer in respect of any expenditure actually incurred by the employee on medical treatment of self or any family member in respect of any illness relating to COVID-19 subject to such conditions, as may be notified by the Central Government, shall not be liable to tax as income from salary.
- Any sum of money received by an individual, from any person, in respect of any expenditure actually incurred by such individual on medical treatment of self or any family member in respect of any illness relating to COVID-19, and subject to such conditions, as may be notified by the Central Government in this behalf, shall not be treated as the income for that person.
- Any sum of money received by a family member of a deceased person, from the employer of the deceased person (without limit), or from any other person or persons to the extent that such sum or aggregate of such sums does not exceed INR1 million, where the cause of death of such person is illness relating to COVID-19 and the payment is, received within 12 months from the date of death of such person, and subject to such other conditions as may be notified by the Central Government in this behalf, shall not be the treated as income for that person.
- The Emergency Credit Line Guarantee Scheme ("ECLGS") was introduced by the Government of India in May 2020 following the outbreak of the COVID-19 to provide relief to Micro Small and Medium Enterprises ("MSMEs"). As per the scheme, 100% guarantee coverage is to be provided by National Credit Guarantee Trustee Company in relation to additional facilities granted by Member Lending Institutions to eligible MSMEs and Business Enterprises. The Finance Minister has now proposed to extend ECLGS until March 2023 and further proposed to increase the cover of the scheme to INR5,000 billion which will now include additional INR500 billion for hospitality and related enterprises.

l. Aligning the purpose of entering into tax treaty with Multilateral Instruments ("MLI")

- On 14 March 2022, the CBDT released synthesised text for India-Iceland tax treaty, incorporating the changes made by the MLI on the basis of respective positions taken by both the countries.

m. Make in India

- Recent announcements by the Government of India towards 'Make in India' initiative amongst other things include Tariff rationalisations, coordinated regulations, infrastructure improvements, public procurements, grants, continued fiscal support, financing and dispute resolution. This is a booster for reviving the economy and is leading to consolidations and restructuring in the industry.



3. SHARE ACQUISITION

a. General Comments

One of the options to acquire a business is through the acquisition of shares. Share acquisition is probably the most conventional method of acquiring another business. The target company remains exactly the same, only its ownership changes. A share sale in which a capital gain arises results in taxation for the seller of the shares. Further, a deemed gift tax may also be triggered in the hands of the transferee in certain situations. A step up in the cost of the underlying business is not possible in the case of a share sale.

b. Tax attributes

The following are key considerations in connection with a share acquisition:

i Carry forward and set off of losses

Consideration should be given to the potential to set off and carry forward tax losses. In the case of closely held companies, losses are restricted from being carried forward and offset against future profits, unless on the last day of the year in which such losses are sought to be offset, the shares carrying not less than 51% of the voting powers are beneficially held by persons who beneficially held shares carrying at least 51% of the voting powers on the last day of the year in which such losses were incurred. However, carry forward of unabsorbed depreciation remains unaffected by such change in shareholding.

Eligible start-ups are allowed to carry forward their losses for the first seven years indefinitely subject to certain conditions, even if there is a change in more than 49% of their shareholding.

ii Valuation of shares

As discussed above, in the case of transfer of shares at a price lower than the fair market value ("FMV"), the FMV of such shares is deemed to be the full value of consideration for the transfer. Further, in an event where the shares are transferred at less than its FMV, the difference between the FMV of shares and the full value of consideration will be liable to tax in the hands of the transferee as income from other sources. In respect of the above, the FMV of shares is to be determined in a prescribed manner in the tax legislation. Lastly, where the transfer of shares is undertaken between two associated enterprise ("AE"), the transaction needs to be carried out at arm's length price ("ALP").

iii Tax clearance

A mechanism exists for obtaining a tax clearance certificate for transfer of assets/business subject to certain conditions. Such an application is typically made when any tax audit (proceeding) is pending against the transferor. In such cases the tax authorities have the power to claim any tax on account of completion of the audit from the transferee where the transfer is made for inadequate consideration.

iv Tax indemnities and warranties

In a share acquisition, the purchaser takes over the target company together with all its related liabilities, including contingent liabilities. Hence, the purchaser generally requires more widespread indemnities and warranties than in the case of an asset acquisition. When significant sums are involved, it is customary for the purchaser to initiate a due diligence exercise.

c. Tax Grouping

Group taxation is not permitted under the Indian tax law.

d. Tax free reorganisations

i Merger and amalgamation of Indian companies

Merging of one company into another company or merging of two or more companies to form a new company requires a National Company Law Tribunal ("NCLT") approval. In India, mergers are used extensively to achieve a tax neutral consolidation of legal entities in the course of corporate reorganisations since they enjoy favourable treatment under the Income Tax Act ("ITA") and other laws, subject to certain conditions. Indian tax law defines "amalgamation" as a merger of one or more companies into another company or a merger of two or more companies to form a new company such that:

- All the properties and liabilities of the amalgamating companies immediately before the amalgamation become the properties and liabilities of the amalgamated company; and
- Shareholders holding at least three-quarters of the shares in the amalgamating companies become shareholders of the amalgamated company (any shares already held by the amalgamated company or its nominees are excluded for purposes of this calculation).

To achieve tax neutrality for the amalgamating company (or companies) transferring the assets and the shareholders of such amalgamating companies, following additional conditions should be satisfied:

- The amalgamated company should be an Indian company; and
- The entire consideration should comprise of shares in the amalgamated company.

ii Demerger of Indian companies

The transfer of a business undertaking by a transferor company to a transferee company for consideration in the form of an issue of shares in the transferee company to the shareholders of the transferor company on a proportionate basis, is regarded as a demerger. A demerger of an undertaking also requires approval from the NCLT. Generally, a demerger is taxed as capital gains. However, if the following conditions are satisfied, then the demerger would be considered tax neutral and would be exempt from capital gains tax.

- All the properties and liabilities of the undertaking immediately before the demerger must become the property or liability of the resulting company by virtue of the demerger and such transfer should be at book value;
- In consideration of the demerger, the resulting company must issue its shares to the shareholders of the demerged company on a proportionate basis (except where the resulting company is itself a shareholder of the demerged company);
- Shareholders holding at least three-quarters of the value of shares in the demerged company become shareholders of the resulting company by virtue of the demerger. Shares in the demerged company already held by the resulting company or its nominee or subsidiary are not considered in calculating three-quarters of the value;
- The transfer of the undertaking must be on a going concern basis; and
- The demerger is subject to any additional conditions as notified by the Central Government.

e. Purchase Agreement

A share purchase agreement ("SPA") is a legal contract between a transferor and transferee of shares. The purchase agreement contains the details of the specific number of shares and the contract price for such transfer. This agreement serves as an evidence that the transfer of shares has taken place at mutually agreeable terms. This agreement also documents the various terms, conditions, representations and warranties agreed between the transferor and transferee. Tax representations, warranties and indemnities in Indian SPA's are typically in line with those accepted internationally.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

i Securities Transaction Tax ("STT")

Transfer of shares through a recognised stock exchange is liable to STT. It is imposed at the rate of 0.1% on both purchase and sale of certain listed instruments through a recognised stock exchange in India. STT is not applicable on transactions undertaken between entities off stock market or on a transfer of shares of unlisted companies.

ii Stamp duty

Generally, delivery based transfers of shares are subject to stamp duty at the rate of 0.015% of the market value of the shares.

iii Income tax on capital gains

Capital gains arising as a result of the transfer of equity shares held for more than a specified holding period (12 months in the case of listed shares and 24 months in the case of unlisted shares) would be taxed as long term capital gains. In all the other cases, capital gains would be treated as short term capital gains. The provisions of the ITA in respect of taxation of capital gains arising on transfer of shares can be summarised as:

Nature of capital gains	Category of capital asset	Tax rate for resident*	Tax rate for non-resident*
LTCG	STT paid on both acquisition and transfer	10% without indexation if the long-term capital gains exceed INR100,000	10% without the benefit of indexation and foreign exchange fluctuation, in case of transfer of securities of unlisted companies and shares of closely held companies. 20% in other cases
	In any other case	20% with indexation	
STCG	STT paid on both acquisition and transfer	15%	40%
	In any other case	Normal domestic tax rates as applicable to the taxpayer	

**Plus surcharge up to 15% and cess at 4%.*

iv Income tax in the hands of the transferee

Where the shares of a company are transferred at a value which is less than the FMV, the excess of the FMV over the sales consideration is liable to tax as income from other sources in the hands of the transferee. The rate of applicable tax would be 30%/25% (excluding surcharge and cess) in case of residents and 40% (excluding surcharge and cess) in the case of non-residents.

v Indirect tax

No implications arise under goods and services tax principles ("GST") on the transfer of shares.

g. "Purchase Accounting" for share acquisitions

In India, purchase accounting is not applicable in the case of a direct or an indirect acquisition of shares.

h. Advantages of share purchases

The following are the advantages of a share purchases:

- Faster execution process, because no court approval is required (except where the open offer code is triggered, or government approval is required);
- Transferor to receive consideration directly in his hands. No tax leakage to repatriate surplus cash to the shareholders unlike business / assets transfer;
- Taxable at concessional rates when compared with the other modes of business reorganisation;
- Lower stamp duty cost and other cost of compliance; and
- GST is not applicable.

i. Disadvantages of share purchases

Following are the disadvantages of share purchases:

- In the case of a share acquisition, the value of intangibles and fair valuation of assets cannot be captured in the books of accounts and amortisation of goodwill is not available.
- Historical liability to move with the Company
- Carried forward tax loss of closely held company would lapse if acquisition result in change in shareholding by more than 49%.
- In the case of an acquisition of more than 25% of the shares of listed companies, compliance under SEBI Takeover Code is mandatory.

This would entail higher transaction cost and time.

- Capital gains tax for the seller.
- No benefit of amortisation in respect of the amount paid in excess of the book value of the underlying assets as opposed to the case of an asset acquisition. Hence, consideration paid for the acquisition of shares is locked in until such shares are sold;

Compliance and approvals may be required from the government and regulatory authorities especially for regulated entity like non-banking finance company, insurance company, etc.; and

- Regulatory Pricing guidelines may apply for valuation purposes in certain cases.

j. Other considerations

- Mode of discharge of consideration: Generally, consideration for share acquisitions has to be discharged in cash. Discharge of consideration in kind or through shares of transferred company, may be subject to certain restrictions under CA 2013 and exchange control regulations, which need specific evaluation.
- Exchange control regulations: The acquisition and transfer of shares of an Indian Company between a resident and a non-resident is governed by the Indian exchange control regulations. The regulations, inter alia, provide the permissible limit on investment, the manner of transfer of shares, the minimum/maximum price at which the shares can be transferred, etc.

4. ASSET ACQUISITION

a. General Comments

A purchase of assets can be achieved either through the purchase of a business on a going concern basis or via the purchase of individual assets. A business could be acquired in either of the following ways:

- • Slump sale: Slump sale refers to the transfer of one or more undertakings as a result of sale for a lump sum consideration without assignment of values to the individual assets and liabilities. In the case of a slump sale, the entire business is transferred as a going concern. Up to March 2021, a slump sale necessarily entailed transfer of an undertaking on a going concern basis for monetary consideration. However, recently, the scope of slump sale has been expanded to include such transfer of undertaking for other than monetary consideration. A slump sale includes within its scope all types of transfers, such as sale, exchange, relinquishment of assets etc. thus proposing to tax slump exchange of an undertaking as Slump Sale. This increased the scope for the levy of tax on slump sale by any means. It also provided that the fair market value ("FMV") of the capital assets (being an undertaking or division transferred by way of slump sale) as on the date of transfer should be calculated in a prescribed manner. FMV is deemed to be the full value of the consideration received or accruing as a result of transfer of the business undertaking. Further, the value of goodwill, which has not been purchased shall be taken as nil for computation of FMV of capital assets.
- Itemised sale : An itemised sale typically occurs either where only specific assets are transferred or where the buyer has an option to choose to purchase individual assets.

b. Purchase Price Allocation

The actual cost of the asset is regarded as its cost for tax purposes. However, this general rule may be subject to some modifications depending on the nature of asset and the transaction.

- Slump sale : While a slump sale entails transfer of undertaking without consideration being assigned to individual assets, generally, the buyer carries out a purchase price allocation post acquisition. Allocation of the purchase price by the buyer in case of acquisition through a slump sale is critical from a tax perspective because the entire business undertaking is transferred as a going concern for a lump sum consideration. The tax authorities normally accept the allocation of the purchase price on a fair value or other reasonable commercial basis. Generally, reports from independent valuation providers are also acceptable.
- Itemised sale : The cost paid by the acquirer as agreed upfront may be accepted as the acquisition cost, subject to certain conditions.

c. Tax Attributes

The following are key tax attributes of an asset acquisition:

- Tax losses : In an asset acquisition, tax losses are retained by the seller and are not transferred to the acquirer.
- Undertaking specific tax deductions : Certain tax benefits/deductions available to an undertaking may be available to the acquirer on transfer of whole undertaking on a going concern basis as a result of a slump sale.
- Succession : The transferee may be liable to pay any claim raised by the tax authorities for any tax on account of completion of the pending proceeding where the transfer is made for inadequate consideration and without prior clearance from the tax authorities.

d. Purchase Agreement

An asset purchase agreement ("APA") is an agreement between a buyer and a seller that finalises terms and conditions related to the purchase and sale of a company's assets. It is important to note that in an APA transaction, it is not necessary for the buyer to purchase all the assets of the company. In fact, it is common for a buyer to exclude certain assets in an APA. The provisions of an APA may include the payment of purchase price, monthly instalments, liens and encumbrances on the assets, conditions precedent for the closing, etc. Defining and controlling behaviour is a major objective of the APA. The buyer must represent its authority to purchase the asset. The seller must represent its authority to sell the asset.

e. Depreciation and Amortisation

- Goodwill : In the case of a slump sale, when the consideration paid is higher than the total FMV/cost of the assets acquired, goodwill arises. Such goodwill, being the excess of consideration over the value of the assets, arises because of the underlying value of intangible assets. However, no depreciation is allowed for tax purposes on such goodwill acquired. Such acquired goodwill would still be recorded in books as a non-depreciable asset, the cost of which will be available as a deduction in computing capital gains on any subsequent sale of business.
- Depreciation : Book Depreciation is ignored for tax purposes and tax laws allow depreciation on a "block of assets" basis. All assets of a similar nature are classified under a single block and any additions/deletions are made directly in the block. Depreciation under the Income Taxes Act ("ITA") is generally computed on reducing balance basis on the entire block. However, companies engaged in the business of generation and/or distribution of power have the option to claim depreciation on a straight line basis. Goodwill is excluded from the meaning of "block of assets".

Finance Act, 2022 amended the special provision for computation of capital gains in the case of depreciable assets by clarifying that reduction of the amount of goodwill of a business or profession, from the "block of assets" shall be deemed to be transfer of such goodwill. This could lead to capital gain tax under certain circumstances viz. there are no assets left in the block, or the value of block becomes nil on reduction of goodwill.

Further, when the assets are used for more than 180 days in the first year, the entire eligible tax depreciation for that year is allowed. However, in case where the assets are used for less than 180 days, only 50% of the eligible tax depreciation would be allowed. Capital allowances are available for certain types of asset, such as assets used in scientific research or other specified businesses, subject to certain conditions.

The tax laws provide for specific depreciation rates for the tangible assets (buildings, machinery, plant or furniture), depending on the nature of asset used in the business. Additional depreciation of 20%/35% is available for new plant and machinery used in manufacturing or production, provided prescribed conditions are met. Depreciation on eligible intangible assets (such as know-how, patents, copyrights, trademarks, licenses and franchises or any similar business or commercial rights) is allowed at 25%.

f. Transfer Tax, VAT

i Stamp duty

Transfer of assets by way of a slump sale would be subjected to stamp duty based on the amount of consideration received for the transfer or the market value of the property transferred (whichever is higher). Rates of stamp duty are state specific. Generally, rates of stamp duty applicable to immovable property range between 5-10% and for movable property range between 3-5%.

ii Income tax/Corporate Income Tax

The income tax implications under asset sale are as under:

- Slump sale : The excess of sales consideration over the net worth of the transferred undertaking shall be treated as capital gains in the hands of the transferor. Net worth is the aggregate value of the total assets of the undertaking as reduced by the value of liabilities as per the accounts. In this regard, the manner of computation of the aggregate value of total assets is prescribed. If the undertaking has been held for more than 36 months, the capital gains shall be considered as long term capital gains ("LTCG"), liable to tax at 20% (plus surcharge and cess). If not held for more than 36 months then capital gains would be treated as short term capital gains ("STCG") liable to tax at normal tax rates applicable to the transferor. Further, a slump exchange is also classified as a slump sale.

In accordance with taxing a slump exchange, the CBDT issued valuation rules for computing capital gains arising from a slump sale. For the purposes of computing capital gains from a slump sale, the net worth of the undertaking is deemed to be the cost of acquisition.

- Itemised sale : In case of depreciable assets, capital gains shall be computed on a block of asset basis. The excess of full value of consideration over and above the aggregate of the written down value of the block of assets and expenditure incurred in relation to the transfer will be treated as STCG. In other cases, capital gains tax payable by the seller will depend on the period for which the seller has held each of the assets that are transferred.

iii Indirect taxes

Goods and Service Tax ("GST") has been applicable in India from 1 July 2017. Under the GST regime, services by way of transfer of a going concern, as a whole or an independent part thereof, are exempt from levy of GST. However, in case the transaction does not qualify as a "transfer of going concern" (i.e. qualifies as an itemised sale), GST will be applicable on the rates applicable on the transferred goods.

g. Advantages of Asset Purchases

The following are the advantages of an asset purchase:

- Unlike a share acquisition, there is no need to make an open offer for acquisition (applicable for listed companies) of business/asset ;
- Selective acquisition and assumption of assets and liabilities is possible;
- Recognition of value of brand and other intangibles and claims of depreciation thereon may be possible;
- No court approval is required and thus, the execution process is faster compared to a merger/ demerger;
- Values of the assets can be stepped-up by the acquirer for accounting and tax purposes subject to certain conditions; and
- Unlike a share purchase, tax and other commercial liabilities of the whole entity/company are not necessarily transferred upon acquisition.

h. Disadvantages of Asset Purchases

The following are the disadvantages of an asset purchase:

- Applicable stamp duty on an asset purchase is higher than other modes of acquisition;
- Levy of GST may apply in an itemised sale of assets. Also, certain amount of input tax credit ("ITC") may require reversal.
- The transaction may not be tax neutral, unlike certain other modes of acquisition like demerger, amalgamation, etc.
- The process may get delayed due to requirements of approvals from the financial institutions, inter alia, for transfer assets or undertakings; and
- Continuity of incentives, concessions and unabsorbed losses under direct or indirect tax laws may be jeopardised.



5. ACQUISITION VEHICLES

a. General Comments

There are a number of options of possible acquisition vehicles available in India to a foreign purchaser. Implications under the tax and regulatory framework influences the choice of acquisition vehicles of purchasers.

b. Domestic Acquisition Vehicle

The following are the options of domestic vehicles available for acquisition:

- Local holding company : FDI guidelines for downstream investments governs the acquisitions made through an Indian holding company. Generally, indirect foreign investments through Indian companies are not construed as foreign investments where the intermediate Indian holding company is owned and/or controlled by residents of India. Ownership and control of an Indian company is determined on the basis of ownership of more than 50% of the shares along with control of the governing board.

c. Foreign Acquisition Vehicle

- Foreign parent company : Subject to FDI guidelines, foreign investors can invest in India directly through a foreign parent company.
- Non-resident intermediate holding company : To minimise tax leakage in India and avail favourable treaty benefits, an intermediate holding company resident in another territory could be used for investment into India. However, proof of substance in the intermediate holding company's jurisdiction may be required to avoid any application of the GAAR.

d. Partnerships and joint ventures

- LLPs and partnerships : Generally, Indian LLPs and partnerships may not be permitted to act as an acquisition vehicle for Indian investments. However, seeking specific approval from RBI in this regard, may be evaluated.
- Joint venture : Joint ventures ("JVs") are normally used where specific sectoral caps are applicable under the foreign investment guidelines. In such scenarios, a JV with an Indian partner is set up that will later acquire the Indian target. In planning a JV, the current guidelines for calculating indirect foreign investments should be considered. Additionally, JVs are also set up to create synergies between the intellectual properties/skills of the JV's partners.



6. ACQUISITION FINANCING

a. General Comments

An acquisition can be financed in various forms including debt, equity and hybrid instruments that combine the characteristics of both. The principles underlying these approaches are discussed below.

b. Equity

Equity shares are ordinary shares in the share capital of a company and are entitled to voting rights and dividend rights. Companies in India, as in other jurisdictions, pay their shareholders dividends on their equity shares, usually a percentage of the nominal or face value of the share. For a foreign investor holding an equity interest, payment of dividend on equity shares is a straightforward way of extracting earnings. Dividends received by equity shareholders are taxable in India and the domestic distributing companies are required to withhold tax on dividends. Non-resident shareholders may be eligible to claim foreign tax credit for taxes paid in India subject to tax laws in their home jurisdictions.

c. Debt

Debentures are debt securities issued by a company representing a loan taken by the company with a predetermined rate of interest. Debentures may either be secured or unsecured. Debentures issued to non-residents are also required to be compulsorily convertible to equity shares. For the purposes of FDI, fully and compulsorily convertible preference shares and debentures are treated on a par with equity and do not need to comply with the guidelines governing external commercial borrowings ("ECB Guidelines"). The ECB Guidelines place a negative list for which the ECB proceeds cannot be utilised. Indian companies and LLPs are permitted to benefit from ECB, which limits up to USD750 million per company/LLP per year under the automatic route depending on the sectors in which the companies are doing business. Further, there remain restrictions on the minimum average maturity period. The benchmark rate in case of foreign currency ECB and trade credit has changed from six months Libor to any widely accepted interbank rate or alternative reference rate ("ARR") of six-month tenor, applicable to the currency of borrowing.

Thin Capitalisation provisions have been introduced in India wherein the interest expenditure on certain specified debt is restricted to 30% of the EBIDTA. The balance interest expenditure (which is not allowed as a tax deduction) is allowed to be carried forward for eight years and claimed against taxable profits, if any, subsequently.

The debt in respect of which the thin capitalisation provisions apply include any borrowings from an AE or any third party to which the AE has provided an implicit or explicit guarantee. Also, the aforesaid provisions cover in their ambit, loans, finance lease or funds raised through any other means. These provisions are not applicable if the interest expenditure in respect of these debts does not exceed INR10 million. Interest paid on other debts (third-party debts, not covered above) shall be allowed as tax deductible expenditure. Further, a debt pushdown structure needs evaluation on a case by case basis.

d. Hybrid Instruments

Preference capital is used in some transaction structuring models. Preference capital has preference over equity shares for dividends and repayment of capital, although it does not carry voting rights. An Indian company cannot issue perpetual (non-redeemable) preference shares. The maximum redemption period for preference shares is 20 years. Preference dividends can be only declared out of profits. Dividends on preference shares are not a tax deductible cost. Preference dividends on fully convertible preference shares can be freely repatriated under the current exchange control regulations. The preference



shares may be converted into equity shares, subject to the terms of the issue of the preference shares. On the regulatory front, a foreign investment made through fully compulsorily convertible preference shares is treated the same as equity share capital. Accordingly, all regulatory norms applicable for equity apply to such securities. Other types of preference shares (non-convertible, optionally convertible or partially convertible) are considered as debt and must be issued in conformity with the ECB guidelines discussed above in all respects. Certain hybrid instruments are proposed to be covered by specific hybrid instruments regulations to be announced. Because of the ECB restrictions, such non-convertible and optionally convertible instruments are not often used for funding acquisitions.

e. Other Instruments

Call/put options are some of the other investment instruments used for acquisition financing. SEBI permits contracts consisting of pre-emption rights, such as options, right of first refusal, and tag along/drag along rights, in shareholder or incorporation agreements. Further, the RBI has notified taxpayers that the use of options is subject to certain pricing guidelines that principally do not provide the investor an assured exit price and conditions as to the lock-in period. FDI regulations permit issue of non-convertible/redeemable bonus preference shares or debentures (bonus instrument) to non-resident shareholders under the automatic route. Another possibility is the issuance of convertible debt instruments. Interest on convertible debentures normally is allowed as a deduction for tax purposes. However, like preference shares, all compulsorily convertible debentures are treated the same as equity.

f. Earn-outs

Earn-out is a consideration contingent upon the happening of certain events or the achieving of pre-set targets such as meeting a post-transaction earnings goal. Earn-out arrangements are particularly helpful when the target company is an early stage or high growth company where value would be better represented by future performance as against historical performance. Business and valuation models containing an earn out arrangement are prevalent in M&A practice, with investors seeking recourse to the same in cases where promoter involvement is sought to be retained throughout the transition period or to motivate the seller to keep customers and increase productivity even after the acquisition.

As per the provisions of the Income Taxes Act, ("ITA"), income arising on transfer of a capital asset is taxable as capital gains in the year in which such transfer takes place, irrespective of the year of receipt of consideration. In the case of earn-outs, the transfer of an asset takes place in a particular year whereas the consideration for such transfer is crystalised in subsequent years. This poses a peculiar challenge in computing the capital gains in the year of transfer. A possible view being adopted is that the entire sale consideration (i.e. maximum amount receivable by the taxpayer) would be subject to capital gains tax in the year of transfer. However, certain judicial rulings have upheld a contrary position that the capital gains arising in case of earn outs should be taxed in the year of receipt of the sale consideration. The issue however remains extremely litigious.

7. DIVESTITURES

a. Tax Free

Merger and amalgamation of Indian companies

The merger of one company into another company or merging of two or more companies to form a new company requires an NCLT approval. Amalgamations enjoy favourable treatment under CITA/ITA and other laws, subject to certain conditions. The important provisions under Indian laws relating to amalgamation are discussed below.

i Income tax

Indian tax law defines "amalgamation" as a merger of one or more companies into another company or a merger of two or more companies to form a new company such that:

- All the properties and liabilities of the amalgamating companies immediately before the amalgamation become the properties and liabilities of the amalgamated company; and
- Shareholders holding at least three-quarters of the shares in the amalgamating companies become shareholders of the amalgamated company (any shares already held by the amalgamated company or its nominees are excluded for purposes of this calculation).

To achieve tax neutrality for the amalgamating company (or companies) transferring the assets and the shareholders of such amalgamating companies, following additional conditions should be satisfied:

- The amalgamated company should be an Indian company; and
- The entire consideration should comprise of shares in the amalgamated company.

ii Carry forward and offset of accumulated losses and unabsorbed depreciation

Unabsorbed tax losses, including depreciation, of the amalgamating company (or companies) are deemed to be those of the amalgamated company in the year of amalgamation. In effect, the business losses get a fresh lease of life as they may be carried forward for up to eight years from the year of amalgamation.

However, the carry forward is available only where:

- The amalgamating company owns a ship or hotel or is an industrial undertaking (manufacturing or processing of goods, manufacturing of computer software, electricity generation and distribution, telecommunications, mining or construction of ships, aircraft or rail systems); or
- The amalgamating companies are banking companies.

Further, the carry forward of losses on amalgamation is subject to additional conditions under the ITA.

iii Other implications

Other implications of amalgamation include the following:

- In the case where a company claiming certain specified business unit/undertaking linked tax deductions is amalgamated, the amalgamated company may not be entitled to such unit/undertaking linked tax benefits where specifically restricted under the tax law. However, in other cases, unamortised instalments of certain deductions eligible to the amalgamating company (or companies) are allowable for the amalgamated company.
- No step up in the value of assets acquired on amalgamation is possible for tax purposes. The total depreciation on assets transferred to the amalgamated company in that financial year is apportioned between the amalgamating and amalgamated company in the ratio of the number of days for which the assets were used by each entity during the year.
- In respect of goodwill acquired on business acquisitions, Accounting Standard 14 allows for amortisation of goodwill over a period not exceeding five years unless a longer period can be justified. Ind AS 103 requires amortisation of goodwill over its useful life if the same is finite. But if the useful life of the goodwill is determined as indefinite, then there shall be no amortisation. The CITA/ITA does not specifically provide whether depreciation shall be allowed on acquired goodwill for tax purposes. However, the Supreme Court has held that goodwill acquired on amalgamation (being difference between cost of assets and consideration paid) is a capital right falling under the category of "any other business or commercial right of a similar nature" in the definition of intangible assets and hence, eligible for depreciation. However, the Finance Act, 2021 specifically excluded goodwill from the definition of "block of assets", not allowing any depreciation on such goodwill.
- Amalgamation expenses can be amortised in five equal annual instalments, starting in the year of amalgamation.

iv Indirect tax

There are no GST implications. Input Tax Credit ("ITC") can be transferred to the transferee company case of sale, merger, demerger, amalgamation, lease or transfer of a business.

v Stamp duty

Stamp duty is levied on the NCLT order effecting amalgamation at the applicable rate. The rate of stamp duty is dependent upon the state where the registered offices of the companies are situated.



b. Taxable

Demerger of Indian companies

The transfer of a business undertaking by a transferor company to a transferee company for consideration in the form of an issue of shares in the transferee company to the shareholders of the transferor company on a proportionate basis, is regarded as demerger. A demerger of an undertaking requires approval from the NCLT. Specific provisions of law with respect to demerger are as follows:

i Income tax/Corporate Income Tax

Generally, a demerger is taxed as capital gains. However, if the following conditions are satisfied, then the demerger would be considered tax neutral and should be exempt from capital gains tax.

- All the properties and liabilities of the undertaking immediately before the demerger must become the property or liability of the resulting company by virtue of the demerger and such transfer should be at book value;
- In consideration of the demerger, the resulting company must issue its shares to the shareholders of the demerged company on a proportionate basis (except where the resulting company itself is a shareholder of the demerged company);
- Shareholders holding at least three quarters in value of shares in the demerged company become shareholders of the resulting company by virtue of the demerger. Shares in the demerged company already held by the resulting company or its nominee or subsidiary are not considered in calculating three quarters in value;
- The transfer of the undertaking must be on a going concern basis; and
- The demerger is subject to any additional conditions as notified by the Central Government.

Any divestment by the Central/State Government which results in reduction of its holding in a public sector company ("PSC") to below 51% shall be regarded as tax neutral demerger and proposes to enable set off and carry forward of loss and allowance of depreciation, subject to certain conditions.

ii Other implications

Other implications of demerger include the following:

- Accumulated losses and unabsorbed depreciation relating to the transferred business undertaking can be carried forward by the resulting company for the balance period.
- If the undertaking of the demerged company was entitled to tax incentive, then the resulting company may claim such incentives for the balance period after demerger.
- Step up in the value of assets is not permissible in books of accounts or for tax purposes.
- The total depreciation on assets transferred to the resulting company in that financial year is apportioned between the demerged company and the resulting company in the ratio of the number of days for which the assets were used by each entity during the year. Thus, depreciation up to the effective date of transfer is available to the demerged company and depreciation after that date is available to the resulting company.
- Expenses incurred on account of demerger can be amortised in five equal annual instalments, starting in the year of demerger.

iii Indirect tax

There are no GST implications if the entity is transferred as a going concern; ITC can be transferred to the transferee company case of sale, merger, demerger, amalgamation, lease or transfer of a business.

iv Stamp duty

Stamp duty is levied on the NCLT order effecting demerger at the applicable rate. The rate of stamp duty is dependent upon the state where the registered offices of the companies are situated.

c. Cross Border

i Cross border mergers

Recently, the CA 2013 has notified provisions for cross border merger. The following cross border mergers are permitted:

- Inbound merger : Foreign company can merge into an Indian company.
- Outbound merger : An Indian company can merge into a foreign company in a permitted jurisdiction,

However, it is pertinent to note that prior approval of the RBI is mandatory and only after receiving RBI's approval, an application can be made by the Indian company with the jurisdictional NCLT in respect of the cross border merger. Outbound mergers are not tax neutral. Also, a cross border merger entails a detailed analysis in respect of other tax and regulatory aspects.

ii Amalgamation of foreign companies involving direct/ indirect transfer of shares of Indian company

Amalgamation of two foreign companies involving the transfer of shares of an Indian company or shares of a foreign company deriving its value substantially from shares of an Indian company, is normally tax exempt provided that:

- The amalgamation satisfies the criteria for an amalgamation set out above;
- At least 25% of the shareholders of the amalgamating company remain shareholders in the amalgamated company; and
- Such transfer does not attract capital gains tax in the country in which the amalgamating company is incorporated.

iii Demerger of foreign company involving direct/ indirect transfer of shares of Indian company

A demerger involving the transfer of shares of an Indian company or shares of a foreign company deriving its value substantially from shares of an Indian company, is also tax exempt provided that:

- The shareholders holding not less than three quarters of the shares in the demerged foreign company remain shareholders in the resulting company; and
- Such transfer does not attract capital gains in the country in which the demerged foreign company is located.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

Foreign Investments by an Indian company are regulated by the RBI guidelines. Broadly, an Indian entity can invest up to 400% of its net worth (as per audited accounts) in joint ventures or wholly owned subsidiaries overseas, although investments exceeding USD5 million may be subject to certain pricing guidelines.

Tax on foreign operations of domestic target in India

In India, whether a person is subject to tax is determined based on residential status of the person. In the case of tax residents of India, the worldwide income is liable to tax in India, irrespective of the source of income.

i Residential Status of a Company

A foreign company will be regarded as a tax resident of India, if:

- It is incorporated in India; or
- Its Place of Effective Management ("POEM") in that year is in India.

In this regard, POEM been defined to mean "a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made". Determination of POEM is dependent on facts and circumstances and a holistic analysis of the principles laid out. CBDT's guidelines issued vide circular no. 6 of 2017 serves as a guidance for determination of POEM in India. As per Circular no. 8 of 2017, the provisions of POEM will not be applicable to a Company having turnover of INR500 million or less in a financial year.

ii Foreign tax credit

The domestic target entities can benefit from a foreign tax credit ("FTC") in respect of taxes paid by them outside India under the tax treaty or income tax payable under the applicable law of that country. Such FTC can be utilised by the domestic target against their tax liability in respect of tax, surcharge, cess, minimum alternate tax ("MAT") which is chargeable on companies and alternate minimum tax which is chargeable for Partnerships and LLPs are payable in India. FTC is available to the taxpayer in the year in which the income corresponding to such foreign tax has been offered to tax in India. The total available FTC is the aggregate of FTC computed separately for each source of income arising from a particular country as per prescribed rules. The taxpayer is required to furnish certain prescribed documents on or before the due date of filing of return of income to avail such FTC.

b. CFC Regime

Currently, there are no CFC regulations in India.

c. Foreign branches and partnerships

The income of foreign branches is taxable in India as part of the Indian company's worldwide taxable income. Similarly, the losses of all foreign branches are deductible in computing the worldwide taxable income. In computing the income or loss of a foreign branch, a deduction is generally allowed for all expenses incurred wholly and exclusively for the purpose of the business that are not of a capital or personal nature. Income is taxed whether or not repatriated. If such foreign branch incurs tax in the foreign country, credit is available in India to the extent of the lesser of the foreign tax paid or the Indian tax on the foreign income, either unilaterally or under treaty.

Further, taxability of foreign partnerships in India would be dependent on its tax residential status in India. A partnership firm would be treated as a tax resident in India if control and management of its affairs is not wholly situated outside India.

d. Cash repatriation

Dividends received from foreign company are taxable in the hands of the domestic company at applicable tax rates.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

GAAR

In certain circumstances, the tax authorities are empowered to invoke GAAR and treat an "arrangement" to be an impermissible avoidance agreement ("IAA"), resulting in denial of the tax benefit under the provisions of the domestic tax law or a tax treaty. An arrangement would be treated as IAA if the main purpose of the arrangement is to avail treaty benefit and such arrangement contains one of the following tainted elements:

- The transaction is not at arms' length price;
- The motive of the transaction is to abuse the tax provisions;
- The transaction lacks commercial substance and is not undertaken for bona fide purpose.

GAAR is not applicable to the following transactions:

- Foreign Institutional Investors ("FIIs") who do not avail themselves of the benefit of tax treaties;
- Non-resident who have invested in such FIIs;
- Transactions where the aggregate tax benefit from an arrangement in relevant financial year does not exceed INR30 million.

If GAAR provisions are invoked, the following consequences apply:

- Overriding effect of tax treaty benefits availed by the assessee;
- Disregarding or re-characterising any step in, or a part of or the whole arrangement;
- Disregarding any accommodating party or treating the parties to the arrangement as one and the same person;
- Re-characterising the place of residence or situs of an asset or transaction, reallocating the accrual, receipt or expenditure amongst the parties to the arrangement; and
- Ignoring corporate structure applied by the assessee.

With the advent of the GAAR, structuring of transactions is expected to require additional consideration. Moreover, the CBDT has clarified that GAAR will not apply to an arrangement where the NCLT has "explicitly and adequately" considered its tax implication. As a result, GAAR may have to be considered in all future Schemes proposed to be presented to the NCLT before they are submitted. In view of this, all future structuring options should be examined from the perspective of GAAR and it should be ensured that they have strong commercial rationale supporting the transaction. The taxpayers could also approach the Board for Advance Rulings for achieving certainty and clarity. The Authority for Advance Rulings has recently been changed to the Board for Advance Rulings. As the Board for Advance Rulings has recently been set up, the time for applications to be processed is currently unclear.



CBDT vide letter dated 7 April 2021 has notified the composition of the Approving Panel for making references under GAAR. Further CBDT, vide letter dated 11 February 2022 has notified that GAAR Secretariat has been set up in Delhi and all the references need to be sent directly to the GAAR Secretariat. GAAR reference can be made to the Approving panel, in case where a taxpayer objects to notice issued for declaring an arrangement as an impermissible avoidance arrangement and determining the consequences thereof and where taxpayer's explanation is found unsatisfactory.

Indirect transfer

In the backdrop of the Supreme Court's decision in the case of Vodafone Holdings and with an intention of protecting the Indian tax base from highly abusive tax planning structures, in 2012, the provisions for taxation of indirect transfer were introduced in the ITA with retrospective applicability from 1 April 1962. As per the said provisions, any income accruing or arising from transfer of the share of, or interest in, a company or entity located outside India that derives directly or indirectly, its value substantially from assets located in India shall be treated as indirect transfer and shall be taxable in India. In this regard, share or interest shall be deemed to derive its value substantially from the assets located in India, if value of assets on the specified date:

- Exceeds INR1 million; and
- Represents at least 50% of the total value of assets owned by the company or entity, as the case may be in India.

For the purpose of valuation of assets, the ITA considers the FMV of assets on the specified date without reduction of liabilities. The specified date shall be either the immediately preceding accounting period ending prior to the transfer or the date of transfer. The date of transfer shall be considered as the specified date only where the book value of the assets of the foreign company on the date of transfer exceeds the book value of the assets as at the end of the immediately preceding accounting period by more than 15%. The method for determining the value of assets is prescribed under the Income-tax Rules, 1962. Payments for such transfer of shares are liable to withholding tax. The Indian entity and the transferor entity are required to report the information in respect of indirect transfer in prescribed forms.

b. CbC and Other Reporting Regimes

If the total consolidated group revenue of the international group is INR55 billion or more in the preceding accounting year, then the resident parent entity or the alternative reporting entity is required to file a CbC report ("CbCr"). Such filing is to be done within a period of 12 months from the end of the reporting accounting year.

Where the Indian entity is a constituent entity ("CE") being a part of international group, whose parent is a non-resident, in such a case, an Indian entity is required to notify the reporting entity to the tax authorities. The due date for such notification is two months before the due date of filing of return in India.

If more than one CE of either of the following international group are resident in India, then one of the entities has to be designated by the international group as the designated entity to furnish CbCr:

- Where the parent is "not obligated" to file CbCr in its home country;
- Where India does not have an agreement for exchange of CbCr with the jurisdiction in which the ultimate parent company or alternate reporting entity is resident;
- Where there has been a systemic failure in a country, and this is intimated by the prescribed authority to the CE.



In the absence of a CbCr exchange agreement between India and certain jurisdictions, inbound CEs with their ultimate parent company or alternate reporting entity in such jurisdictions would need to electronically file the CbCr in India within 12 months from the end of a reporting accounting year. In the event of a systemic failure, the timeline is six months from the end of the month in which intimation is given of this systemic failure.

Master File

Any CE of an international group has to file Part A of the master file. Further, the CE has to file Part B of master file if the following are satisfied:

- Consolidated revenue of such international group as reflected in consolidated financial statements for the accounting year exceeds INR5 billion; and
- The aggregate value of international transaction of CE:
  - During the accounting year exceeds INR500 million; or
  - In respect of purchase, sale, transfer, lease or use of intangible property during the accounting year exceeds INR100 million.

The due date of filing master file is date of filing of return of income i.e. 30 November.

10. TRANSFER PRICING

International transaction

As per the provisions of the CITA/ITA, the definition of international transaction includes a transaction of business restructuring or reorganisation, entered into by an enterprise with an Associated Enterprise ("AE"), irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date. Thus, any international restructuring transaction should be at arm's length price ("ALP") and should be reported.

Further, where there is an increase in the book profit of the income of a year due income of past year(s) on account of secondary adjustment or APA entered by the taxpayer, the Assessing Officer shall recompute the book profit and tax payable of the past years in the prescribed manner.

Deemed international transaction

The domestic transfer pricing provisions have been recently amended to widen the scope of international transactions. Accordingly, a transaction with a person other than an AE is also deemed to be an international transaction if there exists a prior agreement in relation to the relevant transaction between such other person and the AE, or the terms of the relevant transaction are determined in substance between such other person and the AE.

Post-acquisition

All intercompany transactions (international and certain domestic), including interest on loans, are subject to transfer pricing regulations.



11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of hybrid entities

Acquisition entities may have hybrid features which makes their classification difficult. Divergence in approach of classifying such entities may create issue of classification in cross border scenarios. Thus, use of hybrid entities involve issues like entity classification which can have a bearing on the following:

- Determination of residency;
- Eligibility for treaty benefits;
- Nature of income derived by entity/members and tax treatment thereof; and
- Application of provisions of CITA/ITA which are entity specific.

b. Use of hybrid instruments

Some of the hybrid funding options currently under consideration are compulsory convertible preference shares, compulsory convertible debenture ("CCD") and convertible notes. Hybrid instruments that are fully and mandatorily convertible into equity within a specified period are regarded as equity under the FDI policy and hence are eligible to be issued to persons residing outside India. Any hybrid instrument that is not mandatorily convertible into equity is considered debt and governed by external commercial borrowing rules. Use of hybrid entities may have post-integration issues like treatment of the existing CCDs issued by the entities, validity of terms of existing CCDs issued by the former entities after the reorganisation, etc

c. Principal/Limited Risk Distribution or Similar Structures

A limited risk distributor ("LRD") is the distributor in the country of residence which performs limited functions and undertakes limited risks while performing a sales and marketing function. Post-acquisition, a functions, assets and risk ("FAR") analysis needs to be undertaken to review the status of existing LRDs.



d. Intellectual property (licensing, transfers, etc.)

The following are some of the issues with respect to intellectual property ("IP"):

- Aligning IP protection to business objectives like expanding existing coverage through strategic filing programmes and contracting coverage where needed;
- Implementing arrangements for appropriate ownership, control, and use of brands to avoid invalidity and tax concerns;
- Managing patent and trademark portfolios to meet objectives (including global maintenance and enforcement strategies);
- Depending upon the scope of the business activities, making a decision as to whether to obtain the record title to IP assets received in a merger or acquisition or to sell its newly acquired IP to a third party and receive a licence to use such IPs;
- Further, the parties need to decide as to who will bear the future expenses, like expenses of filing, registration, renewals and maintenance of patents, trademarks, etc;
- Entities which create or acquire IP assets have the ability to claim a tax deduction for their costs.

e. Special tax regimes

India has an alternate levy in the form of minimum alternative tax ("MAT") at 15% (plus surcharge and cess) for companies and LLPs. Generally, the credit of MAT is allowed to be carried forward and set off against the future income tax liabilities of the companies and LLPs. However, in case of amalgamation, availability of such MAT credit by way of carry forward and set off, is litigious.

12. OECD BEPS CONSIDERATIONS

Removal of digital taxes

As per the Multilateral Convention, all jurisdictions are required to remove all Digital Services Taxes and other relevant similar measures and provide commitment to refrain from introducing such measures in the future. In view of this, no newly enacted Digital Services Taxes or other relevant similar measures will be imposed on any company from 8 October 2021 and until the earlier of 31 December 2023, or the coming into force of the MLC.

On 8 October 2021, India and the US joined 134 other members of the OECD/G20 Inclusive Framework (including Austria, France, Italy, Spain, and the UK) in reaching agreement on the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. India and the US have agreed that the same terms that apply under the October 2021 Joint Statement shall apply between the US and India with respect to India's charge of 2% equalisation levy on ecommerce supply of services and the US's trade action regarding the said Equalisation Levy. However, the interim period that will be applicable will be from 1 April 2022 till implementation of Pillar One or 31 March 2024, whichever is earlier. The final terms of the Agreement will be finalised in 2022.

BEPS and India:

Some of the BEPS recommendations would immediately be applicable, while some require changes that can be implemented via tax treaties, including the multilateral instruments. Some other require domestic law changes. Tabulated below are the amendments made in Indian tax laws to align it with BEPS.

Action Plan	Particulars	Amendment made / Action taken	Effective from
Action Plan 1	Tax challenges arising from Digitalisation	In order to address the challenges arising on taxation of digital transactions, India via Finance Act, 2016 introduced 'Equalisation levy' at 6% on the amount of consideration for specified services received or receivable by a non-resident not having PE in India, from a: Resident in India who carries out business or profession; or Non-resident having PE in India As mentioned above, the said EL is extended (at the rate of 2%) to online supply of goods and services by ecommerce operators.	1 June 2016
		The concept of "significant economic presence test" to determine business connection / territorial nexus was introduced under the Indian tax laws	1 April 2018
Action Plan 4	Limitation on interest deductions	Interest limitation rules were introduced in India vide Finance Act, 2017. A new section 94B was introduced in the Act, to provide that interest expense paid by an entity to its AE or on a debt implicitly or explicitly guaranteed by the AE shall be restricted to 30% of its EBIDTA or interest paid/payable to AE, whichever is less.	1 April 2017

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Action Plan	Particulars	Amendment made / Action taken	Effective from
Action Plan 5	Harmful tax practices	The Finance Act, 2016 introduced Section 115BBF providing a concessional tax regime and 10% for royalty income from patents to promote in-house research and development and making India a hub for R&D. Such provisions are in line with the nexus approach recommended by BEPS Action 5. For the purpose of this section at least 75% of R&D expenditure for development of patent should be incurred in India by the eligible assessee for any invention in respect of which patent is granted under Patents Act, 1970.	1 April 2016
Action Plan 6	Prevention of tax treaty abuse	GAAR provisions are introduced in the domestic tax laws.	1 April 2017
		India is actively negotiating its existing tax treaties to counter treaty abuse.	Not Applicable
Action Plan 7	Permanent establishment status	The definition of business connection/permanent establishment under the Indian tax laws was aligned with modified DAPE rules as per Action Plan 7.	1 April 2018
Action Plan 13	Country by Country reporting	The requirement of filing a Country-by-Country Report, a Master file and a Local file has been introduced in India broadly in line with BEPS Action Plan 13.	1 April 2016
Action Plan 15	Multilateral Instrument	India has ratified MLI on 7 June 2017 and deposited the instrument of ratification on 25 June 2019.	Come into force 1 October 2019 (Effective from FY 2020-21)

13. ACCOUNTING CONSIDERATIONS

Accounting norms for companies are governed by the Accounting Standards issued under the CA 2013. Normally, for amalgamations, demergers and restructurings, the Accounting Standards specify the accounting treatment to be adopted for the transaction. The standard prescribes two methods of accounting: merger accounting and acquisition accounting.

- In merger accounting, all the assets and liabilities of the transferor are consolidated at their existing book values.
- Under acquisition accounting, the consideration is allocated among the assets and liabilities acquired (on a fair value basis).

The government of India has recently notified International Financial Reporting Standards ("IFRS"), converged Indian Accounting Standards (Ind AS). Under the new Ind AS on amalgamation, all assets and liabilities of the transferor are recorded at their respective fair values. Further, goodwill arising on merger is not amortised; instead it is tested for impairment. The accounting treatment of mergers within a group are separately dealt with under the new Ind AS, which requires all assets and liabilities of the transferor to be recognised at their existing book values only. The new Ind AS are to be implemented in a phased manner. It became applicable to all listed companies and companies with net worth of INR5 billion or more from 1 April 2016, and to companies with net worth of INR2.5 billion or more from 1 April 2017. Other companies will continue to apply existing accounting standards.

14. OTHER TAX CONSIDERATIONS

a. Application of Regional Rules

Buy back

Amongst the other options available for a company to provide an exit to the shareholders, is the buy back of shares. A buy back of shares provides an investor the ability to extract earnings as capital gains and consequently take advantage of tax treaty benefits. However, buy backs in India have certain restrictions and thus need to be strategically planned. For instance, a company may not, except with a special resolution, buy back more than 25% of its outstanding equity shares in a year. Further, a buy back may be effected only from certain permitted sources.

In terms of being subject to tax, any domestic company proposing to buy back its shares from shareholders is required to pay a buy back tax. Any amount of "distributed income" by a domestic company on buy back of unlisted shares from shareholder is chargeable to additional income tax at 20% (plus 12% surcharge and 4% cess). The term "distributed income" has been defined to mean the consideration paid by the company on buy back of shares as reduced by the amount received by it for issue of such shares, to be determined in the prescribed manner. The amount received on issue of shares has to be determined as per the IT Rules. Some of the methodologies relevant for determining amount received on issue of shares are as follows:

- Shares issued by way of subscription
- The amount actually received in respect of such share, including any amount actually received as securities premium.
- Where any amount, out of amount received on issue of shares, has been returned to shareholders prior to buy back.
- The amount received in respect of shares less sum so returned. However, no such deduction is allowed in respect of Dividend Distribution Tax ("DDT").

b. Tax Rulings and Clearances

In case where any transfer is made for inadequate consideration and any proceedings are pending against the transferor, the tax authorities have the power to claim any tax on account of completion of the proceeding by treating the said transfer as void. The CITA/ITA provides mechanism for obtaining a tax clearance certificate for transfer of assets/ business subject to certain conditions. The timeline depends on the facts of each case.

15. MAJOR NON-TAX CONSIDERATIONS

a. Competition Commission of India ("CCI") regulations

If any acquisition exceeds certain financial thresholds and is not within a common group, then such acquisition shall require a prior approval of the CCI. While evaluating an acquisition, CCI would mainly examine if the acquisition would lead to a dominant market position, resulting in an adverse effect on competition in the concerned sector. Under CCI regulations, a business combination that causes or is likely to cause a considerable hostile effect on competition within the relevant market in India shall be void. Any acquisition of control, shares, voting rights or assets, acquisition of control over an enterprise, or merger or amalgamation is regarded as a combination if it meets certain threshold requirements and accordingly requires approval.

b. CA 2013

The acquisition of shares is permissible with prior approval of the audit committee and board of directors. Share sales between related parties may also require prior shareholders' approval. Pursuant to Sections 230 to Section 240 of the CA 2013, schemes of arrangement require approval of the NCLT. Procedurally, any scheme is first approved by the audit committee, the board of directors, stock exchanges (if shares are listed) and then by the shareholders/creditors of the company with a requisite majority (i.e. majority in number and 75% in value of shareholders/creditors voting in person, by proxy or by postal ballot). NCLT will give its final approval to the scheme after considering the observations of the Regional Director, Registrar of Companies, Official Liquidator, income tax authorities, other regulatory authorities like RBI, stock exchanges, SEBI, CCI, etc. and any other objections filed by any other stakeholder interested in or affected by the scheme.

c. Securities laws

Any acquisition of 25% shares of a listed company by an acquirer would trigger an open offer to the public shareholders. However, under the Takeover Code, a merger or demerger of a listed company usually does not trigger an open offer to the public shareholders. Any merger or demerger involving a listed company would require prior approval of the stock exchanges and SEBI before approaching NCLT.

d. Foreign exchange regulations

Transfer of equity shares are permissible transactions subject to RBI pricing guidelines and permissible sectoral caps. Merger/demerger transaction involving any issuance of shares to a non-resident shareholder of the transferor company does not require prior RBI/government approval, provided that the transferee company does not exceed the foreign exchange sectoral caps and the merger/demerger is approved by the NCLT. Issuance of any instrument other than equity shares/ compulsorily convertible preference shares/compulsorily convertible debentures to the non-resident would require prior RBI approval as they are considered as debt.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Albania	10	10	10	[A] [B] [C] [D] [E]
Armenia	10	10	10	[A] [B] [C] [D] [E]
Australia	15	15	10 / 15	[A] [B] [C] [D] [E] [J]
Austria	10	10	10	[A] [B] [C] [D] [E]
Bangladesh	10 / 15	10	10	[A] [B] [C] [D] [E]
Belarus	10 / 15	10	15	[A] [B] [C] [D] [E]
Belgium	15	10 / 15	10	[A] [B] [C] [D] [E] [F] [G]
Bhutan	10	10	10	[A] [B] [C] [D] [E]
Botswana	7.5 / 10	10	10	[A] [B] [C] [D] [E]
Brazil	15	15	25 / 15	[A] [B] [C] [D] [E] [H]
Bulgaria	15	15	15 / 20	[A] [B] [C] [D] [E]
Canada	15 / 25	15	10 / 15	[A] [B] [C] [D] [E] [J]
China (People's Republic of China)	10	10	10	[A] [B] [C] [D] [E]
Chinese Taipei (Taiwan)	12.50	10	10	[A] [B] [C] [D] [E]
Colombia	5	10	10	[A] [B] [C] [D] [E]
Croatia	5 / 15	10	10	[A] [B] [C] [D] [E]
Cyprus	10	10	10	[A] [B] [C] [D] [E]
Czech Republic	10	10	10	[A] [B] [C] [D] [E]
Denmark	15 / 25	10 / 15	20	[A] [B] [C] [D] [E]
Estonia	10	10	10	[A] [B] [C] [D] [E]
Ethiopia	7.50	10	10	[A] [B] [C] [D] [E]
Fiji	5	10	10	[A] [B] [C] [D] [E]
Finland	10	10	10	[A] [B] [C] [D] [E] [G]
France	10	10 / 15	20	[A] [B] [C] [D] [E] [F] [G]
Georgia	10	10	10	[A] [B] [C] [D] [E]
Germany	10	10	10	[A] [B] [C] [D] [E]
Hong Kong	5	10	10	[A] [B] [C] [D] [E]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Hungary	10	10	10	[A] [B] [C] [D] [E] [F]
Iceland	10	10	10	[A] [B] [C] [D] [E]
Indonesia	10	10	10	[A] [B] [C] [D] [E]
Ireland	10	10	10	[A] [B] [C] [D] [E]
Israel	10	10	10	[A] [B] [C] [D] [E]
Italy	15 / 25	15	20	[A] [B] [C] [D] [E]
Japan	10	10	10	[A] [B] [C] [D] [E]
Jordan	10	10	20	[A] [B] [C] [D] [E]
Kazakhstan	10	10	10	[A] [B] [C] [D] [E] [F]
Kenya	10	10	10	[A] [B] [C] [D] [E]
Korea	15	10	10	[A] [B] [C] [D] [E]
Kuwait	10	10	10	[A] [B] [C] [D] [E]
Kyrgyz Republic	10	10	15	[A] [B] [C] [D] [E]
Latvia	10	10	10	[A] [B] [C] [D] [E]
Lithuania	5 / 15	10	10	[A] [B] [C] [D] [E]
Luxembourg	10	10	10	[A] [B] [C] [D] [E]
Macedonia	10	10	10	[A] [B] [C] [D] [E]
Malaysia	5	10	10	[A] [B] [C] [D] [E]
Malta	10	10	10	[A] [B] [C] [D] [E]
Mauritius	5 / 15	7.5	15	[A] [B] [C] [D] [E] [I]
Mexico	10	10	10	[A] [B] [C] [D] [E]
Mongolia	15	15	15	[A] [B] [C] [D] [E]
Montenegro	5 / 15	10	10	[A] [B] [C] [D] [E]
Morocco	10	10	10	[A] [B] [C] [D] [E]
Mozambique	7.50	10	10	[A] [B] [C] [D] [E]
Myanmar	5	10	10	[A] [B] [C] [D] [E]
Namibia	10	10	10	[A] [B] [C] [D] [E]
Nepal	5 / 10	10	15	[A] [B] [C] [D] [E] [F]
Netherlands	10	10	10	[A] [B] [C] [D] [E] [F] [G]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
New Zealand	15	10	10	[A] [B] [C] [D] [E]
Norway	10	10	10	[A] [B] [C] [D] [E]
Oman	10 / 12.5	10	15	[A] [B] [C] [D] [E]
Philippines	15 / 20	10 / 15	15	[A] [B] [C] [D] [E]
Poland	10	10	15	[A] [B] [C] [D] [E]
Portugal	10 / 15	10	10	[A] [B] [C] [D] [E]
Qatar	5 / 10	10	10	[A] [B] [C] [D] [E]
Romania	10	10	10	[A] [B] [C] [D] [E]
Russian Federation	10	10	10	[A] [B] [C] [D] [E]
Saudi Arabia	5	10	10	[A] [B] [C] [D] [E]
Serbia	5 / 15	10	10	[A] [B] [C] [D] [E]
Singapore	10 / 15	10 / 15	10	[A] [B] [C] [D] [E]
Slovenia	5 / 15	10	10	[A] [B] [C] [D] [E]
South Africa	10	10	10	[A] [B] [C] [D] [E]
Spain	15	15	10 / 20	[A] [B] [C] [D] [E] [F]
Sri Lanka	7.50	10	10	[A] [B] [C] [D] [E]
Sudan	10	10	10	[A] [B] [C] [D] [E]
Sweden	10	10	10	[A] [B] [C] [D] [E] [F]
Switzerland	10	10	10	[A] [B] [C] [D] [E] [F]
Syria	5 / 10	10	10	[A] [B] [C] [D] [E]
Tajikistan	5 / 10	10	10	[A] [B] [C] [D] [E]
Tanzania	5 / 10	10	10	[A] [B] [C] [D] [E]
Thailand	10	15	10	[A] [B] [C] [D] [E]
Trinidad & Tobago	10	10	10	[A] [B] [C] [D] [E]
Turkey	15	10 / 15	15	[A] [B] [C] [D] [E]
Turkmenistan	10	10	10	[A] [B] [C] [D] [E]
Uganda	10	10	10	[A] [B] [C] [D] [E]
Ukraine	10 / 15	10	10	[A] [B] [C] [D] [E]
United Arab Emirates	10	5 / 12.5	10	[A] [B] [C] [D] [E]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
UK	10 / 15	10 / 15	10 / 15	[A] [B] [C] [D] [E] [J]
US	15 / 25	10 / 15	10 / 15	[A] [B] [C] [D] [E] [J]
Uruguay	5	10	10	[A] [B] [C] [D] [E]
Uzbekistan	10	10	10	[A] [B] [C] [D] [E]
Vietnam	10	10	10	[A] [B] [C] [D] [E]
Zambia	5 / 15	10	10	[A] [B] [C] [D] [E]

Footnotes:	
[A]	Dividend - Finance Act, 2020 abolished dividend distribution tax. Dividends are now liable to tax in the hands of the shareholders and non-resident shareholders are eligible to pay tax at beneficial tax rate under the tax treaty and also avail foreign tax credit subject to domestic laws in their home jurisdiction.
[B]	Interest - If the relevant tax treaty provides for unlimited taxation rights for the source country on interest income, then the rate of tax is considered as 20%. Under the Indian tax laws, withholding tax rate of 20% (applicable surcharge and cess) applies with respect to interest on monies borrowed or debts incurred in foreign currency by an Indian concern or the government. Reduced rate of 5% (applicable surcharge and cess) applies where the interest paid by business trusts. In case of Kenya, withholding tax rate of 10% is applicable on interest. In other cases, depending on whether the recipient is a corporate entity, a tax rate of 30%/ 40% (plus applicable surcharge and cess) applies.
[C]	Interest - Reduced rate of 0% to 10% generally applies under a tax treaty if interest payments are made to local authorities, political subdivisions, the government, banks, financial institutions or similar organisations or the lender holds a certain threshold of capital in the borrower. Specific clause of the treat needs to be evaluated in this regard.
[D]	Royalty - Under the Indian tax laws, if the relevant tax treaty provides for unlimited taxation rights for the source country on royalty income and if the payment is made by the government of India or an Indian concern, then the rate of tax is considered as 10% (plus surcharge and cess). In case of Kenya, withholding tax rate of 10% is applicable on royalties. In other cases, depending on whether the recipient is a corporate entity, a tax rate of 30%/40% (plus applicable surcharge and cess) applies.
[E]	Royalty - The above rates on royalties are applicable to royalties other than those effectively connected with a PE in India. Further, in some of the tax treaties like UK, US, Spain, Canada and Australia, a separate rate of 10% is specified for equipment royalties. Similarly, in case of Bulgaria, rate of 15% is applicable to copyright royalties other than cinematographic films or films and tapes used for radio or television broadcasting.
[F]	MFN clause - The scope of the definition of royalties/interest may be restricted and/or a reduced rate of tax may be available under the MFN clause.
[G]	MFN clause - In case of notification issued by the government of India giving effect to the MFN clauses in these tax treaties, reduced rate applies.
[H]	Royalties - In case of trademark royalties, rate of tax is 25%.
[I]	Interest - The protocol provides for a withholding tax rate of 7.5% on interest and 15% on royalties.
[J]	Royalty - In the first five years in which this treaty is in effect, if the payer of royalties is the government of the contracting state, a political subdivision or a public sector company, the rate of tax is 15% and in case of other payers, tax rate is 20%. For subsequent years, a 15% rate applies in all cases.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Copy of the Annual Report or the Balance Sheet along with the notes to accounts and audited financial statements for last three years.
2	Tax Due Diligence	General	Management financial statements for current year and the detailed trial balance associated with the financial statements.
3	Tax Due Diligence	General	Copies of major service agreements, loan agreements, if any.
4	Tax Due Diligence	Direct tax	Copy of income tax returns for last three years including revised returns, computation of total income along with notes to computation and form 26AS.
5	Tax Due Diligence	Direct tax	Computation of deferred tax liability and other enclosures except for the TDS certificates and provisional tax computation for current year.
6	Tax Due Diligence	Direct tax	Tax audit reports along with annexures for last three years.
7	Tax Due Diligence	Direct tax	CbCr, Master file, transfer pricing accountant's reports along with the transfer pricing documentation for last three years.
8	Tax Due Diligence	Direct tax	Screenshot of e-proceedings and demand section of traces and income tax e-filing portal.
9	Tax Due Diligence	Direct tax	Copies of the assessment orders/ transfer pricing orders for the latest three years along with the notice for demand, notices for initiation of penalty proceedings.
10	Tax Due Diligence	Direct tax	Details of historical tax positions taken by the company.
11	Tax Due Diligence	Direct tax	Details of any Income tax incentives (Section 10AA, 80IA, etc.)/concessions/exemptions, if any, availed by the Company from Central and State governments.
12	Tax Due Diligence	Direct tax	Analysis of past losses and the impact of change in shareholding on such losses.
14	Tax Due Diligence	Direct tax	Analysis of loans advanced to shareholders and allied entities and possibility of deemed dividend.
18	Tax Due Diligence	Direct tax	Details of underreported tax liabilities, if any.
19	Tax Due Diligence	Direct tax	Representation made by the seller at the time of pre-deal negotiation.
20	Tax Due Diligence	Direct tax	Sample checks of withholding tax compliances help in identifying inconsistencies in withholding tax filings/ compliances of the target company.
21	Tax Due Diligence	Direct tax	Recoverability of tax refunds/credits like MAT credit, etc.
22	Tax Due Diligence	GST	Details with respect to GST and other historical indirect tax regime like service tax, value added tax, excise duty, custom duty, etc.

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1. INTRODUCTION

a. Forms of Legal Entity

The typical legal structures found in an M&A context in Indonesia include:

- Corporate taxpayers (commonly known as Perusahaan Terbatas or "PT") with capital, which is divided into shares;
- Registered foreign companies, established or domiciled abroad;
- Taxpayers that have not yet gone public, but intends to conduct an initial public offering of shares;
- Taxpayer that has gone public (commonly known with additional Terbuka or "Tbk" behind the name of the listed company), in that all entities resulting from the business expansion have conducted an initial public offering of shares;
- Corporate taxpayers performing a separation of a sharia business unit;
- Resident corporate taxpayers, a business entity resulting from an expansion that obtains additional capital from a foreign investor of at least IDR500 billion;
- A state owned enterprise taxpayer receiving additional capital from the state of the Republic of Indonesia, when a business expansion is conducted related to the establishment of a holding company of a state owned enterprises;
- A permanent establishment conducting activities in the banking business; and
- Joint ventures.

b. Taxes, Tax Rates

The main taxes imposed in Indonesia, in the context of M&A, are taxes on land and building transfers, duty on the acquisition of land and building rights ("BPHTB"), and Corporate Income Tax ("CIT") on the gains from the sale of assets. In accordance with the VAT provisions, the delivery of taxable goods in the context of a merger is not subject to VAT.

Tax on Land and Building Transfers

A transfer of land and buildings will give rise to final income tax on the deemed gain on the transfer/sale to be charged to the transferor company. The final tax is set at 2.5% of the gross transfer value (tax base). However, for transfers of simple houses and apartments conducted by taxpayers engaged in the property development business, the tax rate is 1%.



Corporate Income Tax ("CIT")

The Corporate Income Tax ("CIT") rate is a flat rate of 22%. Public companies that satisfy a minimum listing requirement of 40% and other conditions, are entitled to a tax reduction of 3% off the standard rate, giving them an effective tax rate of 19%. Small enterprises, (i.e. corporate taxpayers with an annual turnover of not more than IDR50 billion), are entitled to a 50% discount on the standard tax rate, which is imposed proportionally to the taxable income of the part of the gross turnover of up to IDR4.8 billion.

Duty on Land and Building Rights ("BPHTB")

In a land and building transfer, the acquirer is liable for BPHTB at a maximum of 5% of either the market (transaction) value or the government determined value ("NPOP"), whichever is greater. The tax due is determined by applying the applicable rate of a maximum of 5% to the relevant NPOP, minus an allowable non-taxable threshold.

Value Added Tax ("VAT")

The VAT rate in Indonesia increased from 10% to 11% on 1 April 2022 and will rise to 12% by 1 January 2025. However, the transfer of assets as a result of M&A is not subject to VAT.

c. Common divergences between income shown on tax returns and local financial statements

Taxable business profits are calculated on the basis of normal accounting principles, modified by certain tax adjustments. Generally, a deduction is allowed for all expenditures incurred to obtain, collect and maintain taxable business profits. The fiscal adjustments can create either a temporary or permanent difference to the taxable income.



2. RECENT DEVELOPMENTS

Transfer Pricing

Transactions between related parties must be in accordance with the arm's length principle. If this principle is not followed, the Directorate General of Taxes ("DGT") is authorised to recalculate the taxable income or deductible costs arising from such transactions, applying the principle.

The number of tax audits with transfer pricing as the key focus has continued to increase, following the issue of regulations related to transfer pricing. The DGT has issued detailed guidelines that broadly follow the Organisation for Economic Co-Operation and Development ("OECD") principles. Transactions under particularly close scrutiny include payments of royalties and technical or management services fees, inter-company services, royalty and financing transactions, and exports to related parties.

Should a taxpayer have no documentation available to substantiate these transactions, there is a high risk the payments will be denied in full.

Under Harmonisation of Tax Regulations Law (commonly known as UU Harmonisasi Peraturan Perpajakan or UU HPP, "UU HPP"), discrepancies from transfer pricing adjustments would be considered as taxable dividends in accordance with the prevailing tax laws and regulations.

COVID-19

The Indonesian government, through various regulations, provided several tax incentives in response to COVID-19. The one that may be most relevant in an M&A context is the 50% reduction of monthly tax instalments that is valid for the January 2022 to June 2022 fiscal periods.

A 50% reduction of monthly tax instalments will be provided to taxpayers whose business codes ("KLU") are in the list of MoF number 3/PMK.03/2022. To enjoy this incentive, the taxpayer has to submit a notification letter to the tax office through the DGT's online channel.



3. SHARE ACQUISITION

a. General Comments

In a merger, the surviving company will acquire the shares of the transferor company. Meanwhile, an acquisition will involve a legal entity in the form of company or other entity or an individual, to acquire all the shares or majority of the shares from the seller.

If the sale price is higher than the original price of shares, this results in a capital gain for the transferor company or the seller.

From a buyer's perspective:

The buyer or the surviving company receives the shares owned by the transferor company along with the liabilities and tax payables. It is common for the buyer to conduct tax due diligence to provide the buyer with information about the inherent tax liabilities and any outstanding tax disputes.

From a seller's perspective:

The seller or the transferor company transfers its shares to the surviving company.

The income from the difference between the transferred price and the original price of shares transferred can be considered as capital gain received by the transferor company.

In a share acquisition, the capital gain received by the seller is subject to CIT at a rate of 22%. If the seller is an individual then the capital gain received by the seller is subject to Individual Income Tax at a maximum rate of 35%.

b. Tax Attributes

Under the regulations of business mergers, carried forward losses of the transferor company will be expire at the time of acquisition.

c. Tax Grouping

There is no tax grouping in Indonesia.

d. Tax Free Reorganisations

There are no Tax Free Reorganisations in Indonesia.

e. Purchase Agreement

This section is left intentionally blank.



f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

The proceeds from sales of shares listed on the Indonesian stock exchange are subject to a final Withholding Tax ("WHT") at 0.1% of the gross sales consideration. An additional tax of 0.5% applies to the share value of founder shares at the time an initial public offering takes place, irrespective of whether the shares are held or sold. The shareholder may elect not to pay this tax, in which case the actual gain will be subject to CIT at the time the shares are sold. In addition, a nominal stamp duty of 10,000 Indonesian Rupiah is imposed on any notarial deeds, documents evidencing or recording the receipt of money and securities instruments.

g. Share Purchase Advantages

The share purchase is a straight forward action which requires a share valuation from the independent appraisal to determine the share price.

h. Share Purchase Disadvantages

The main disadvantage of the share purchase is to work out of any commercial liabilities and tax liabilities which transfer to the buyer. In the event of a tax audit, the tax liabilities may increase and the dispute resolutions may take up to five years until the taxpayer receive the final decision.

4. ASSET ACQUISITION

a. General Comments

Article 10 paragraph 3 of Law No.36 of 2008 on Income Tax - as amended by Law No.7 of 2021 - states that the acquisition value or transfer of assets during a liquidation, merger, consolidation, expansion, division or acquisition shall be the amount that should be incurred or received based on the market price, unless otherwise stipulated by the Minister of Finance.

Under this article, in principle, if there is any transfer of assets, the value of the transferred assets shall be based on the market price. Such transfers may be conducted for business expansion in the form of a merger, consolidation, expansion, division or acquisition. In addition, such transfers may be conducted for business liquidation or other reasons. The difference between the market price and the remaining book value of the transferred property shall be the income on which tax may be levied.

From a buyer's perspective:

The acquirer, or the surviving company, will receive transferred assets from the transferor company.

A transfer of land and building rights will typically also give rise to duty on the acquisition of land and building rights (Bea Pengalihan Hak atas Tanah dan Bangunan, "BPHTB") liability for the surviving company as the party receiving or obtaining the rights.

The acquisition of rights over land and buildings transferred in the context of a business merger is subject to BPHTB at a rate of 5% on the transfer value.

From a seller's perspective:

The difference between the sales price and the remaining book value of the transferred assets (other than land and building) shall be the income of the surviving company subjected to Corporate Income Tax ("CIT") at a rate of 22%.

Transfers of assets in the form of land and buildings are subject to Final Income Tax at a rate of 2.5% on the transfer value. Final Tax is imposed on the transferor company or the seller.

b. Purchase Price Allocation

The value of the transferred assets in the framework of merger or acquisition shall be the amount based on the market price, unless otherwise stipulated by the Minister of Finance.

Market value of the assets may be stipulated by an appraisal service provider licensed by the Government. If the market value stipulated by the appraiser clearly does not reflect the actual condition, the Director General of Taxation shall recalculate the market value or fair value of such assets.

Transfers of assets in business mergers, consolidations, splits, or acquisitions must generally be dealt with at market value. Gains resulting from this kind of restructuring are assessable, while losses are generally claimable as a deduction from income.



c. Tax Attributes

In general, gains resulting from the transfer of assets are subject to CIT at a rate of 22%. Likewise, losses arising from the transfer of assets are tax deductible. The gain or loss from the transfer is calculated from the proceeds minus the book value of the asset.

Transfers of assets in the form of land and buildings are subject to Final Income Tax at a rate of 2.5% on the transfer value. Final Tax is imposed on the transferor company / the seller.

The acquisition of rights over land and/or buildings is subject to BPHTB. BPHTB is based on the Tax Object Acquisition Value (Nilai Perolehan Objek Pajak/NPOP), which in most cases is the higher of the market (transaction) value or the Sales Value of Taxable Object (Nilai Jual Objek Pajak, "NJOP") of the land and building rights concerned. The tax due on a particular event is determined by applying the applicable duty rate of a maximum of 5% to the relevant NPOP, minus an allowable non-taxable threshold. The non-taxable threshold amount varies by region. The minimum is IDR80 million, except in the case of an inheritance, which starts at IDR300 million. The Government may change the non-taxable threshold as per regulations.

d. Tax Free Reorganisations

A tax neutral merger or consolidation, under which assets are transferred at book value, can be conducted but is subject to the approval of the DGT. Upon submission of the request to the DGT, the taxpayer shall complete a certain list of documents and pass a business purpose test.

e. Purchase Agreement

This section is left intentionally blank.

f. Depreciation and Amortisation

Depreciation or amortisation of assets which are received by taxpayers who use book value for the transfer of assets in the context of a merger, consolidation, expansion, or takeover, after obtaining approval of the Director General of Taxation, shall be performed based on the remaining useful life as indicated in bookkeeping of the party which transfers the assets.

Expenses related to business establishment or expansion can either be claimed as an expenses during the year or amortised. Pre-operational expenses with a useful life of more than one year should be capitalised and amortised accordingly.



g. Transfer Taxes, VAT

Article 1A paragraph 2 letter d of Value Added Tax ("VAT") Law No.42 of 2009, as last amended by Law No.7 of 2021, stipulates that delivery of taxable goods in the framework of a business merger, consolidation, expansion, spin-off or acquisition is not included in the definition of delivery of taxable goods. Thus, the transfer of assets in the context of merger and acquisition is not subject to VAT.

h. Asset Purchase Advantages

The historical risks and liabilities of the company are transferred to the acquirer company. Transfers of assets in the context of merger and acquisition are not subject to VAT as described above.

i. Asset Purchase Disadvantages

An acquirer potentially faces the greater duty liability of a business sale. The transferor company is likely to strongly favour a share sale, and this may impact the commercial negotiation of the deal.



5. ACQUISITION VEHICLES

a. General Comments

There are no restrictions on the buyer side. However, a foreign investor shall be evaluated by the Indonesian Investment Coordinating Board (Badan Koordinasi Penanaman Modal or "BKPM") on the proposed investment during the establishment of a foreign investment company. If a foreign company wishes to acquire an existing Indonesian company, the foreign company shall verify whether the line of business of the existing Indonesia company is open for foreign investment.

b. Domestic Acquisition Vehicle

This section is left intentionally blank.

c. Foreign Acquisition Vehicle

This section is left intentionally blank.

d. Partnerships and joint ventures

The formation of a joint venture ("JV") is a co-operative effort carried out by two or more companies. The JV development process produces a new business entity whose position is separate from the type of business of the companies involved in it. The new entity formed by the JV can be in the form of a limited liability company, corporation, or partnership. Each party who is a member of a JV is responsible for losses, costs, or profits that occur as a result of the JV's business activities.

Domestic and foreign investment made in the form of a limited liability company is carried out by taking a share of shares at the time of establishment of the limited liability company.

Joint ventures are considered to have investment activities from both foreign and domestic capital. Joint venture activities involving foreign capital are considered as Foreign Investments ("PMA"). On the other hand, joint venture activities involving domestic companies are considered as Domestic Investment ("PMDN").

In Indonesia, there is no law that explicitly discusses the regulation of joint ventures. However, implicitly, joint ventures are covered by Law No.25 of 2007 concerning Investment.

Merger activity in Indonesia is not typically undertaken using unincorporated JVs or partnerships in which there is a co-operation or establishment of a new business activity or project that takes place within a certain period of time.

e. Strategic vs Private Equity Buyers

This section is left intentionally blank.

6. ACQUISITION FINANCING

a. General Comments

An acquisition funded by a loan is subject to a debt to equity Ratio ("DER") of 4:1. A taxpayer that obtains a loan and would like to use the relevant interest as a deduction is required to submit the DER calculation report. If the loan is from overseas, the taxpayer has to attach a report on the foreign loan along with the Corporate Income Tax ("CIT") return submission.

b. Foreign Acquirer

Shareholders in a Limited Liability Company ("PT") may decide to sell all or part of their shareholding to foreign investors or foreign companies. However, the status of the legal entity must be changed to become a Foreign Investment Company ("PMA").

The legal position of a non-PMA company after its shares are purchased or acquired by a Foreign Citizen ("WNA") or a Foreign Legal Entity is that the non-PMA company turns into a PMA company, but only after the administrative requirements have been met, including an application for a change of status to the Head of BKPM.

The foreign investor must be in the form of a legal entity and it must meet one of the criteria specified in the Investment Law.

In addition to the minimum authorised capital requirement of IDR10 billion, a PT or PMA is also required to deposit 25% of the capital, or IDR2.5 billion, as paid-in capital. This paid-in capital can then be used for all PT and PMA business activities.

c. Debt

Other than the requirement of a debt to equity ratio (DER) of 4:1 as referred to above, taxpayers that have foreign private debts must report the amount of those debts to the Director General of Taxation. If the taxpayer does not deliver a report, the costs of the loan payable on the foreign private debts cannot be deducted in calculating taxable income.

Debts shall be taken as the average balance of debts in one fiscal year or in part of a fiscal year, calculated based on the average balance of debts at the end of every month in the related fiscal year or average balance of debts at the end of every month in part of the related fiscal year. The balance of debts shall cover the balance of long term debts or balance of short term debts including the balance of account payable, which is charged with interest.

If a loan is procured from a related party, the taxpayer also has to ensure that interest charged is on an arm's length basis. Otherwise, the interest can be deemed to be a dividend distribution.



i Limitations on Interest Deductions

In the event that the debt to equity ratio of a taxpayer exceeds 4:1, the interest that can be deducted for income tax purposes as a part of the costs of the loan shall be limited to the amount of interest up to the debt to equity ratio. For taxpayers who show zero or a deficit in their equity balance, the entire borrowing costs are not tax deductible.

Interest expenses on loans used to buy shares where dividends to be received are not subject to income tax are also not deductible.

ii Related Party Debt

In the case of a loan that is procured from a related party, the taxpayer also has to ensure that the interest charged is on an arm's length basis. Otherwise, the interest can be deemed to be a dividend distribution.

iii Debt Pushdown

It is not common practice in Indonesia to achieve debt pushdown, for example by borrowing to distribute dividends, since it may reduce the debt to equity ratio.

d. Hybrid Instruments

This section is left intentionally blank.

e. Other Instruments

This section is left intentionally blank.

f. Earn-outs

This section is left intentionally blank.

7. DIVESTITURES

a. Tax Free

Generally, transfers of assets in relation to business mergers, consolidations, expansions, or acquisitions, must be conducted at market value. Gains resulting from this kind of restructuring are assessable, while losses are generally claimable as a deduction from income.

However, a tax neutral merger, consolidation, or acquisition under which assets are transferred can be conducted at fiscal book value, subject to the approval from the Directorate General of Taxes ("DGT"). The Taxpayer shall submit the request letter at the latest of six months after the effective date. The DGT shall issue the approval or the rejection at the latest of one month after the request letter is considered complete.

Assets, including cash, received by an entity in exchange for shares or capital contributions are considered as income that is exempted from income tax.

b. Taxable

Sales of shares listed on the Stock Exchange are subject to Final Income Tax. Sales of non-founders' shares are subject to 0.1% of the gross transaction amount. Sales of founders' shares are subject to 0.1% of the gross transaction amount and an additional 0.5% tax rate from the share price at the Initial Public Offering.

Please also refer to point 3.f above.

c. Cross Border

Taxpayers are required to withhold Income Tax on sales of shares in a non-listed company in Indonesia to non-Indonesian tax residents.

Indonesia's Double Taxation Agreements ("DTAs") provide for tax benefits in the form of Withholding Tax ("WHT") rates on dividends, interest, royalties and branch profits received by tax residents of its treaty partners.

The WHT rate could be reduced in accordance with the applicable DTA provided that the foreign party or non-resident provides a valid Certificate of Domicile ("CoD") as stipulated in the Attachment of DGT Regulation No.PER-25/PJ/2018, to the ITO through the Indonesian party paying the income. Without this document, the party is not entitled to the tax benefit and tax is withheld at a rate of 20%.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Indonesian tax residents are taxed on their worldwide income, with certain exceptions for qualifying individual tax residents. Non-Indonesian tax residents are taxed only on income sourced from Indonesia, including income attributable to permanent establishments ("PE") (Bentuk Usaha Tetap (PEs)) in Indonesia.

b. CFC Regime

Certain income of Controlled Foreign Companies ("CFCs") is subject to deemed dividend rules in Indonesia.

A CFC is defined as:

(i) Direct CFC: A non-listed foreign company in which at least 50% of its paid-in capital is contributed by an Indonesian taxpayer; or at least 50% of its paid-in capital is collectively contributed by an Indonesian taxpayer with other Indonesian taxpayers.

(ii) Indirect CFC: A non-listed foreign company in which at least 50% of its paid-in capital is contributed/collectively contributed by:

- An Indonesian taxpayer and other direct CFCs and/or indirect CFCs;
- An Indonesian taxpayer and other Indonesian taxpayers through direct CFCs and/or Indirect CFCs; or
- Direct CFCs and/or indirect CFCs.

The ownership threshold that is used to determine the CFC status is the ownership percentage at the end of the Indonesian taxpayer's fiscal year, which is based on either the percentage of paid-up capital or the percentage of paid-up capital with voting rights. The period of recognition of deemed dividends by Indonesian taxpayers is four months after the due date of income tax return filing for the CFC. If the CFC does not have an obligation to file its Income Tax return, the period of recognition of deemed dividends will be seven months after the end of the tax year.

The only situation in which the rules do not apply is when the CFC's shares are listed on a stock exchange.

c. Foreign Branches and Partnerships

A company is considered as a resident of Indonesia for tax purposes by virtue of being incorporated or domiciled in Indonesia. A foreign company carrying out business activities through a PE in Indonesia will generally have to meet the same tax obligations as a resident taxpayer. A foreign corporate carrying certain business activities in Indonesia over the PE time test within a period of 12 months shall be regarded to exist in Indonesia through a PE and has to register for an Indonesian tax identification number ("NPWP").

The taxable business profit of a PE is calculated on the basis of normal accounting principles as modified by certain tax adjustments. Generally, a deduction is allowed for all expenditures incurred to obtain, collect and maintain taxable business profits. A timing difference may arise if an expenditure recorded as an expense for accounting cannot be immediately claimed as a deduction for tax.



d. Cash Repatriation

The following are examples of offshore income that may be exempted from income tax if it is reinvested or used for business activities in Indonesia within three years :

- Income received by an Indonesian taxpayer from a PE abroad;
- Dividends paid by foreign companies; and
- Active business income received by an Indonesian taxpayer from abroad (not from a PE of foreign subsidiary).

For after-tax income from a PE and dividends paid from the non-listed subsidiary, the minimum reinvestment amount is 30% of the profit after tax. Otherwise, the difference between the 30% threshold and the reinvested portion will be subject to income tax.

In principle, dividend income received by a resident taxpayer from a domestic liability company (generally referred to as Perseroan Terbatas or "PT") is taxable as ordinary income for the taxpayer receiving the dividend. However, it becomes non-taxable if the recipient is a domestic corporate taxpayer or a domestic individual taxpayer whose dividends are reinvested in Indonesia within a certain period. Where the recipient is not resident in Indonesia, a WHT rate of 20% applies, subject to variation under tax treaties.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

As per point 4.c above, transfers of assets in the form of real property such as land and buildings in the context of M&A are subject to Final Income Tax at a rate of 2.5% on the transfer value.

b. CbC and Other Reporting Regimes

Indonesia has implemented the country by country ("CbC") reporting obligation.

Taxpayers under the following criteria must prepare transfer pricing documentation, namely Master file, Local file and CbC report:

- A taxpayer constituting a parent entity of a business group with consolidated gross income in the tax year in question of at least IDR11 trillion;
- A domestic taxpayer who is a member of a business group where the parent entity of the business group is a foreign tax subject, where the country or jurisdiction in which the parent entity is domiciled:
  - (a) Does not obligate the delivery of CbC reports;
  - (b) Does not have any agreement with the Government of Indonesia on the exchange of taxation information; or
  - (c) Has an agreement with the Government of Indonesia on the exchange of taxation information, but the CbC reports cannot be obtained by the Government of Indonesia from such country or jurisdiction.

The Master file and Local file must be available if requested by the DGT, while the summary must be attached to the CITR of the tax year concerned. The notification of the CbC reporting obligation and the CbC report itself (if required) must be submitted to the tax office within 12 months of the end of a tax year.

10. TRANSFER PRICING

Since 2010, the Directorate General of Taxes ("DGT") has issued guidelines and regulations to provide greater certainty to business on transfer pricing rules.

The DGT is authorised to adjust taxpayers' incomes or expenses, where transactions with related parties are not in accordance with "fair and common business practices". A related party transaction is deemed to exist in the following circumstances:

(a) Where a taxpayer directly or indirectly holds 25% or more of the capital of another taxpayer, or where a company holds 25% or more of the capital of two taxpayers, in which case the latter two taxpayers are also considered as related parties;

(b) Where there is a control through management or the use of technology, even though ownership relations are not present; or

(c) Where there is a family relationship, either biological or by marriage, in vertical and/or horizontal lineage of the first degree.

Corporate taxpayers are required to disclose their related party transactions in a separate attachment to the Corporate Income Tax ("CIT") return which includes various information, such as the type of transactions, nature of relationship, a questionnaire on documentation prepared to support the arm's length principle implementation, as well as transactions with parties from so called, "tax haven" countries.

Indonesia adopts the OECD transfer pricing model and related party transactions are subject to arm's length requirements and substantiation. If the arm's length principle is not followed, the DGT is authorised to recalculate the taxable income or deductible costs arising from such transactions applying the principle.

Under the General Tax Provisions and Procedures Law, the Government requires specific transfer pricing documentation to prove the arm's length nature of related party transactions.

In principle, the Indonesian transfer pricing rules put the onus on taxpayers to undertake a transfer pricing analysis with regard to their transactions with related parties, to ensure that the transactions conform to the arm's length principle. This involves, inter alia, conducting a comparability analysis and determining the comparable transactions; identifying the most appropriate transfer pricing method; and applying the arm's length principle based on the result of the comparability analysis and the most appropriate transfer pricing method. The rules also outline specific requirements for intragroup services and intangible transactions.

Although there are no specific transfer pricing regulations related to mergers, if the merger transaction is required to use the prevailing market value, the value should be based on the arm's length price.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

This section is left intentionally blank.

b. Use of Hybrid Instruments

This section is left intentionally blank.

c. Principal/Limited Risk Distribution or Similar Structures

Taxation rights and obligations of a taxpayer that transfers assets in the context of a merger or acquisition for a tax period, part of a fiscal year, and/or a fiscal year prior to merger or acquisition, shall be transferred to a taxpayer that receives the transfer of assets in the context of a merger or acquisition.

d. Intellectual Property

In accordance with the DGT Regulation No. PER-32/PJ/2011, the transfer of an intellectual property between related parties must comply with the arm's length principle. The company must determine the arm's length of the transaction value by applying the most appropriate transfer pricing method.

Under the Income Tax Law No.36 of 2008, as most recent amended by Law No.7 of 2021, intellectual property is classified as intangible assets with a useful life more than one year. It should be amortised using the straight line or the double declining balance method. The amortisation rates specified in categories 1, 2, 3, and 4 are based on the useful life of the property. Classification into an appropriate category is determined on the basis of the nearest useful life. If an intangible asset has a useful life of more than 20 years, the amortisation can be carried out using the straight line method using a 20 year period or the actual useful life based on the taxpayer's bookkeeping.

e. Special Tax Regimes

The depreciation or amortisation of assets which are received shall be performed based on the remaining useful life as indicated in bookkeeping of the party which transfers assets.

12. OECD BEPS CONSIDERATIONS

The Indonesian Government signed the Multilateral Convention in Paris on 7 June 2017. In December 2019, Indonesia became one of the countries to sign the Multilateral Instrument ("MLI"), together with 92 other countries. In this ratified document, Indonesia has 47 tax treaties to be covered by the convention. In general, the MLI would not terminate the pre-existing tax treaties. Instead, it would aim to accomplish a synchronised and integrated application of the MLI provisions and bilateral tax treaties related to BEPS. The MLI will modify automatically some articles in tax treaties, while some will remain unchanged. There are minimum standard articles that should be followed or modified by countries signing the MLI.

This MLI came into force on 1 August 2020. Indonesia submitted notification to OECD (as the depositary of the MLI) to confirm the completion of internal procedures for the tax treaty on 26 November 2020.

13. ACCOUNTING CONSIDERATIONS

A taxpayer that receives a transfer of assets in the context of a merger, consolidation, expansion, or takeover shall record the acquisition value of the assets in accordance with the book value as indicated in the bookkeeping of the transferor.

The book value shall be:

(a) The acquisition value reduced by accumulated depreciation or accumulated amortisation, for assets which are depreciated or amortised; or

(b) The acquisition value for assets which are not depreciated or amortised.

Depreciation or amortisation of assets received shall be performed based on the remaining useful life as indicated in the bookkeeping of the party that transfers assets.

In the event that there are accounts payable or receivable between the taxpayer that transfers assets and the taxpayer that receives the assets in the context of a merger, consolidation, or takeover, they shall be recorded by offset. Incomes on the nullification of accounts payable, and the costs of nullification of accounts receivable, shall not be booked.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

This section is left intentionally blank.

b. Application of Regional Rules

The major income tax incentives available for Indonesian corporate taxpayers are:

Tax holiday facility

A tax holiday is available for a new investment or business expansion in certain pioneer industries. The Ministry of Finance ("MoF") may provide an avenue for a Corporate Income Tax ("CIT") reduction of 50% or 100% of the CIT due for 5-20 years from the start of commercial production, depending on the investment value.

After the period for which the CIT reduction is granted, the taxpayer will be given a CIT reduction of 25% or 50% of CIT payable for the following two fiscal years, depending on the investment value.

This facility is provided to firms in pioneer industries, which provide additional value and high external benefits, introduce new technologies, and have strategic value for the national economy. Currently this facility is available for business sectors with specific Indonesian Standard Classification of Business Field ("KBLI") as listed in regulations. Business sectors outside this list may also apply by using the self-assessed quantitative scoring system to justify their status as a pioneer industry.

Tax allowance facility

A tax allowance facility is applicable for the new investment or expansion of a corporate taxpayer's main business activities. This facility is available to companies with a specified minimum level of capital investment in certain industry sectors, or those operating in certain designated business areas or in certain geographic locations where the necessary requirements are satisfied.

The tax allowance facility includes:

- A reduction in taxable income of up to 30% of the total investment amount of tangible fixed assets, including land used for primary business activities, pro-rated at 5% for six years of the commercial production, provided that the assets invested are not transferred out within six years;
- Accelerated depreciation and/or amortisation;
- Tax loss carry forward which may be extended for up to 10 years, and
- A reduced Withholding Tax ("WHT") rate of 10% (or lower if treaty relief is available) on dividends paid to a non-resident.

To obtain the facility, the applicant must meet the following criteria:

- High investment value or export purpose;
- High absorption of manpower; or
- High local content.



Super Tax Deduction facility

A Super Deduction Tax is given to industries in Indonesia involved in vocational education programmes, including research and development activities to generate innovation.

Domestic corporate taxpayers can obtain two types of incentives depending on the type of activity carried out. Domestic corporate taxpayers who organise internships will get a tax deduction of a maximum of 200% of the total costs incurred for these learning activities. Meanwhile, for domestic corporate taxpayers conducting certain research and development activities, the business entity will receive a maximum gross income reduction of 300% of the amount incurred.

CIT facilities in special economic zone ("SEZ")

SEZ business entities can obtain a reduction of corporate income tax of 100% of the total tax stated in the investment provisions of IDR100 billion to IDR500 billion. This incentive is given for 10 tax years. However, if a business entity invests between IDR500 billion and IDR1 trillion, the CIT reduction facility is given for 15 years. A business entity can obtain a reduction of CIT for 20 years if the investment value is more than IDR1 trillion.

After the end of the incentive period, the government still provides a 50% reduction on the CIT payable for the next two tax years. In addition to a 100% CIT discount, the government also offers income tax facilities for investment in certain business fields and/or certain areas.

This incentive is provided in the form of a 30% reduction in net income from the total investment for six years, accelerated depreciation and amortisation, the imposition of income tax on dividends paid to foreign taxpayers of 10%, and compensation for losses for 10 years.

Reinvestment of branch profits

After-tax profits are subject to a WHT of 20%, regardless of whether the profits are remitted to the home country. However, a concessional WHT rate may be applicable where a tax treaty is in force. The branch profit tax may be exempted if a PE reinvests the profits entirely in Indonesia within the same year, or no later than the following year in certain investment options within a certain period.

Tax facility for venture capital company investment in small and medium enterprises

The dividends received by a venture capital company from capital participation in a micro, small, or medium sized enterprise, of which the shares are not traded on the Indonesian Stock Exchange, with certain requirements, are non-taxable.



c. Tax Rulings and Clearances

A tax merger or consolidation, under which assets are transferred, can be conducted at book value with the approval of the DGT.

The merger or acquisition at book value can be conducted by maintaining the survival of the company that has no remaining fiscal loss or has the smaller remaining fiscal loss. In case the surviving entity and the dissolving entity have no remaining fiscal losses, the taxpayer could choose which will be the surviving entity between the two merging companies.

A taxpayer which performs a transfer or which receives a transfer of assets in the context of a merger or acquisition by using book value shall be obligated to meet the following conditions:

(i) It files an application to the Director General of Taxation no later than six months after the effective date of the merger, consolidation, expansion, or takeover, by attaching the reasons and purposes of the merger, consolidation, expansion, or takeover;

(ii) It meets the conditions of the business purpose test; and

(iii) It obtains a fiscal certificate from the Director General of Taxation for every related resident corporate taxpayer and permanent establishment ("PE").

15. MAJOR NON-TAX CONSIDERATIONS

This section is left intentionally blank.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends % [A]	Interest % [B]	Royalties % [C]	Footnote Reference
Algeria	15	15	15	
Armenia	10 / 15	10	10	[1]
Australia	15	10	10 / 15	[2]
Austria	10 / 15	10	10	[3]
Bangladesh	10 / 15	10	10	[4]
Belarus	10	10	10	
Belgium	10 / 15	10	10	[5]
Brunei	15	15	15	
Bulgaria	15	10	10	
Cambodia	10	10	10	
Canada	10 / 15	10	10	[6]
China	10	10	10	
Croatia	10	10	10	
Czech Republic	10 / 15	12.5	12.5	[7]
Denmark	10 / 20	10	15	[8]
Egypt	15	15	15	
Finland	10 / 15	10	10 / 15	[9], [10]
France	10 / 15	10 / 15	10	[11], [12]
Germany	10 / 15	10	10 / 15	[13], [14]
Hong Kong	5 / 10	10	5	[15]
Hungary	15	15	15	
India	10	10	10	
Iran	7	10	12	
Italy	10 / 15	10	10 / 15	[16], [17]
Japan	10 / 15	10	10	[18]
Jordan	10	10	10	
Kuwait	10	5	20	
Laos	10 / 15	10	10	[19]

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Jurisdiction	Dividends % [A]	Interest % [B]	Royalties % [C]	Footnote Reference
Luxembourg	10 / 15	10	12.5	[20]
Malaysia	10	10	10	
Mexico	10	10	10	
Mongolia	10	10	10	
Morocco	10	10	10	
Netherlands	5 / 10 / 15	5 / 10	10	[21], [22]
New Zealand	15	10	15	
North Korea	10	10	10	
Norway	15	10	10 / 15	[23]
Pakistan	10 / 15	15	15	[24]
Papua New Guinea	15	10	10	
Philippines	15 / 20	10 / 15	15	[25], [26]
Poland	10 / 15	10	15	[27]
Portugal	10	10	10	
Qatar	10	10	5	
Romania	12.5 / 15	12.5	12.5 / 15	[28], [29]
Russia	15	15	15	
Serbia	15	10	15	
Seychelles	10	10	10	
Singapore	10 / 15	10	8 / 10	[30], [31]
Slovakia	10	10	10 / 15	[32]
South Africa	10 / 15	10	10	[33]
South Korea	10 / 15	10	15	[34]
Spain	10 / 15	10	10	[35]
Sri Lanka	15	15	15	
Sudan	10	15	10	
Suriname	15	15	15	
Sweden	10 / 15	10	10 / 15	[36], [37]
Switzerland	10 / 15	10	10	[38]

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Jurisdiction	Dividends % [A]	Interest % [B]	Royalties % [C]	Footnote Reference
Syria	10	10	15 / 20	[39]
Taiwan	10	10	10	
Tajikistan	10	10	10	
Thailand	15 / 20	15	15	[40]
Tunisia	12	12	15	
Turkey	10 / 15	10	10	[41]
Ukraine	10 / 15	10	10	[42]
United Arab Emirates	10	7	5	
United Kingdom	10 / 15	10	10 / 15	[43], [44]
United States	10 / 15	10	10	[45]
Uzbekistan	10	10	10	
Venezuela	10 / 15	10	20	[46]
Vietnam	15	15	15	
Zimbabwe	10 / 20	10	15	[47]

Footnotes	
[A]	The Indonesian domestic withholding tax rate ("WHT") for dividends paid to non-resident recipients is 20%. The tax rate may be lowered subject to the applicable tax treaty benefits.
[B]	The Indonesian domestic WHT rate for interest, including premiums, discounts and guarantee fees paid to or earned by non-resident recipients is 20%. Interest income from bonds paid to or earned by non-resident recipients is subject to a WHT rate of 10%. This rate is applicable to bonds issued by the government and non-government agencies, including sharia bonds. The tax rate may be lowered subject to the applicable tax treaty benefits.
[C]	The Indonesian domestic WHT rate for royalties paid to non-residents is 20%. The tax rate may be lowered subject to the applicable tax treaty benefits.
[1]	Dividend – maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company which holds directly at least 25% of the equity capital of the paying company.
[2]	Royalties – maximum rate of 15%. 10% rate applies to the gross amount of royalties for the use of, or the right to use, industrial, commercial or scientific equipment, the supply of scientific, technical industrial or commercial knowledge, and the supply of ancillary assistance relating to such equipment.
[3]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company which holds directly at least 25% of the capital of the paying company.

Footnotes	
[4]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company which holds directly at least 10% of the capital of the paying company.
[5]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company which holds directly at least 25% of the capital of the paying company.
[6]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company which holds directly at least 25% of the capital of the paying company.
[7]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company which holds directly at least 20% of the capital of the paying company.
[8]	Dividend – maximum rate of 20%. 10% rate applies to the gross amount of the dividends paid to a company (excluding a partnership) which holds directly at least 25% of the capital of the paying company.
[9]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company (other than a partnership) which holds directly at least 25% of the capital of the paying company.
[10]	Royalties – maximum rate of 15% of the gross amount of royalties for the use of, or the right to use, any patent, trademark design or model, plan, secret formula or process, or any industrial, commercial, or scientific equipment, information concerning industrial, commercial, or scientific experience. 10% rate applies to the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, and films or tapes for television or radio broadcasting.
[11]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company which holds directly at least 25% of the capital of the paying company.
[12]	Interest – maximum rate of 15%. 10% rate applies to the amount of interest paid by a bank, a financial institution or by an enterprise the activities of which are mainly carried on in the fields of agriculture, plantation, forestry, fishery, mining, manufacturing, industries, transportation, low cost housing projects, tourism and infrastructure and the amount of interest paid to a bank or to another enterprise.
[13]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company (excluding a partnership) which holds directly at least 25% of the capital of the paying company.
[14]	Royalties – maximum rate of 15% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, and films or tapes for television or radio broadcasting, any patent, trademark, design or model, plan, secret formula or process. 10% rate applies to the gross amount of royalties for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.
[15]	Dividend - maximum rate of 10%. 5% rate applies to the gross amount of the dividends paid to a company (other than a partnership) which holds directly at least 25% of the capital of the paying company.
[16]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company (other than a partnership) which holds directly at least 25% of the capital of the paying company.
[17]	Royalties – maximum rate of 15% of the gross amount of royalties. 10% rate applies to the gross amount of royalties for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.
[18]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company which holds directly at least 25% of the voting shares of the paying company.



Footnotes	
[19]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company (other than a partnership) which holds directly at least 10% of the capital of the paying company.
[20]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company (other than a partnership) which holds directly at least 25% of the capital of the paying company.
[21]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a pension fund that is recognised and controlled according to the statutory provisions of one of the two countries and the income of which is generally exempt from tax in the country according to whose statutory provisions it is recognised and controlled. 5% rate applies to the gross amount of the dividends paid to a company (other than a partnership) which holds directly at least 25% of the capital of the paying company.
[22]	Interest – maximum rate of 15%. 5% rate applies to interest paid on a loan made for a period of more than two years or is paid in connection with the sale on credit of any industrial, commercial or scientific equipment.
[23]	Royalties – maximum rate of 15% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, and films or tapes for television or radio broadcasting. 10% rate applies to the gross amount of royalties for the use of, or the right to use, any patent, trademark design or model, plan, secret formula or process, or any industrial, commercial, or scientific equipment, information concerning industrial, commercial, or scientific experience.
[24]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company which holds directly at least 25% of the capital of the paying company.
[25]	Dividend - maximum rate of 20%. 15% rate applies to the gross amount of the dividends paid to a company which holds directly at least 25% of the capital of the paying company.
[26]	Interest – maximum rate of 15%. 10% rate applies to interest paid by a company in respect of public issues of bonds, debentures or similar obligations.
[27]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company which holds directly at least 20% of the capital of the paying company.
[28]	Dividend - maximum rate of 15%. 12.5% rate applies to the gross amount of the dividends paid to a company which holds directly at least 25% of the capital of the paying company.
[29]	Royalties – maximum rate of 15% of the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work. 12.5% rate applies to the gross amount of royalties for the use of, or the right to use, any patent, trademark design or model, plan, secret formula or process, or for information concerning any industrial, commercial or scientific experience, or for the use of, or the right to use, industrial, commercial or scientific equipment, cinematograph films or tapes for television or broadcasting.
[30]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company which holds directly at least 25% of the capital of the paying company.
[31]	Royalties – maximum rate of 10% of the gross amount of the royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process. 8% rate applies to the gross amount of royalties for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

Footnotes	
[32]	Royalties – maximum rate of 15% of the gross amount of the royalties for the use of, or the right to use, any copyright, patent, software, design or model, plan, secret formula or process, trademark or other like property or right, the use of, or the right to use, any industrial, commercial or scientific equipment, the supply of scientific, technical, industrial or commercial knowledge or information, and the supply of ancillary assistance relating to such property, equipment or knowledge. 10% rate applies to the gross amount of royalties for the use of, or the right to use, any copyright of motion picture films, films or tapes for television or radio broadcasting.
[33]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company which holds directly at least 10% of the capital of the paying company.
[34]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company (other than a partnership) which holds directly at least 25% of the capital of the paying company.
[35]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company which holds directly at least 25% of the capital of the paying company.
[36]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company (other than a partnership) which holds directly at least 25% of the capital of the paying company.
[37]	Royalties – maximum rate of 15% of the gross amount of the royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process. 10% rate applies to the gross amount of royalties for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
[38]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company (other than a partnership) which holds directly at least 25% of the capital of the paying company.
[39]	Royalties – maximum rate of 20% of the gross amount of the royalties for the use of, or the right to use, any patent, trademark, design or model, plan, or any industrial or scientific equipment, or for information concerning industrial or scientific experience. 15% rate applies to the gross amount of royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or tapes for television or radio broadcasting.
[40]	Dividend - maximum rate of 20%. 15% rate applies to the gross amount of the dividends if the company paying the dividends engages in an industrial undertaking.
[41]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company (excluding partnership) which holds directly at least 25% of the capital of the paying company.
[42]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company (other than a partnership) which holds directly at least 20% of the capital of the paying company.
[43]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company that controls, directly or indirectly, at least 15% of the voting power of the paying company.
[44]	Royalties – maximum rate of 15% of the gross amount of the royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films, and films or tapes for radio or television broadcasting, or any patent, know-how, trademark, design or model, plan, secret formula or process. 10% rate applies to the gross amount of royalties for the use of, or the right to use, any industrial, commercial or scientific equipment.



Footnotes	
[45]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company which owns directly at least 25% of the voting stock of the paying company.
[46]	Dividend - maximum rate of 15%. 10% rate applies to the gross amount of the dividends paid to a company (other than a partnership) which holds directly at least 10% of the capital of the paying company.
[47]	The Tax Treaty is not effective yet.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Merger plan approved by the board of commissioners of each company and approved by the general meeting of shareholders of each company that contain at least the following: (a) name and domicile of each company planning to conduct the merger (b) the reasons and explanation from the BOD of each company and the requirements for the merger (c) the procedures for the valuation and conversion of the transferor company's shares into the shares of the surviving company (d) the draft amendment of the articles of association of the transferor company, if any (e) the financial statement covering the last three financial years of each company intending to conduct the merger (f) continuing or winding-up plans for the business activities of the companies conducting the merger (g) the pro forma balance sheet of the company receiving the merger pursuant to the generally accepted financial accounting standards applicable in Indonesia (h) the settlement procedure for the status, rights and obligations of the members of the BOD, BOC, and the employees of each company conducting the merger (i) the settlement procedure for the rights and obligations of the merging company toward third parties (j) the settlement procedure for the rights of the shareholders who do not agree to conduct the merger (k) the names of the BOD and BOC members and the salary, honorarium and other allowances for the BOD and BOC members of the surviving company (l) an estimate of the duration of the merger implementation (m) report on the conditions, developments, and the results achieved by each company conducting the merger (n) the main activities of each company conducting the merger and the changes that have occurred during the current financial year (o) details of problems which have arisen during the current financial year affecting the activities of each company conducting the merger
2	Tax Due Diligence	General	Copy of Taxpayer Identity: Tax ID, Type of Business, Certificate of Registration ("SKT"), Taxable enterprise confirmation letter and VAT centralisation letter of the transferor and acquirer company.
3	Tax Due Diligence	General	USD Bookkeeping Approval Letter from the Indonesian Tax Office ("ITO") for each company (if the company maintain the bookkeeping in USD currency).

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Nº.	Category	Sub-Category	Description of Request
4	Tax Due Diligence	General	Details of any private binding ruling or advance opinion requests, decisions of the Tax Office in relation to any such ruling or advance opinion requests and objection or appeals against any ruling or assessment that have been instituted or are being contemplated by the transferor company.
5	Tax Due Diligence	General	Copies of any material correspondence with the Tax Office or other government agency responsible for Tax (audit notifications, information requests, objections, amended assessments etc.) during the last five financial years.
6	Tax Due Diligence	General	Chart/scheme of composition of organisation before and after merger/acquisition accompanied by composition of ownership of shareholders.
7	Tax Due Diligence	Income Tax	Copies of tax opinions, tax advice and tax position papers on structure, key transactions and significant issues.
8	Tax Due Diligence	General	Details of any loans advanced by or to the transferor company involving any shareholder (or their associates) of the transferor company or the parent of the transferor company.
9	Tax Due Diligence	General	Copy of independent appraisal report for assets of the transferor company.
10	Tax Due Diligence	General	Copy of announcement of merger/acquisition plan already published in Indonesian language daily newspapers circulating nationally.
11	Tax Due Diligence	Income Tax	Copy of financial statement audited by Public Accountant Office of the transferor company and the surviving company for five completed tax years.
12	Tax Due Diligence	Income tax	Details of any dividends paid by the transferor company.
13	Tax Due Diligence	Income tax	Copy of Tax Assessment Letter, Tax Court Decision, Tax Objection Decision, and Tax Dispute Decision for the transferor and acquirer company.
14	Tax Due Diligence	Income tax	Copies of transfer pricing documentation including Local file, Master file, and CbC report for each company for five completed tax years.
15	Tax Due Diligence	Income tax	Copies of final and signed income tax returns and its attachment with tax acknowledgment for each company for five completed tax years.
16	Tax Due Diligence	Income tax	Details of any intra-group dealings (including loan agreements, management agreements and group services agreements) or dealings with non-resident counterparties in relation to the application of transfer pricing which involves the transferor company.
17	Tax Due Diligence	Withholding Tax	Evidence of dividend, royalty and interest WHT compliance in relation to any payments to non-residents of Indonesia.
18	Tax Due Diligence	Employment taxes	Copies of Employee Income Tax Returns (Income Tax Art. 21) lodged by the transferor company for the past 12 months.
19	Tax Due Diligence	Employment taxes	Copies of the 1721-A1 form of the employees of the transferor company.
20	Tax Due Diligence	Employment taxes	Details of any employee share schemes (e.g. share plans, option plans, bonus plans) or other incentive arrangements available to employees (or their associates) of the transferor company.

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Nº.	Category	Sub-Category	Description of Request
21	Tax Due Diligence	International tax	Details of any overseas operations or investments of the transferor company (including any foreign permanent establishments, assets or personnel based overseas, details of how cash from these operations or investments is repatriated back to Indonesia and the Indonesian tax treatment of income derived offshore).
22	Tax Due Diligence	Stamp duty	Evidence that all agreement, notarial deed, land deed, and documents stating an amount of money with a nominal value of more than IDR5 million which mentions a receipt of money or contains acknowledgment that a debt has been fully or partly paid or calculated have been duly stamped.
23	Tax Due Diligence	General	Copy of document of merger/acquisition plan in the context of merger and acquisition conducted using book value.
24	Tax Due Diligence	Income Tax	Copy of the current tax fixed asset register for the target.
25	Tax Due Diligence	Income Tax	Copy of financial statement already audited by Public Accountant Office of the taxpayer transferring asset and the taxpayer receiving asset for the period that expires one day before the effective date in the context of merger or acquisition conducted using book value.
26	Tax Due Diligence	Income Tax	Copy of financial statement of pro forma per effective date of merger / acquisition reviewed/ analysed/ assessed by independent experts.
27	Tax Due Diligence	Income Tax	Projection of incomes and income tax payable before and after merger/acquisition in the context of merger or acquisition conducted using book value.
28	Tax Due Diligence	General	Explanation letter on details of calculation of estimated elimination inter-company (reciprocal accounts) conducted in the context of merger/acquisition in the context of merger or acquisition conducted using book value.
29	Tax Due Diligence	General	Copy of Approval Letter for Decision Letter on Principal Licence of merger/acquisition, or similar documents issued by authorised institution.
30	Tax Due Diligence	General	Registration of deed of merger/acquisition and deed of amendment to Articles of Association in List of Company in the context of merger or acquisition conducted using book value.
31	Tax Due Diligence	Income Tax	Statement letter and checklist in the context of business purpose test for merger/acquisition in the context of merger or acquisition conducted using book value.
32	Tax Due Diligence	Income Tax	List of compensation of losses of income tax of corporate taxpayers for the last five completed tax years for the transferor and surviving company.
33	Tax Due Diligence	Land tax	Copies of all land and building tax filings lodged by the transferor company for the past 12 months.

INDONESIA

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IRELAND

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1. INTRODUCTION

a. Forms of Legal Entity

There are a number of different legal entities which may be established in Ireland. In general, the most common form of legal entity used in an M&A context is a company.

The Companies Act 2014 introduced two new forms of private company to replace all existing private companies limited by shares:

- A new private company limited by shares ("LTD"), and
- A designated activity company ("DAC").

The LTD is the model company type under the Companies Act 2014. It has the advantage of simplified corporate governance measures that are not available to other company types. A DAC is the closest type of company to the old form of private company limited by shares.

The main difference between a DAC and a LTD is that the legal capacity of a DAC is limited by an object's clause, whereas a LTD has unlimited legal capacity.

Credit institutions, insurance undertakings and companies that have (or wish to have) debentures admitted to trading or listed on a market cannot be a LTD and must be a DAC if they wish to have the form of a private company limited by shares.

Shareholders who do not have a shareholder's agreement and who wish to ensure that the company in which they have invested continues to carry on a business only, rather than having unlimited capacity to carry on any business, may prefer the company to be a DAC rather than a LTD.

Aside from the private company limited by shares, other company types are public limited companies, companies limited by guarantee and unlimited companies. Irish company law also allows for the establishment of a SE ("Societas Europaea") which is a European public limited company ("PLC").

Where a company is incorporated in Ireland on or after 1 January 2015, Irish tax legislation provides that such companies are deemed Irish tax resident. However, if an Irish incorporated company is considered tax resident in another country under the terms of a double taxation agreement the company will not be considered as an Irish tax resident. If a company is managed and controlled in Ireland it will be regarded as an Irish tax resident notwithstanding that it is not incorporated in Ireland.

There is no legislative definition of management and control but case-law has determined that it is typically the location of the board of directors' meetings and at which strategic policy decisions are made.

b. Taxes, Tax Rates

The rate of tax applicable to an Irish company's profits is dependent on the type of income earned by the company and whether the activities are considered to be trading (active) or passive.

A rate of 12.5% applies to the trading income of companies. A rate of 25% applies to non-trading income (i.e. passive income). 'Trade' is defined in the legislation as including 'every trade, manufacture, adventure or concern in the nature of a trade'. The legislation does not provide specific rules for distinguishing between trading and non-trading income. However, trading generally denotes activity with multiple transactions and employees based in Ireland who carry on that activity.

On 7 October 2021 the Irish Government approved the decision to join the OECD International Tax Agreement on the future of corporation tax which in time will result in an increase in the corporate tax rate to 15%. The European Commission has proposed a Directive for the implementation of this 15% rate at EU level. Notably, the 12.5% rate of corporation tax will continue to apply to trading businesses with revenues of less than EUR750 million.

c. Common divergences between income shown on tax returns and local financial statements

Generally, a company's taxable income will be calculated in line with the accounting treatment. The profit figure shown in the profit and loss account is adjusted, by adding back (disallowing) expenses which are not deductible for tax purposes (e.g. depreciation and amortisation), and by giving deductions which would otherwise not be given.

2. RECENT DEVELOPMENTS

Ireland has introduced several measures in recent years in light of developments taking place at an international level.

In particular, many legislative changes have been brought in to comply with EU law, including the EU Anti-Tax Avoidance Directives ("ATAD" and "ATAD 2") and to adopt the provisions recommended in the OECD BEPS Action Plan.

Like many governments around the world, Ireland also introduced various business support measures In response to the spread of COVID-19.

A summary of some of the main legislative measures which will be relevant from an M&A perspective are set out below. There has also been a recent ruling of the Irish Tax Appeals Commission ("TAC") which will be relevant where a takeover transaction is structured as a scheme of arrangement. We have included a summary of the decision below.

a. International tax measures

i Interest Limitation Rule

Ireland has introduced interest limitation rules in line with ATAD in Finance Act 2021 which was signed into law on 21 December 2021.

The interest limitation rules apply for accounting periods commencing on or after 1 January 2022 and apply in addition to the current rules relating to availability of interest relief on various interest payments.



The legislation applies to cap tax deductions for "exceeding borrowing costs" at 30% of EBITDA (earnings before interest, tax, depreciation and amortisation) (subject to certain exceptions). "Exceeding borrowing costs" are a company's interest (and interest equivalent) borrowing costs as reduced by its interest (and interest equivalent) income. The legislation specifies that "interest equivalent" amounts include (but are not limited to) discounts on the issue of securities, amounts under derivative or hedging arrangements connected with the raising of finance, foreign exchange movements on interest (or interest equivalents) and debt raising costs including guarantee, arrangement and commitment fees. All references to "interest" hereafter refer to interest inclusive of "interest equivalent" amounts.

At a high level the legislation provides that:

- Where the interest expenses of the relevant entity exceed the interest income of the relevant entity; and
- Where the amount by which the interest (expense exceeds interest income is greater than EUR3 million (the de minimis amount));

Then the deductible interest expense will be limited to 30% of the EBITDA of the relevant entity.

As such, at a high level, there is a full exemption from the interest limitation rules where the exceeding borrowing costs (i.e. the net interest expense) of the relevant entity does not exceed EUR3 million.

Once the EUR3 million de minimis threshold is breached, the entire amount of the exceeding borrowing costs is subject to the restriction (not just the amount in excess of the EUR3 million limit).

Certain amounts may be classed as "spare capacity" and carried forward for use in later periods.

Where the interest income of a relevant entity exceeds its interest expense in an accounting period, this excess is called "interest spare capacity". Additionally, where the amount by which the interest expense exceeds interest income is less than the 30%, this amount is called "limitation spare capacity".

The sum of interest spare capacity and limitation spare capacity is "total spare capacity" which may be carried forward for use within 60 months. In future years, where the 30% threshold is breached, the relevant entity may use the total spare capacity to increase the interest deduction available in that future year.

Additionally, where a portion of interest is not deductible as a result of the application of the interest limitation rule, that disallowed amount may be carried forward as a "deemed borrowing cost" and a deduction may be claimed for that amount in future years (subject to the relevant entity having sufficient capacity).

For the purposes of the legislation, companies may elect to be a member of an interest group allowing the calculations to be performed at group level. The main benefit associated with interest groups is that interest and spare capacity may be pooled between the group members. It is important to note that the EUR3 million de minimis limit applies to interest groups as a whole (and not on an individual member basis). Where an election is made to be a member of an interest group, a company cannot elect out of the group for three years.

There are two reliefs available which are dependent on the results of the worldwide group (essentially an accounting consolidation group of which the relevant entity is a part). These reliefs aim to prevent the restrictions applying to interest incurred on third-party debt where the interest costs are not disproportionately borne by the taxpayer.

- Group ratio: This relief considers the worldwide group's exceeding borrowing costs as a percentage of its EBITDA. Where the group ratio exceeds 30% for an accounting period of a relevant entity, the relevant entity may elect to replace the 30% limit with the group ratio for the purposes of calculating the allowable interest deduction. At a basic level, the group ratio is calculated as follows:

$$\frac{\text{amount by which group interest expenses exceed group interest income}}{\text{group EBITDA}}$$

This is calculated using the worldwide group's consolidated financial statements.

- Equity ratio: This relief compares the relevant entity's ratio of equity to assets to that of the worldwide group (using the same GAAP for the purposes of doing both calculations). If, when this calculation is applied, the relevant entity's ratio of equity to assets is 98% or more of the worldwide group's ratio, then the interest limitation rule is disapplied.

It should be noted that the group ratio and equity ratio referred to above cannot both be applied in the same accounting period.

There are also a number of noteworthy exemptions from the interest limitation rules as follows:

- There is a total exemption from the interest limitation rules for "standalone entities" being companies resident in Ireland that are not included in a financial statements group consolidation, have no "associated enterprises" (persons with a 25%+ equity relationship or voting rights or entitlement to 25%+ of the profits available on a distribution) and have no permanent establishments outside of Ireland.
- The legislation also contains an exemption for "legacy debt". The exemption only applies where the terms of the debt were agreed before 17 June 2016. However, where the principal was not drawn down by 17 June 2016, the exemption will only apply if there is a legal obligation on the lender to advance funds upon the happening of pre-determined milestones as set out in the terms agreed before 17 June 2016.
- The legislation also provides for an exemption for interest on debt used to fund certain long-term infrastructure projects being projects to provide, upgrade, operate or maintain a "large-scale asset" where the project operator is established and tax resident in an EU Member State, the large scale asset concerned is in an EU Member State and the income and the deductible interest equivalent costs relating to the project arise in an EU Member State.

Revenue guidance is expected to be published mid-2022 in respect of the operation of the interest limitation rules which should be informative as regards the practical application of the rules.

ii Exit charge

Finance Act 2018 introduced an ATAD compliant exit charge, replacing the pre-existing measures which had provided an exclusion for certain companies (those which were 90% owned by residents of a country with which Ireland has a double tax agreement).

The new charge which took effect from midnight on 10 October 2018 applies to unrealised capital gains by deeming a disposal to have occurred where companies migrate or transfer assets out of Ireland, without an actual disposal arising. The rate of exit tax is 12.5%. An anti-avoidance provision is included to ensure that a rate of 33% rather than 12.5% applies if the exit forms part of a transaction to actually dispose of the asset and the purpose of the exit is to ensure that the gain is charged at the lower rate.

The charge will not apply to assets that remain within the charge to Irish CGT, including Irish land, minerals or mineral rights, or shares that derive their value or the greater part of their value from such assets. The charge will also not apply to assets which continue to be used in Ireland by a permanent establishment of the company after the company migrated. There is also an exception for asset transfers relating to the financing of securities, or assets which are given as security for a debt, or where the transfer takes place to meet prudential capital requirements or for liquidity purposes, in each case where the asset is due to revert to the permanent establishment or company within 12 months of the transfer.

Under the new rules, an exit tax charge applies where:

- A company transfers assets from its permanent establishment in Ireland to its head office or to a permanent establishment in another country;
- A company transfers the business carried on by its permanent establishment in Ireland to another country; or
- An Irish resident company transfers its residence to another country.

iii Measures relating to hybrids

Ireland introduced anti-hybrid legislation following on from the extended measures relating to hybrids included in ATAD 2. The rules applied with effect from 1 January 2020 with the exception of the rules relating to "reverse hybrids", which applied from 1 January 2022.

The rules seek to prevent arrangements that exploit the differences in the tax treatment of an instrument or entity arising from the way in which that instrument or entity is characterised under the tax laws of two or more territories to generate a tax advantage or "mismatch outcome". A hybrid mismatch outcome arises due to differences in the tax characterisation, or the hybrid nature of, the instrument or entity. The rules require careful consideration of the tax treatment of transactions and entities in other territories.

Where the rules apply, a tax deduction or relief can be denied in respect of payments made by Irish-resident companies that give rise to a mismatch outcome. In certain specific circumstances, the provisions can also result in hybrid payments being subject to tax in Ireland where this would not otherwise be the case.

The rules apply to all corporate taxpayers and there is no de minimis threshold below which the rules do not apply.

If "check the box" elections are made in the US or a payment is made to a US LLC, these anti-hybrid rules will need to be carefully considered to ensure that the Irish company will be entitled to a deduction for payments, such as management charges or interest.

iv Transfer pricing

Ireland's transfer pricing regime was revised in Finance Act 2019 to align with the 2017 version of the OECD Transfer Pricing Guidelines (the "2017 OECD Guidelines"). The new measures applied from 1 January 2020 and extend the transfer pricing regime to cover arrangements which were previously excluded, including non-trading transactions, capital transactions and arrangements entered into pre-July 2010.

The Finance Act 2021 which was signed into law on 21 December 2021 contains new legislation which provides for the application of the "Authorised OECD Approach" in attributing income to an Irish branch of a non-resident company. These new provisions apply for accounting periods commencing on or after 1 January 2022. See section 10 below for further detail.

v CFC rules

A new controlled foreign companies ("CFC") regime was introduced in Finance Act 2018. The CFC rules apply to accounting periods beginning on or after 1 January 2019. See section 8.b. below for further details.

b. COVID-19 related measures

The Irish government was swift to introduce new measures to mitigate the effects of COVID-19 on business, including suspension of late payment interest and Revenue enforcement activity. Various grants have also been made available to businesses to help with cashflow difficulties.

A range of measures were brought in to provide financial support to Irish workers affected by the COVID-19 crisis. At the start of the crisis the Temporary Wage Subsidy Scheme ("TWSS") was introduced. This ended on 31 August 2020 and was replaced by the Employment Wage Subsidy Scheme ("EWSS"). The EWSS is a payroll subsidy scheme that applies from 1 September 2020 to 30 April 2022. There are a number of conditions which need to be complied with in relation to the measures and many of these are set out in frequently changing guidance rather than legislation. This is an area that is heavily scrutinised by Irish Revenue and as such it is a point which is worth bearing in mind from a due diligence perspective.

There were a range of other COVID-19 measures which were introduced by the Irish government which have now been largely withdrawn, but again would require consideration in tax due diligence processes as appropriate.

c. TAC Decision

In certain cases, shares of an Irish company can be transferred by way of a court approved "scheme of arrangement" under the Irish Companies Act 2014.

A scheme of arrangement typically results in 100% ownership of the target company transferring to the acquiring company. The former shareholders of the target company become shareholders of the acquiring company.

In a cancellation scheme of arrangement, the target company seeks the approval of its shareholders for the cancellation of their existing shares and the issue of new shares to the acquiring company. Some deals will also include a certain amount of cash consideration. The arrangement made between the target company and its shareholders must be sanctioned by the Irish High Court. In return, the shareholders receive consideration from the acquiring company.

This cancellation scheme of arrangement was not previously subject to stamp duty as it did not involve an actual transfer of shares to the acquiring company, despite the fact that the net effect was to transfer ownership of the target company. Where such an arrangement was used, there was no stampable instrument on which to impose a stamp duty charge.



However, Finance Act 2019 introduced a new anti-avoidance measure which sought to impose a stamp duty charge where there is an agreement to acquire a target company using a court approved scheme of arrangement in accordance with the Companies Act 2014 involving the cancellation of the target company's shares and the issue of new shares to the person acquiring the company.

The new legislation was brought in with effect from midnight on 9 October 2019. As such, from that date, Irish stamp duty applies to a scheme of arrangement. In general, a 1% stamp duty charge would arise (on the total value of the Irish company's shares) on the cancellation of shares pursuant to a scheme.

The new measure caught taxpayers by surprise and led to the imposition of stamp duty on some high value takeover transactions involving Irish companies. There were no transitional arrangements for schemes which had already been announced or which were proceeding through the necessary steps, such as the shareholder vote or the court order process.

One of the deals affected by the measure was Abbvie's USD63 billion (EUR52 billion) takeover of Allergan PLC. Abbvie took a case to the Tax Appeals Commission ("TAC", first tier tribunal) to appeal against the EUR587 million stamp duty which arose as a result of the new legislation. In a decision issued on 8 December 2020 and published on 13 January 2021, the Commissioner struck out the stamp duty assessment and effectively rewrote the new stamp duty law.

The Commissioner agreed that the new law needed to be interpreted in light of EU law, specifically Council Directive 2008/7/EC (the "Capital Taxes Directive") which (amongst other things) prohibits the imposition of any form of indirect tax on the restructuring operations of "capital companies" (a term which includes companies whose shares are listed on a stock exchange).

The Commissioner ultimately found that the assessment was contrary to and in breach of the Capital Taxes Directive. On that basis, the Commissioner adopted an interpretation of the new legislation which would conform with the Directive. She did this by including wording which states that the new stamp duty provision does not apply where the consideration received by the target company's shareholders consists, even in part, of shares. She also noted that if necessary, it would also be open to the TAC to disapply the new stamp duty legislation in its entirety.

The Commissioner also indicated that the lack of any transitional arrangements was problematic. In particular, the fact that the assessment sought to impose stamp duty retrospectively by deeming an agreement completed prior to the introduction of the legislation to be executed on a later date, was found to be unconstitutional. The Commissioner stated that the legislation would need to be interpreted in a way which did not unjustly interfere with Abbvie's property rights under the Constitution of Ireland.

Following the TAC decision, the stamp duty position in relation to schemes of arrangement is uncertain. Revenue is appealing the decision to the High Court and it will be some time before there is clarity on the point.

3. SHARE ACQUISITION

a. General Comments

A share acquisition will often be the preferred structure in an M&A context. From a seller's perspective, a share sale avoids the potential double charge to Capital Gains Tax ("CGT") which may arise in the case of an asset sale. The seller may also be able to benefit from the CGT participation exemption regime. Stamp duty costs will also generally be lower for the buyer when compared to an asset sale.

b. Tax Attributes

Subject to anti-avoidance legislation, in general a trading loss in an accounting period may be carried forward indefinitely for off set against the trading income from the same trade in succeeding accounting periods.

Where shares in a loss making company are sold, specific rules apply to carrying losses forward. The legislation provides that relief for the losses forward is not available where:

- Within any period of three years there is both a change in the ownership of a company and (whether earlier or later in that period or at the same time) a major change in the nature or conduct of a trade carried on by the company, or
- At any time after the scale of the activities in a trade carried on by a company has become small or negligible and before any considerable revival of the trade, there is a change in the ownership of the company.

The legislation defines 'major change in the nature or conduct of a trade' as including:

- A major change in the type of property dealt in, or services or facilities provided, in the trade; or
- A major change in customers, outlets or markets of the trade.

c. Tax Grouping

There is no fiscal unity or consolidated tax grouping in Ireland. However, group relief may be claimed where one member of a group is entitled to surrender its current year trading loss to another member of the same group. In order to be deemed a member of a group, the following conditions must be satisfied:

- One company must be a 75% subsidiary of the other company or both companies must be a 75% subsidiary of a third company;
- The parent must hold 75% of the ordinary share capital of the subsidiary;
- The parent must be beneficially entitled to not less than 75% of the profits available to equity holders; and
- The parent must be beneficially entitled to not less than 75% of the assets available for distribution on a winding up.

The 75% group relationship may be traced through companies resident in the EU, an 'EEA treaty country' or another country with which Ireland has a double taxation agreement (a "relevant territory"). In addition, in determining whether one company is a 75% subsidiary of another company for the purpose of the group relief provisions, the other company must either be resident in a relevant territory or quoted on a recognised stock exchange in a relevant territory or on another stock exchange approved by the Minister for Finance.

In general, the surrender of losses is only allowed by Irish resident companies, or, in certain cases, branches of companies which are resident in the EU or an 'EEA treaty country' that are within the charge to corporation tax in Ireland and such losses may only be surrendered to an Irish resident company. However, in certain circumstances losses that are incurred by a subsidiary company which is resident in an EU Member State or an EEA state with which Ireland has a double tax treaty may be surrendered to an Irish parent company. It must be shown that the loss being surrendered to the Irish parent company cannot be utilised in any other way by the foreign subsidiary.

In addition, group relief may be claimed on transfers between Irish resident companies from CGT where there is a 75% direct or indirect group. Since Finance Act 2017 it has been possible to trace the group relationship through any country with which Ireland had a double tax treaty. Previously the group relationship could only be traced through companies resident in the EU or an EEA state which Ireland has a treaty with.

d. Tax-Free Reorganisations

The Companies Act 2014, which commenced on 1 June 2015 introduced a statutory framework for mergers and divisions between private companies in a purely national context for the first time under Irish law. Previously, mergers between private companies could generally only be implemented if there was a cross-border element to the transaction and by obtaining court approval. The Companies Act 2014 allows for a merger of private domestic companies, without the need for court approval. Finance Act 2017 introduced new measures designed to ensure that domestic mergers and divisions may be carried out in a tax neutral basis.

It should also be possible for an Irish group to carry out a reorganisation in a tax neutral manner. Relief is available from corporation tax, CGT and stamp duty on intragroup transfers. It should be noted that the definition of a 'group company' or 'associated company' differs for CGT, corporation tax and stamp duty. It should be noted that there are certain conditions which will need to be satisfied in order for the relevant tax reliefs to apply to mergers, divisions and reorganisations. In certain circumstances the reliefs may be clawed back.

e. Purchase Agreement

Generally, a share purchase agreement will be executed by the parties to a share acquisition. This will usually include tax warranties. A separate tax deed of indemnity will typically also be provided which will cover pre-completion tax liabilities of the target.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

In general, the stamp duty on the transfer of shares is 1% (as opposed to 7.5% on an asset acquisition) of the consideration paid or of the market value if higher. Provided certain conditions are complied with, an exemption from stamp duty is available on the sale of shares where the amount or value of the consideration is EUR1,000 or less. In certain cases, where the shares derive their value or the greater part of their value from Irish non-residential land or buildings, the rate of stamp duty may rise to 7.5%. There are also certain anti-avoidance provisions which were introduced on 19 July 2021 pursuant to the Finance (Covid-19 and Miscellaneous Provisions) Act 2021 which can operate to impose a stamp duty rate of 10% in respect of the conveyance or transfer certain shares that derive value from residential units. It is worth noting that Irish stamp duty may arise where there is a transfer of non-Irish shares in certain circumstances, including if the shares are transferred in exchange for the issue of shares of an Irish company. Stamp duty must be paid within 44 days of the execution of the stock transfer form to avoid the imposition of any interest and penalties. Stamp duty is a liability of the acquiring entity and is paid via the stamp duty return which is filed on the Irish Revenue Commissioner's ("Revenue") On-line System ("ROS"). It is worth noting that where the entities are not already registered for Irish tax in Ireland, it is necessary to apply for an Irish tax reference number or an Irish PPS number as appropriate, in order to file the stamp duty return.

The legislation provides that the time limit for stamping is 30 days from the date of execution of the relevant stampable instrument. By concession Revenue allow an extra 14 days bringing the time limit to 44 days.

The purchase of shares is a VAT-exempt activity. Therefore, a company which incurs costs in relation to the acquisition of shares in a newly acquired entity is not generally entitled to recover the VAT on such costs.

However, there are specific circumstances where Revenue accepts that a company which has acquired shares can recover a portion of the VAT incurred on such costs.

g. "Purchase accounting" applicable to share acquisitions

This section is left intentionally blank.

h. Share Purchase Advantages

The stamp duty costs arising on an acquisition of shares are generally lower than on an asset acquisition. As mentioned above the stamp duty on the transfer of shares is generally 1% (as opposed to 7.5% on an asset acquisition) of the consideration paid or of the market value if higher. However, there are circumstances where a 7.5% or 10% rate can apply (see above).

From a seller's perspective, share sales typically only trigger a single layer of taxation, either CGT or corporation tax in the hands of the selling shareholder as opposed to a potential double layer as part of an asset purchase (see section 4 below). In addition, in certain circumstances where a company disposes of shares any gain arising will be exempt from CGT under the participation exemption regime. There are no provisions under Irish law allowing an increase in tax basis in the assets of the company where there is a share acquisition.

It is not possible for entities to finalise their Irish tax exposures prior to acquisition. Ireland's tax regime is a self-assessment system. Under the self-assessment system, the notice of assessment issued by Revenue is merely an acknowledgment of the figures submitted by the taxpayer in the relevant return. The statutory time limit within which Revenue may raise an assessment is generally four years from the end of the accounting period in which the return is filed. However, in certain cases, including where Revenue suspect that there was any fraud or negligence in filing the return or any anti-avoidance involved, there is no statutory time limit within which an assessment may be raised.

i. Share Purchase Disadvantages

Any historical liabilities will remain in the target group. The purchaser will typically expect to receive a tax indemnity and tax warranties for pre-completion tax liabilities under the transaction documents. However, this contractual protection is generally subject to certain exclusions and limitations. We are increasingly seeing warranty and indemnity insurance policies being used in M&A transactions.

There is no opportunity to get a step up in the basis of the assets as part of a share acquisition. In a share deal the purchaser's base cost is represented in the shares acquired. To the extent that the target company owns assets which have a base cost of less than their current market value, a deferred or latent gain exists. Such a deferred gain is often taken into account by purchasers in deciding on the price for the shares.

4. ASSET ACQUISITION

a. General Comments

An asset acquisition may be preferred by a purchaser as it allows them to pick and choose the assets and liabilities they acquire. Any historical tax liabilities will generally remain with the existing company. As mentioned above, from a seller's perspective, an asset sale generally gives rise to a double layer of CGT. Stamp duty costs will also typically be higher on an asset deal when compared to a share deal.

b. Purchase Price Allocation

The parties will determine how the purchase price will be allocated amongst the various classes of assets acquired as part of the transaction.

c. Tax Attributes

In a third-party asset acquisition, it is not possible to purchase losses. However Irish tax legislation allows for losses forward to be carried over from one company to another company where a trading company ceases to carry on a trade and thereafter another company carries it on, provided that there is substantial identity in the ownership of the trade before and after the change. Where the necessary conditions are fulfilled, the successor company effectively steps into the shoes of the predecessor company for the purposes of utilising the losses forward.

In order for the losses to be carried over:

- There must be the transfer of and succession to a trade;
- An interest in the trade of at least three quarters (75%) must belong to the same person at some time within one year before the change and at some time within two years after the change, and
- Between the times when the ownership test above is satisfied, the trade must be carried on only by a company or companies within the charge to corporation tax.

Given the requirement for substantial identity of ownership, these provisions are generally only applicable in the case of internal reorganisations rather than third-party acquisitions.

d. Tax-Free Reorganisations

It is possible to carry out tax-free reorganisations (subject to certain conditions).

e. Purchase Agreement

The parties will generally execute an asset purchase agreement which will set out the assets and liabilities being acquired.

f. Depreciation and Amortisation

No specific tax depreciation is available for goodwill in Ireland. However, tax relief is available in Ireland on capital expenditure incurred by companies on the acquisition of intangible assets, including goodwill which is directly attributable to these intangible assets. The definition of an 'intangible asset' which qualifies for this relief is very wide and includes patents, trademarks, brand names, domain names, any copyright, computer software, know-how generally related to manufacturing or processing and customer lists (except where such customer lists have been provided directly or indirectly in connection with the transfer of a business as a going concern).

The relief is designed to provide tax allowances broadly equal to the write-off to the profit and loss account available under normal accounting rules for capital expenditure incurred on the provision of specified intangible assets. Under the relief, the capital expenditure incurred to acquire intellectual property can be written off either in line with the accounting write-off or over a 15-year period. If a company makes this election, a rate of 7% will apply for years 1 to 14 and of 2% for year 15. Certain claw back provisions may apply if the asset is disposed of within five years of acquisition. Additionally, in the case of capital expenditure incurred on qualifying assets on or after 14 October 2020, a clawback may arise where the asset ceases to be used for the purposes of the trade.

Finance Act 2017 reintroduced a cap on the amount of capital allowances that can be deducted for intangible assets. The cap restricts the deduction for capital allowances to 80% of the trading income derived from those intangible assets. This cap applies to expenditure incurred on or after 11 October 2017.

g. Transfer Taxes, VAT

The stamp duty rate on an acquisition of assets is 7.5% of the consideration paid or of the market value if higher. There is an exemption on the sale or transfer of certain intellectual property such as patents and trademarks. Where assets are capable of being transferred by delivery and are transferred by delivery and not pursuant to any written instrument, then no stamp duty applies.

There are also anti-avoidance provisions which were introduced on 19 July 2021 pursuant to the Finance (Covid-19 and Miscellaneous Provisions) Act 2021 which can operate in certain situations to impose a stamp duty rate of 10% in respect of the acquisition of residential units on or after 20 May 2021 where at least 10 residential units are acquired during any 12-month period after that date.

An agreement to transfer assets may be stampable. As such where there is a delay between the signing of the asset purchase agreement and the completion of the transaction and execution of the instruments of transfer, a purchaser should be aware that the 44 day time limit for stamping will begin to run from the date the asset purchase agreement is executed.

Generally, the transfer of assets is subject to VAT. However, where the assets transferred constitute a business or part of a business capable of being operated on an independent basis, the transfer is deemed not to be a supply for VAT purposes. This exemption applies to the transfer of tangible and intangible assets to an accountable person / taxable person depending on the circumstances. It also applies even if the business has ceased trading.

h. Asset Purchase Advantages

In an asset deal the purchaser's base cost in the assets will be the price paid for the assets. This will be relevant for any future sale of the assets.

The purchaser has the advantage of being able to pick and choose the assets and liabilities it wishes to acquire. Historical tax liabilities of the target group will generally not transfer as part of an asset acquisition.

i. Asset Purchase Disadvantages

From a Seller's perspective, an asset sale will typically result in two layers of taxation. Corporation tax will be payable by the company in respect of any chargeable gains or balancing charges triggered on the sale of the target assets. CGT or income tax or corporation tax will also be payable in the hands of the ultimate shareholders, depending on whether the proceeds from the sale are distributed upon a subsequent liquidation of the company or as a dividend.

5. ACQUISITION VEHICLES

In terms of share acquisitions, generally an Irish acquisition vehicle would be used particularly in the case of private equity acquirors to allow a debt pushdown. An Irish acquisition vehicle may also be required from a commercial perspective to allow subordination of loans.

6. ACQUISITION FINANCING

a. General Comments

There are no particular challenges involved in bringing funds into Ireland or administrative steps required to be taken.

b. Equity

It will generally be preferable from a tax perspective for the holding company of an Irish entity to be located in the EU / EEA state or a country with which Ireland has a double tax agreement. This should allow tax efficient repatriation of profits and interest payments.

There are no particular requirements for holding companies to have a certain level of substance in Ireland. However, where a company has no substance in Ireland this will impact on the company's VAT recoverability and the corporate tax rate which will apply. It would be necessary to consider whether any foreign tax implications would arise in such circumstances (e.g. withholding taxes in source country) and whether, for example, benefits under the relevant tax treaty would be available particularly in light of the anti-treaty abuse measures under the Multilateral Instrument.

c. Debt

i Limitations on use of debt

Under the current legislation, an Irish holding company may be financed principally by way of debt as Ireland has no thin capitalisation rules. However it is worth noting that following on from the introduction of the ATAD, Ireland has introduced a general interest limitation rule which applies for accounting periods commencing on or after 1 January 2022 pursuant to which the tax deduction of net financial expenses will be limited to 30% of the taxpayer's earnings before interest, tax, depreciation and amortisation ("EBITDA") or to a maximum amount of EUR3 million, whichever is higher (subject to several exceptions).

ii Limitations on interest deductions

Subject to certain conditions, interest relief may be available to a company on interest paid on monies borrowed to acquire shares in or loan money to a trading company or a company whose business consists wholly or mainly of holding stocks, shares or securities in such a company. Such interest relief will be treated as a 'charge'. This means that it can be offset against the company's total profits for the year of assessment in which the interest is paid. The charge can also be used against profits in other Irish group companies subject to certain conditions. It should be noted that this is a complex area which is subject to a number of detailed anti-avoidance provisions.

iii Related Party Debt

In terms of the distinctions between related party debt and unrelated party debt, there are complicated anti-avoidance measures which need to be considered when interest relief is being sought in connection with interest arising on related party debt.

iv Debt Pushdown

It is quite common for debt pushdowns to be used in the context of acquisitions. In the case of a share purchase, assuming that the conditions set out above in relation to interest as a charge are satisfied, interest relief may be available as a charge in respect of the interest paid on the funds borrowed to acquire the shares. Such interest is deductible against the total profits of the company. However, to the extent that there is excess interest, such current-year interest can be surrendered within an Irish corporation tax group (i.e. a 75% group). The interest surrendered can be off-set against the other company's total profits, minimising its tax.

d. Hybrid Instruments

Financial instruments that combine elements of both debt and equity have become increasingly popular. Typically, these hybrid instruments would be used to invest in high growth, high potential businesses due to the increased flexibility they provide to both investors and investee companies. Generally, such instruments allow for investors to initially lend to companies and subsequently convert their loan to equity should the business reach certain milestones.

Where such instruments are used, both the investors and the investee companies should be aware of the potential for interest payments to be classified as distributions for tax purposes, with consequent withholding tax implications and an impact on the availability of deductions for the investee company.

Hybrid financial instruments may also be subject to the new anti-hybrid measures introduced in Finance Act 2019 and Finance Act 2021 (see section 2.a.ii. above), if, for example there is a hybrid mismatch outcome attributable to differences between the Irish and foreign tax characterisation of a financial instrument or payments under a financial instrument.

e. Other Instruments

This section is left intentionally blank.

f. Earn-outs

Earn-outs are relatively common in Ireland. From a Seller's perspective it will be important to determine whether CGT will need to be paid on the full amount of the potential earn-out upfront. This will depend on how the earn-out is structured.

Where an amount of the consideration is contingent but is ascertainable, generally the entire amount of the earn-out should be included when calculating the gain made by the seller for CGT purposes. If the seller does not ultimately receive this amount, a refund may be sought.

Where the ultimate amount which a seller will receive as part of an 'earn-out' cannot be quantified, this will be considered unascertainable consideration. In general, the view is taken that where the consideration is unascertainable, the right to receive that future sum of money should be valued based on what an independent third-party would pay for the right to the future consideration in the given circumstances and the risks involved. This right is then treated as a separate asset for CGT purposes.

In such cases where there is a sale of shares an initial CGT liability will arise based on the up-front consideration received on completion plus the value placed on the earn-out. Subsequent charges to CGT would then arise if / when any earn-out is paid. In the event that the earn out is not paid then a capital loss may arise.

7. DIVESTITURES

a. Tax Free

There is a participation exemption from CGT where shares are disposed of by a company in certain circumstances. In order to qualify for the exemption, the following conditions must be satisfied:

- At the time of the disposal, the subsidiary company must be tax resident in an EU country or a country with which Ireland has a double tax agreement;

- For a consecutive period of twelve months ending not more than two years before the date of disposal, the parent company, must either directly or indirectly:
  - Hold at least 5% of the company's ordinary share capital;
  - Be beneficially entitled to at least 5% of the profits available for distribution to equity holders of the company; and
  - Be beneficially entitled to at least 5% of the assets available for distribution to equity holders on a winding up;
- At the time of the disposal, either:
  - The business of the investee company (the company whose shares are being sold) consists wholly or mainly of the carrying on of a trade or trades; or
  - The business of the parent company, and all companies which meet the residence / holding period test, when taken together, consists wholly or mainly of trading business; and
- The shares disposed of do not derive their value or the greater part of their value from land or mineral rights in Ireland, nor are held as part of a foreign business fund.

b. Taxable

The current rate of Irish CGT is 33%. The charge to CGT applies to individuals, trusts, unincorporated bodies and companies in the case of development land gains.

Companies resident in Ireland are taxed on chargeable gains, other than for development land, at the same rate as CGT, but the tax falls under its corporation tax liability.

c. Cross Border

A company that is non-resident is liable to Irish CGT on the disposal of 'specified assets', including land and buildings in Ireland and the shares of an Irish company which derives its value, or the greater part of its value, from Irish land or buildings.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

Ireland operates a worldwide tax system. An Irish tax-resident company will be subject to tax on its worldwide income and gains. To the extent that it is subject to foreign tax, a tax credit should be available when calculating the company's Irish tax liability on the relevant income or gains.

b. CFC Regime

Ireland has recently introduced CFC legislation in line with ATAD requirements. The rules apply for accounting periods beginning on or after 1 January 2019.

Broadly, an entity will be a CFC where it is not resident in Ireland and is subject to more than 50% control by an Irish resident company and / or its associated enterprises. The CFC regime will only apply to an entity whose foreign tax liability is less than half the tax that would have been due had that entity been subject to tax in Ireland. There are also exclusions for companies with low accounting profits and companies with a low profit margin.

When implementing ATAD, Member States were given two options for determining whether the income of a CFC should be attributed to its parent / controlling company.

Option A attributes undistributed income arising from certain categories of primarily passive income of a CFC to the parent company.

Option B attributes undistributed income arising from non-genuine arrangements put in place for the essential purpose of obtaining a tax advantage, attributes undistributed income arising from non-genuine arrangements put in place for the essential purpose of obtaining a tax advantage. It requires an analysis of the extent to which the CFC would own the assets or assume the risks if it were not for the parent company undertaking the significant people functions or key entrepreneurial risk-taking functions relevant to those assets and risks. It focuses on bringing income that is artificially diverted from Ireland to a low tax jurisdiction back into the Irish tax net. Ireland has opted for Option B.

The legislation confirms that the CFC charge will not apply to arrangements that have been subject to Irish transfer pricing rules. There is also a carve out for undistributed income which is attributable to relevant Irish activities where it is reasonable to conclude that such arrangements would be entered into by persons dealing at arm's length.

The objective behind the new legislation is to align where tax is paid with where significant people functions are located and where key entrepreneurial risk-taking functions are carried on.

Where a CFC charge arises, it must be calculated in accordance with transfer pricing rules and should reflect the amount that the CFC would have paid to a third-party in respect of the Irish activities (subject to certain restrictions). The CFC charge is applied at the Irish corporation tax rates (12.5% for trading income and 25% in all other cases). In calculating the CFC charge, credit is given for foreign tax paid by the CFC on its income and CFC charges imposed by other countries on the relevant income.

c. Foreign branches and partnerships

An Irish tax resident company with a foreign branch or which is part of a foreign partnership will be subject to Irish tax on profits arising from such branch / partnership. To the extent that the company is also subject to foreign taxes on such income, a tax credit should be available when calculating its Irish tax liability.

d. Cash Repatriation

Ireland does not have a full participation regime for dividends.

In general, distributions (other than in respect of preference shares) received by an Irish resident company from another Irish company are exempt from tax.

Distributions received by an Irish resident company from foreign subsidiaries are subject to tax at either 12.5% or 25% depending on the nature of the profits out of which the dividends are paid.

The 12.5% tax applies when distributions are received by an Irish resident company from companies resident in a 'Relevant Territory' or companies which are publicly quoted or a 75% subsidiary of a publicly quoted company. A 'Relevant Territory' is either:

- An EU member state;
- A state with which Ireland has a double taxation treaty; or
- A country which has ratified the Joint Council of Europe / OECD Convention on Mutual Assistance in Tax Matters.

The dividends must be made out of trading profits of the company making the distribution. Trading profits of non-resident companies will be allowed to pass up through tiers of companies in a group by way of dividend payments, so that when the dividend is ultimately paid to the Irish resident company it will be taxable at the 12.5% rate.

The legislation also contains a 'safe harbour' provision which allows the full amount of a dividend received by a company to be charged at the 12.5% rate provided the following conditions are met:

- At least 75% of the total profits of the top tier company making the distribution arise out of trading activities. In calculating this 75%, dividends from trading profits received from lower tier companies resident in a Relevant Territory constitute trading profits of the top tier company.
- The aggregate value of the trading assets at the end of the accounting period in which the dividend is received by the Irish resident company in receipt of the dividend (including its subsidiaries) must be at least 75% of the aggregate value of all of their assets.

Irish tax legislation operates a tax credit system for underlying tax on the profits out of which the dividend is paid in the source country. As such, if the dividend is subject to tax at 12.5% in Ireland and more than 12.5% tax is paid on the underlying profits out of which the relevant dividends are paid, no further tax should be payable in Ireland. Likewise, if the dividend is subject to tax at 25% in Ireland and more than 25% tax is paid on the underlying profits out of which the relevant dividends are paid, no further tax should be payable in Ireland.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

i Withholding tax

A withholding tax applies where, on a purchase of shares in a company, the consideration exceeds EUR500,000 and the shares (other than shares quoted on a stock exchange) also derive their value or greater part of their value directly or indirectly from land and buildings in Ireland, minerals in Ireland or any minerals or mining rights, exploration, exploitation right in a designated area.

In these cases, under Section 980 of the Taxes Consolidation Act 1997, the purchaser must withhold from the consideration and remit to Revenue tax amounting to 15% of the consideration unless the vendor provides a Form CG50A (CGT Clearance Certificate). A CG50A is also required when the consideration for the shares exceeds EUR500,000, the shares were acquired following a reorganisation and the 'old shares' fell within the category of shares outlined above.

The 15% withholding tax obligation does not apply if the seller obtains a CG50A from Revenue and delivers it to the purchaser prior to the consideration being paid.

ii VAT

Ireland has complex rules for VAT on property which should also be closely examined. A capital goods scheme tracks the use of a property over a 20 year period to ensure the VAT recovered reflects the use of the property over the period. An annual review will establish if there are any adjustments to be made. There are also record keeping requirements over the life of the capital good.

iii Close company

A close company is a company which is controlled by five or fewer 'participators'. When there is surplus rental and investment income, a close company surcharge applies (at a current rate of 20%) if such income has not been distributed by the close company within 18 months of the end of the accounting period.

iv Stamp Duty

For transfers on or after 6 December 2017 of certain shares and interests in companies and funds which derive their value, or the greater part of their value, directly or indirectly from non-residential land and buildings in the State, the rate of stamp duty is 7.5%. This increased rate of stamp duty will apply where the transfer leads to a change in the control of the land or buildings and where the land or buildings were acquired or were developed for the sole or main object of realising a gain on its disposal.

As outlined above, there are also anti-avoidance provisions which were introduced on 19 July 2021 pursuant to the (Covid-19 and Miscellaneous Provisions) Act 2021 which can operate in certain situations to impose a stamp duty rate of 10% in respect of:

- The acquisition of residential units on or after 20 May 2021 where at least 10 residential units are acquired during any 12-month period after that date; and
- The conveyance or transfer certain shares that derive value from residential units.

b. CbC and Other Reporting Regimes

Ireland has introduced country by country reporting in line with the BEPS project.

10. TRANSFER PRICING

Until recently, Ireland had quite limited Transfer Pricing ("TP") rules. However, in Finance Act 2019 Ireland introduced a full TP regime with effect from 1 January 2020. The TP legislation will incorporate the 2017 OECD Guidelines, along with the OECD Guidance issued in 2018 on Hard to Value Intangibles and the Transactional Profit Split Method.

The Irish TP rules require that transactions between associated persons should take place at arm's length. The legislation applies to transactions involving the supply and acquisition of goods, services, money or intangible assets between associated persons or companies, and is applicable to overstated expenses or understated receipts. It is an upwards only adjustment. Generally, companies are regarded as associated if one company is in control of the other or if both are controlled by the same person or by connected persons.

Ireland's TP rules had previously only applied to arrangements which were entered into after 1 July 2010. Since 1 January 2020, all arrangements, including those entered into pre-1 July 2010 are subject to the TP rules. This change is not expected to have a major impact as most arrangements covered by the grandfathering rules have now been phased out.

The rules have been extended to apply to capital transactions where the market value of the asset being acquired or disposed of intragroup exceeds EUR25 million. Irish law already applies market value to capital transitions between connected parties. However, the valuation of relevant capital transactions must now be in line with the 2017 OECD Guidelines and so will also be subject to the new TP documentation requirements (see below).

Ireland's TP rules had previously only applied to trading transactions. However, the new rules extend the scope of the TP regime to cover non-trading transactions (such as intragroup loans, both interest free and interest bearing). There is an exemption for domestic transactions in certain cases.

The legislation requires Revenue to consider the TP rules in accordance with the substance of an arrangement where the substance is inconsistent with the form.

Revenue also has the power to recharacterise an intragroup arrangement if it lacks the required substance and is not consistent with the normal commercial actions of parties acting at arm's length. In such cases, Revenue may disregard the arrangement or substitute an alternative arrangement that is consistent with the arm's length principle.

Ireland has incorporated the documentation requirements at Chapter V of the 2017 OECD Guidelines into its transfer pricing legislation, subject to certain thresholds. Taxpayers must now retain for Revenue inspection a master file where group revenues exceed €250 million worldwide and a local file where such revenues exceed EUR50 million.

The information to be included in master and local files can be found at Annexes I and II to Chapter V of the 2017 OECD Guidelines.

Non-compliance with the documentation requirements can result in penalties of EUR4,000 or EUR25,000 (depending on size), while larger taxpayers will be subject to a further EUR100 daily penalty where documentation is outstanding.

The legislation provides for the extension of transfer pricing rules to SMEs (previously exempt). The key criteria in determining whether a company fits the definition of an SME are that the company has less than 250 employees; and either turnover of less than EUR50 million or assets of less than EUR43 million.

When applying these criteria, one must consider the consolidated enterprise, which will encompass both Irish and foreign companies, and the economic activities of individuals who are controlling shareholders.

However, the commencement of these provisions is subject to Ministerial Order. In light of the potential impact of Brexit and the current impact of ongoing COVID-19 crisis on SMEs, this extension is unlikely to take effect for some time.

Finance Act 2021 incorporated new legislation for the application of the "Authorised OECD Approach", an OECD-developed method for the attribution of profits to branches. The new provisions will apply for accounting periods commencing on or after 1 January 2022 but the implementation date for the application of these provisions to small and medium enterprises is subject to a Ministerial Commencement Order which has not been effected to date.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

As discussed in section 2.a.ii. above, Ireland introduced anti-hybrid and reverse hybrid mismatch legislation in Finance Act 2019 and in Finance Act 2021 which will need to be monitored carefully by multinational groups, particularly those with multiple layers of intermediary holding entities such as LLCs or partnerships.



If "check-the-box" elections are made in the US or a payment is made to a US LLC, these anti-hybrid rules will need to be carefully considered to ensure that the Irish company will be entitled to a deduction for payments, such as management charges or interest, made by it to a group entity.

Following acquisition, a purchaser should be aware that the use of hybrid entities (including US entities that have been subject to a check the box election for US tax purposes) as part of a group structure which includes an Irish entity may give rise to certain tax implications. In particular certain reliefs may not be available for intra group transfers and the surrender of losses between group members may be impacted.

b. Use of Hybrid Instruments

As with hybrid entities, the use of hybrid instruments (for example preferred equity which is more akin to a debt instrument than equity share capital) may give rise to complications from an Irish tax perspective when considering the availability of certain tax reliefs and may also be subject to the new anti-hybrid measures outlined in section 2.a.ii.

c. Principal / Limited Risk Distribution or Similar Structures

In terms of post-acquisition tax planning, Ireland is commonly used as the EMEA base for companies.

d. Intellectual property (licensing, transfers, etc.)

Ireland has a very favourable regime for Intellectual Property ("IP") companies the main features of which include:

- A corporation tax rate of 12.5% on trading income;
- An attractive IP amortisation relief which allows an IP company to write off the cost of certain IP it acquires (and any related interest expense) against the income from its IP trade (subject to certain restrictions);
- A research and development tax credit of 25% of qualifying R&D expenditure incurred. This relief is in addition to a corporation tax deduction at 12.5% resulting in effective relief of 37.5% on qualifying R&D expenditure;
- The 'Knowledge Development Box', an OECD compliant IP regime which provides for an effective corporate tax rate of 6.25% on qualifying profits relating to certain IP, namely patented inventions and copyrighted software.

e. Special tax regimes

This section is left intentionally blank.

12. OECD BEPS CONSIDERATIONS

Ireland is part of the inclusive framework and has been a committed participant in the BEPS process.

The Irish government has introduced a number of measures which are designed to prevent base erosion and has committed to adopting further measures over the coming years.

Of particular relevance in the context of M&A activity involving Irish groups will be:

- The introduction of an exit charge with effect from midnight on 9 October 2018;
- The introduction of the CFC regime;
- The impact of the new Multilateral Instrument;
- The introduction of interest limitation rules and the introduction of anti-hybrid and reverse-hybrid rules; and
- The reform of Ireland's TP regime.

13. ACCOUNTING CONSIDERATIONS

The usual accounting principles which apply to the relevant entity will need to be followed in an Irish M&A transaction. For example, typically business combinations will be accounted for using the 'acquisition method', which generally requires assets acquired and liabilities assumed to be measured at their fair values at the acquisition date.

Where there is a divestiture or spin-out, it will be important to understand at the outset the value attributable to the business and assets (including the book value) involved as this may be relevant for a number of company law and tax points including, for example, to ensure that the company has sufficient distributable reserves to allow it to legally carry out the transaction, or to determine whether a CG50A Clearance Certificate will be required.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Distributions may only be paid to the extent that the company has distributable reserves. A repayment of share capital up to the amount paid for the shares will not generally be considered a distribution, although complications can arise where the repayment follows a bonus issue of shares. This is subject to certain procedural requirements from a company law perspective.

b. Substance Requirements for Recipients

Irish tax legislation imposes dividend withholding tax at the standard rate (currently 25%) on all dividends paid by Irish resident companies. The same treatment applies regardless of whether the dividends arise out of capital gains or operational profits.

Exemptions are available for distributions made to certain shareholders, including:

- A non-resident person (other than a company) who is resident for tax purposes in a country with which Ireland has a double tax treaty or in another EU Member State (a "Relevant Territory");
- A non-resident company which is resident in a Relevant Territory and is not under the control of an Irish resident person;
- A non-resident company controlled by persons, who are tax resident in a Relevant Territory and who are not themselves under the control of persons who are not resident in a Relevant Territory.

In order for a non-resident person or company to avail of the exemption certain declarations must be submitted to the dividend paying company prior to the making of the distribution. The declarations must contain a number of confirmations, including that the declarant is beneficially entitled to the dividend.

The declaration from a non-resident person must contain a certificate of residence issued by the tax authority of the Relevant Territory confirming that the person is resident in that country. In the case of US individuals, a Form 6166 should accompany the declarations by any US individuals.

c. Application of Regional Rules

As Ireland is part of the EU it is obliged to implement EU Directives into national law. Given the EU's increasing role in shaping tax policy many of the recent changes to Irish tax legislation have arisen due to the implementation of EU Directives. For example:

- Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market ("Anti-Tax Avoidance Directive", or "ATAD");
- Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries ("Anti-Tax Avoidance Directive 2" or "ATAD2"); and
- Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU ("DAC 6").



d. Tax Rulings and Clearances

Tax rulings and clearances are not commonly sought as part of acquisitions, divestitures or post acquisition integrations.

15. MAJOR NON-TAX CONSIDERATIONS

There will be a number of non-tax considerations to bear in mind. For example:

- On an asset sale, the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (as amended) ("TUPE") may apply. TUPE provides for certain protections for employees where there is a transfer of a business or undertaking.
- Certain mergers and acquisitions require mandatory notification to the Competition and Consumer Protection Commission ("CCPC") before completion where the relevant turnover thresholds are met, or the transaction comes within the definition of a "media merger" (regardless as to whether the thresholds have been met). A failure to comply with competition law can lead to a transaction being void and could potentially give rise to criminal liability.
- The pricing of the transaction (e.g. whether there will be a set of Completion Accounts prepared or whether the deal will be priced based on the last set of audited accounts or whether the deal is a locked box deal) will be relevant in terms of the scope of a number of the warranties and indemnities.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Albania	0 / 5 / 10	0 / 7	7	[1] [2]
Armenia	0 / 5 / 15	0 / 5 / 10	5	[3] [4]
Australia	15*	10	10	
Austria	10*	0	0 / 10	[5]
Bahrain	0	0	0	
Belarus	0 / 5 / 10	0 / 5	5	[6] [7]
Belgium	15 / 20	15	0	[8]
Bosnia and Herzegovina	0	0	0	
Botswana	0 / 5	0 / 7.5	5 / 7.5	[9] [10] [11]
Bulgaria	5 / 10	0 / 5	10	[12] [13]
Canada	5 / 15	0 / 10	0 / 10	[14] [15] [16]
Chile	5 / 15	5 / 15	5 / 10	[17] [18] [19]
China	5 / 10	0 / 10	6 / 10	[20] [21] [22]
Croatia	5 / 10	0	10	[23]
Cyprus	0	0	0 / 5	[24]
Czech Republic	5 / 15	0	10	[25]
Denmark	0 / 15*	0	0	[26]
Egypt	5 / 10	0 / 10	10	[27] [28]
Estonia	5 / 15	0 / 10	5 / 10	[29] [30] [31]
Ethiopia	5	0 / 5	5	[32]
Finland	0 / 15*	0	0	[33]
France	10 / 15 / 20	0	0	[34]
Georgia	0 / 5 / 10	0	0	[35]
Germany	5 / 15	0	0	[36]
Ghana (Not in effect)	0 / 7	0 / 7	8	[37] [38]
Greece	5 / 15	5	5	[39]
Hong Kong	0	0 / 10	3	[40]
Hungary	5 / 15	0	0	[41]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Iceland	5 / 15	0	0 / 10	[42] [43]
India	10	0 / 10	10	[44]
Israel	10*	5 / 10	10	[45]
Italy	15	10	0	
Japan	0	10	10	[46]
Kazakhstan	0 / 5 / 15	0 / 10	10	[47] [48]
Kenya (Not in effect)	0 / 8 / 15	0 / 12	10	[49] [50]
Korea (Republic of)	10 / 15*	0	0	[51]
Kosovo (Not in effect)	0 / 5 / 10 / 15	0 / 5	0	[52] [53]
Kuwait	0	0	5	
Latvia	5 / 15	0 / 10	5 / 10	[54] [55] [56]
Lithuania	5 / 15	0 / 10	5 / 10	[57] [58] [59]
Luxembourg	0	0	0	[60]
Macedonia	0 / 5 / 10	0	0	[61]
Malaysia	10	0 / 10	8	[62]
Malta	5 / 15	0	5	[63]
Mexico	5 / 10	0 / 5 / 10	10	[64] [65]
Moldova	5 / 10	0 / 5	5	[66] [67]
Montenegro	0 / 5 / 10	0 / 10	5 / 10	[68] [69] [70]
Morocco	6 / 10	0 / 10	10	[71] [72]
Netherlands	0 / 15	0	0	[73]
New Zealand	15*	10	10	
Norway	0 / 5 / 15	0	0	[74]
Pakistan	5 / 10	0 / 10	10	[75] [76]
Panama	5	0 / 5	5	[77]
Poland	0 / 15	0 / 10	10	[78] [79]
Portugal	15	0 / 15	10	[80]
Qatar	0	0	5	
Romania	3	0 / 3	0 / 3	[81] [82]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Russia	10	0	0	
Saudi Arabia	0 / 5	0	5 / 8	[83] [84]
Serbia	5 / 10	0 / 10	5 / 10	[85] [86] [87]
Singapore	0	0 / 5	5	[88]
Slovakia	0 / 10	0	0 / 10	[89] [90]
Slovenia	5 / 15	0 / 5	5	[91] [92]
South Africa	5 / 10	0	0	[93]
Spain	0 / 15*	0	5 / 8 / 10	[94] [95]
Sweden	5 / 15*	0	0	[96]
Switzerland	0 / 15*	0	0	[97]
Thailand	10	0 / 10 / 15	5 / 10 / 15	[98] [99]
Turkey	5 / 10 / 15	10 / 15	10	[100] [101]
Ukraine	5 / 15	0 / 5 / 10	5 / 10	[102] [103] [104]
United Arab Emirates	0	0	0	
United Kingdom	5 / 15	0	0	[105]
United States	5 / 15*	0	0	[106]
Uzbekistan	5 / 10	5	5	[107]
Vietnam	5 / 10	0 / 10	5 / 10 / 15	[108] [109] [110]
Zambia	7.5	0 / 10	8 / 10	[111] [112]

* Exemption from Irish tax if there is no entitlement to tax credit on dividends, otherwise Irish tax at 15%

Note 1: Ireland generally does not impose withholding tax on dividends paid to a recipient located in a tax treaty country.

Note 2: Under Ireland's domestic law, however, withholding tax is imposed only on patent royalties.

Note 3: Numerous exemptions are available in respect of DWT.

Footnotes	
1	Dividends - Maximum rate of 10%. Reduced rate of 5% applies where the beneficial owner is a company which holds at least 25% of the capital of the company paying the dividend. Dividends are exempt from tax where the dividends are paid to the government of a contracting state. The term "government" includes (a) in the case of Ireland: the Central Bank, the National Treasury Management Agency, the National Pension Reserve Fund and any other statutory body which is wholly or mainly owned by the government of Ireland and (b) in the case of Albania: the Central Bank of Albania and any other statutory body which is wholly or mainly owned by the government of Albania.
2	Interest - Maximum rate of 7%. Reduced rate of 0% applies where the interest is paid to a statutory body or other government owned entity or the Central Bank of the other state and in the case of Ireland, the National Treasury Management Agency and the National Pension Reserve Fund. Exemption also applies where interest is paid by or to a financial institution, to a pension fund which is exempt from tax on interest income or is paid with respect to an indebtedness arising as a consequence of the sale on credit of any equipment, merchandise or service.
3	Dividends - Maximum rate of 15%. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends. Reduced rate of 0% rate applies where the beneficial owner is a company which holds at least 25% of the capital of the company paying the dividends and has owned that holding for a period of at least 2 years. In addition, the beneficial owner must be entirely relieved from tax paid in respect of dividends by an exemption or credit in their state of residence, in order to avail of the 0% rate.
4	Interest - Maximum rate of 10%. Reduced rate of 5% applies where the interest is paid in respect of a loan of any kind granted by a banking enterprise. Reduced rate of 0% applies where interest is paid to a contracting state or a local authority thereof, including the Central Bank of a state or any institution, agency or fund wholly owned by a state.
5	Royalties - Where payments are made to an Irish entity owning more than 50% of the share capital of the Austrian payor, a rate of 10% applies. Otherwise, royalties are only taxable in the state where the recipient of the royalties is resident.
6	Dividends - Maximum rate of 10%. Reduced rate of 5% applies where the beneficial owner is a company which holds at least 25% of the capital of the company paying the dividend. Reduced rate of 0% where the recipient of the dividend is the National Treasury Management Agency, the National Pension Reserve Fund or any organisation, agency or institution wholly or mainly owned by the Government as may be agreed from time to time.
7	Interest - Maximum rate of 5%. Reduced rate of 0% where the interest is paid to the government, a central bank, the National Treasury Management Agency, the National Pension Reserve Fund or an organisation owned or partly owned by the government of a state. Exemption also applies to interest on any loan which is government guaranteed or approved and to any loan which is used to finance the acquisition of industrial, commercial, trade, medical or scientific equipment.
8	Dividends - Maximum rate of 15% where dividends paid by Belgium resident company. Dividends paid by Irish resident company subject to the standard rate of tax (20%).
9	Dividends - Maximum rate of 5%. Reduced rate of 0% where the beneficial owner is the government.
10	Interest - Maximum rate of 7.5%. Reduced rate of 0% where the beneficial owner is the government or local authority.
11	Royalties - Maximum rate of 7.5%. Reduced rate of 5% applies in respect of the use of or the right to use industrial, commercial or scientific equipment.
12	Dividends - Maximum rate of 10%. Reduced rate of 5% applies where the beneficial owner is a company which holds at least 25% of the capital of the company paying the dividend.

Footnotes	
13	Interest - Maximum rate of 5%. Reduced rate of 0% applies where the interest is paid to the government, a local authority or the Central Bank of the other State.
14	Dividends - Maximum rate of 15%. Reduced rate of 5% applies where the beneficial owner is a company which controls 10% of the voting power directly or indirectly in the company paying the dividends (except in the case of dividends paid by a non-resident-owned investment corporation that is a resident of Canada).
15	Interest - Maximum rate of 10%. Reduced rate of 0% applies where interest is paid in respect of indebtedness of the government including political sub - divisions of the other State. It also applies where interest is paid to a non-related party relating to the sale on credit of equipment, merchandise or services, interest is paid on a loan guaranteed by Export Development Canada or by an export credit guarantee scheme administered by the Government of Ireland and for interest paid to the administrator of a pension, retirement or employee benefit plan provided the interest is generally exempt from tax in the hands of the recipient in the other State and is not derived from carrying on a trade or business or from a related person.
16	Royalties - Maximum rate of 10% applies. Copyright royalties excluding films, videotape and reproduction, as well as computer software, patents and information concerning industrial, commercial or scientific experience are exempt.
17	Dividends - Maximum rate of 15%. Reduced rate of 5% applies where the beneficial owner is a company that controls directly at least 20% of the voting power in the company paying the dividends.
18	Interest - Maximum rate of 15%. Reduced rate of 5% applies to interest derived from loans granted by banks and insurance companies, bonds and securities regularly and substantially traded in a recognised securities market, and sale on credit by the purchaser of machinery and equipment to a vendor that is the beneficial owner.
19	Royalties - Maximum rate of 10% applies. Reduced rate of 5% applies to royalties for the use of, or the right to use, any industrial, commercial or scientific equipment.
20	Dividends - Maximum rate of 10% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the voting power of the company paying the dividends.
21	Interest - Maximum rate of 10% applies. Interest is exempt where the interest is paid to the government, a local authority, the Central Bank, or a financial institution wholly owned by the government of the other State; the exemption also extends to interest on debts financed by these bodies.
22	Royalties - Maximum rate of 10% applies. Reduced rate of 6% applies to payments of any kind received as a consideration for the use of, or the right to use, industrial, commercial, or scientific equipment.
23	Dividends - Maximum rate of 10% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 10% of the voting power of the company paying the dividends.
24	Royalties - Generally royalties are exempt, except where a 5% rate applies to payments for use of or right to use motion picture films other than films for exhibition on television.
25	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the voting power of the company paying the dividends.
26	Dividends - A rate of 15% applies where the dividends are beneficially owned by a company which holds directly less than 25% of the capital of the company paying the dividends, or by an individual. In all other cases, the dividends are exempt.

Footnotes	
27	Dividends - Maximum rate of 10% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends.
28	Interest - Maximum rate of 10% applies. Reduced rate of 0% applies where the interest is paid by or to a statutory body, political subdivision or local authority, the Central Bank or any other agency owned by the government of a contracting state; or the interest is paid in respect of a loan granted by the government, central bank or any other such agency.
29	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the voting power of the company paying the dividends
30	Interest - Maximum rate of 10% applies. Reduced rate of 0% applies where the interest is paid or received by the government, a local authority or agent of the government, the Central Bank or any financial institution wholly owned by the government, of the other State. Exclusion also applies to interest paid on loans guaranteed by the government of either State.
31	Royalties - Maximum rate of 10%. Reduced rate of 5% applies for the use of any industrial, commercial or scientific equipment.
32	Interest - Maximum rate of 5% applies. Reduced rate of 0% where interest is derived and beneficially owned by the government, a political subdivision, or local authority of the other state, the National Bank of Ethiopia or the Central Bank of Ireland.
33	Dividends - Maximum rate of 15% applies. Reduced rate of 0% applies where the beneficial owner (being a company) is, or is associated with, a company which either alone or together with one or more associated companies controls directly or indirectly 10% or more of the voting power in the company from which the dividend is derived.
34	Dividends - Maximum rate of 15% applies. Reduced rate of 10% applies in the case of dividends distributed by a French resident company to an Irish resident company which has held shares representing at least 50% of the capital of the French company for one year. Dividends paid by Irish resident company subject to the standard rate of tax (20%).
35	Dividends - Maximum rate of 10% applies. Reduced rate of 5% applies where the beneficial owner is a company which controls directly or indirectly at least 10% of the voting power in the company paying the dividends and has invested more than EUR100,000 in the capital of the company paying the dividends. Reduced rate of 0% applies where the beneficial owner is a company which controls directly or indirectly at least 50% of the voting power in the company paying the dividends and has invested at least 2 million Euros in the capital of the company paying the dividends.
36	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company (other than a partnership or a German Real Estate Investment Trust Company) which holds directly at least 10% of the capital of the company paying the dividends.
37	Dividends - Maximum rate of 7% applies. Reduced rate of 0% applies where the recipient of the dividends is the government, a public body, a political subdivision, the Central Bank or any other agency owned by the other state.
38	Interest - Maximum rate of 7% applies. Reduced rate of 0% applies where the interest is paid to the government, a public body, a political subdivision or a local authority thereof or the Central Bank of the other state; or the interest is paid in connection with a loan granted by the government, or any other agency of the other state. The exemption also applies to interest is paid with respect to indebtedness arising as a consequence of the sale on credit of any industrial, commercial or scientific equipment or where the recipient of the interest is a pension fund that is exempt from tax on the interest income.
39	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the voting power of the company paying the dividends.

Footnotes	
40	Interest - Maximum rate of 10% applies. Reduced rate of 0% applies where the beneficial owner is in the case of Ireland: the government, the Central Bank, the National Treasury Management Agency, the National Pension Reserve Fund, the National Assets Management Agency or a statutory body mainly owned by the government. Similarly, in the case of Hong Kong, where the beneficial owner is the government, the Hong Kong Monetary Authority or statutory body mainly owned by the government, no tax shall be chargeable. This exclusion also applies where a financial institution pays or receives the interest, or if the interest is paid with respect to indebtedness arising as a consequence of the sale on credit of any equipment, merchandise or service.
41	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner holds directly at least 10% of the capital of the company paying the dividends.
42	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends.
43	Royalties - Maximum rate of 10% applies. Reduced rate of 0% applies to royalties for the use of, or the right to use computer software or patents or for information concerning industrial, commercial or scientific experience.
44	Interest - Maximum rate of 10% applies. Reduced rate of 0% where the interest is paid to the government, a local authority, the Central Bank and, in the case of India, the Industrial Finance Corporation of India, the Industrial Development Bank of India, the Export – Import Bank of India, the National Housing Bank, the Small Industries Development Bank of India and the Industrial Credit and Investment Corporation of India ("ICICI") of the other State; the exemption also extends to interest on debts financed or guaranteed by these bodies.
45	Interest - Maximum rate of 10% applies. Reduced rate of 5% applies where the interest relates to the sale of industrial, commercial or scientific equipment, the credit sale of merchandise between two enterprises or bank loans.
46	Dividends - Maximum rate of 15% applies on tax payable in Japan. A reduced rate of 10% applies in Japan where an Irish resident company owns at least 25% of the entire voting shares of the company paying such dividends during the period of 6 months immediately preceding the date of payment of the dividends. A 0% withholding tax rate applies to dividends paid by an Irish resident company.
47	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends. Reduced rate of 0% applies where the beneficial owner is the government, the central bank, or any other institution wholly owned by the government of a state.
48	Interest - Maximum rate of 10%. Reduced rate of 0% where the beneficial owner is the government, the central bank or any other institution wholly owned by the government of a state.
49	Dividends – Maximum rate of 15% applies where dividends are paid by an Irish Real Estate Investment Trust ("REIT"). Otherwise, the reduced rate of 8% applies. Reduced rate of 0% applies where dividends are paid to: in the case of Kenya, the Central Bank of Kenya or in the case of Ireland, the Central Bank of Ireland and the National Treasury Management Agency or the bodies under its management. Dividends are also exempt from tax where the dividends are paid to any statutory body or institution wholly owned by the government of a contracting state.
50	Interest – Maximum rate of 12%. Reduced rate of 0% applies where the beneficial owner is: in the case of Kenya, the Central Bank of Kenya or in the case of Ireland, the Central Bank of Ireland and the National Treasury Management Agency or the bodies under its management. Interest is also exempt from tax where the beneficial owner is any statutory body or institution wholly owned by the government of a contracting state.
51	Dividends - Maximum rate of 15% applies. Reduced rate of 10% applies where the beneficial owner is a company which controls directly or indirectly 10% or more of the voting power in the company paying the dividends.

Footnotes	
52	Dividends - Maximum rate of 15% applies where dividends are paid by an Irish Real Estate Investment Trust ("REIT"). Reduced rate of 10% applies in all other cases unless the further reduced rates of 5% or 0% apply. The reduced rate of 5% applies if the beneficial owner is a company which holds at least 10% of the voting power of the company for an uninterrupted twelve month period ending on the date the dividend is paid. Reduced rate of 0% applies where dividends are paid to: in the case of Kosovo, the Central Bank of Kosovo or in the case of Ireland, the Central Bank of Ireland and the National Treasury Management Agency or the bodies under its management. Dividends are also exempt from tax where the dividends are paid to any statutory body or institution wholly owned by the government of a contracting state.
53	Interest – Maximum rate of 5%. Reduced rate of 0% applies where the interest is paid to the beneficial owner and such interest is paid: to the Government of a contracting state, to a political subdivision or local authority thereof or to the Central Bank of a contracting state; in the case of Kosovo, to the Kosovo Treasury; in the case of Ireland, to the National Treasury Management Agency or bodies under its management; to a statutory body or certain institutions wholly or mainly owned by the government of a contracting state; to or by a financial institution; with respect to indebtedness arising as a consequence of the sale on credit of any equipment, merchandise or service; or to a pension fund that is exempt from tax on the interest income.
54	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the voting power of the company paying the dividends.
55	Interest - Maximum rate of 10% applies. Reduced rate of 0% applies if the payer or recipient of the interest is the government, local authority or government agency, Central Bank or financial institution wholly owned by government or if the loan is government guaranteed.
56	Royalties - Maximum rate of 10% applies. Reduced rate of 5% applies where royalties paid for the use of industrial, commercial or scientific equipment.
57	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the voting power of the company paying the dividends.
58	Interest - Maximum rate of 10% applies. Reduced rate of 0% applies if the payer or recipient of the interest is the government, local authority or government agency, Central Bank or financial institution wholly owned by government or if the loan is government guaranteed.
59	Royalties - Maximum rate of 10% applies. Reduced rate of 5% applies where royalties paid for the use of industrial, commercial or scientific equipment.
60	Dividends - Maximum rate of 15% applies in respect of dividends paid by a Luxembourg resident company. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the voting power of the company paying the dividends. A 0% withholding tax rate applies to dividends paid by an Irish resident company .
61	Dividends - Maximum rate of 10% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 10% of the voting power of the company paying the dividends. Reduced rate of 0% applies where the beneficial owner of a company has owned shares directly representing 25% of the capital of the company paying the dividends for an uninterrupted twelve month period ending on the date the dividend is paid, or is a recognised pension fund.
62	Interest - Maximum rate of 10% applies. Reduced rate of 0% applied where the recipient is the government, a local authority or a government agency, Central Bank or financial institution wholly owned by the government or if the loan is guaranteed or insured by any of these bodies.

Footnotes	
63	Dividends - A reduced rate of 5% applies where an Irish resident payee company pays a dividend to a beneficial owner who is Malta-resident and is a company which holds directly at least 10% of the voting power of the company paying the dividends. In other cases involving the paying of dividends from an Irish resident to a Maltese resident, a rate of 15% applies. Where a Maltese resident company pays dividends to a Irish resident, Maltese tax on the gross amount of the dividend shall not exceed that chargeable on the profits out of which the dividends are paid.
64	Dividends - Maximum rate of 10% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 10% of the voting stock of the company paying the dividends.
65	Interest - Maximum rate of 10% applies. Reduced rate of 5% applies where the beneficial owner is a bank. Reduced rate of 0% applies where the recipient or payee is the government, local authority, Central Bank or where the beneficial owner is an exempt pension fund or the interest is on a loan in excess of 3 years guaranteed or insured by the government or specified banks.
66	Dividends - Maximum rate of 10% applies. Reduced rate of 5% applies where the beneficial owner is a company which controls directly or indirectly at least 25% of the voting power in the company paying the dividends.
67	Interest - Maximum rate of 5% applies. Reduced rate of 0% applies where the interest is paid to or by the government, a local authority, a political subdivision or Central Bank of the other State or if it is in respect of a loan which is made by, to or guaranteed by any of the above bodies. The 0% rate also applies in respect of interest paid to a financial institution or is paid with respect to an indebtedness arising as a consequence of the sale on credit of any equipment, merchandise or service.
68	Dividends - Maximum rate of 10% applies. Reduced rate of 5% applies where the beneficial owner is a company which controls directly or indirectly at least 10% of the capital in the company paying the dividends. Reduced rate of 0% applies where dividends are paid to the government.
69	Interest - Maximum rate of 10% applies. Reduced rate of 0% applies if it is derived and beneficially owned by the government of the other state or local authority thereof, the Central Bank or any financial institution wholly or almost wholly owned by that government.
70	Royalties - A rate of 10% applies in the case of any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience. A reduced rate of 5% applies in respect of royalties which derive from the use of or right to use any copyright.
71	Dividends - Maximum rate of 10% applies. Reduced rate of 6% applies where the beneficial owner is a company which owns directly at least 25% of the capital of the company paying the dividends.
72	Interest - Maximum rate of 10% applies. Reduced rate of 0% applies where the interest is paid to the government or the Central Bank of the other state as well as, in the case of Ireland, the National Treasury Management Agency and the National Pension Reserve Fund and in the case of Morocco, the Deposit and Management Fund and the Moroccan Pension Fund.
73	Dividends - Maximum rate of 15% applies. Reduced rate of 0% applies where the beneficial owner is a company and holds directly at least 25% of the voting power in the company paying the dividends.
74	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends. Reduced rate of 0% applies where the dividends are beneficially owned by the government or central bank of either contracting state, in the case of Norway, the Norwegian Government Petroleum Fund and National Insurance Fund, and in the case of Ireland, the National Treasury Management Agency or the National Pension Reserve Fund.

Footnotes	
75	Dividends - Maximum rate of 10% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the share capital of the company paying the dividends.
76	Interest - Maximum rate of 10% applies. Reduced rate of 0% where the beneficial owner is in the case of Ireland, the Central Bank, the National Treasury Management Agency or the National Reserve Fund, in the case of Pakistan, the State Bank.
77	Interest - Maximum rate of 5% applies. Reduced rate of 0% applies where the beneficial owner is a contracting State, the Central Bank, any of its political subdivisions or local authorities, or the interest is paid in relation to the sale on credit of merchandise or equipment to an enterprise of a Contracting State. In addition, the exemption applies to interest paid to other entities or bodies (including financial institutions) or to interest paid to a pension fund recognised for tax purposes in the other state.
78	Dividends - Maximum rate of 15% applies. Reduced rate of 0% applies where the beneficial owner is a company which holds directly at least 25% of the voting power of the company paying the dividends.
79	Interest - Maximum rate of 10% applies. Reduced rate of 0% applies where interest is paid in connection with the sale on credit of any industrial, commercial or scientific equipment, the credit sale of merchandise between two enterprises or bank loans.
80	Interest - Maximum rate of 15% applies. Reduced rate of 0% applies where interest paid by or to the Government or a local authority, or to an institution or body (including a financial institution) in connection with any financing granted by them under an agreement between the governments.
81	Interest - Maximum rate of 3% applies. Reduced rate of 0% applies where interest is paid in connection with the sale on credit of any industrial, commercial or scientific equipment, on any bank loans, on a loan for more than two years or on any debt claim of whatever kind guaranteed by or on behalf of the government.
82	Royalties - Maximum rate of 3% applies. Reduced rate of 0% applies where royalties are attributable to any copyright.
83	Dividends - Maximum rate of 5% applies. Reduced rate of 0% applies where the dividends are paid to a company which holds directly at least 25% of the capital of the company paying the dividends. In addition, dividends shall not be taxable where the recipient of the dividend is in the case of Ireland, the government, the Central Bank or any other institution wholly owned by the government, in the case of Saudi Arabia, the government, the Saudi Arabian Monetary Agency or any other institution wholly owned by the government.
84	Royalties - Maximum rate of 8% applies. Reduced rate of 5% applies where royalties are paid for the use of, or the right to use industrial, commercial or scientific equipment.
85	Dividends - Maximum rate of 10% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly or indirectly at least 25% of the voting power of the company paying the dividends.
86	Interest - Maximum rate of 10% applies. Reduced rate of 0% applies where it is beneficially owned by the Government of the other state, including any political subdivision or local authority thereof, the Central Bank or any financial institution wholly or almost wholly owned by that Government.
87	Royalties - All royalties are subject to a rate of 10%, except copyright royalties which are subject to a reduced rate of 5%. Payments for the lease of aircraft and ships operated in international traffic are specifically excluded from the definition of royalties.

Footnotes	
88	Interest - Maximum rate of 5% applies. Reduced rate of 0% applies where interest is paid to the government, in the case of Singapore this includes the Monetary Authority of Singapore and the Board of Commissioners of Currency, the Government of Singapore Investment Corporation Pte Ltd or any other statutory body. Similarly in the case of Ireland, government includes the Central Bank of Ireland, the National Treasury Management Agency, the National Pensions Reserve Fund or any other statutory body.
89	Dividends - Maximum rate of 10% applies. Reduced rate of 0% applies where the beneficial owner holds directly at least 25% of the voting power of the company paying the dividend.
90	Royalties - A 10% rate applies to payments for patents and intangibles whereas a reduced rate of 0% applies to payments for copyright.
91	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends.
92	Interest - Maximum rate of 5% applies. Reduced rate of 0% applies where the interest is paid to the government, including political subdivisions or local authorities or by a Central Bank thereof, or any other institutions as may be agreed from time to time.
93	Dividends - Maximum rate of 10% applies. Reduced rate of 5% where the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends.
94	Dividends - Maximum rate of 15% applies. Reduced rate of 0% applies where the beneficial owner is a company which either alone or together with one or more associated companies controls directly or indirectly at least 25% of the voting power in the company paying the dividends subject to the conditions of the Parent Subsidiary Directive.
95	Royalties - Maximum rate of 10% applies. Reduced rate of 8% for royalties received in consideration for the use of, or the right to use, cinematographic films, or films, tapes, and other means of transmission or reproduction of image or sound, and of the gross amount of royalties for the use of, or the right to use, industrial, commercial or scientific equipment, and for any copyright of scientific work. Reduced rate of 5% for royalties for the use of, or the right to use, any copyrights of literary, dramatic, musical or artistic work.
96	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 10% of the voting power of the company paying the dividends.
97	Dividends - Maximum rate of 15% applies. Reduced rate of 0% applies where the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends, or where the beneficial owner is a pension scheme or the central bank of a contracting state.
98	Interest - Maximum rate of 15% applies. Reduced rate of 10% where the interest is beneficially owned by a financial institution (including an insurance company) or where the interest is paid with respect to indebtedness as consequence of a sale of any equipment, merchandise or services to an unconnected party. Reduced rate of 0% where interest is paid to the government which includes in the case of Thailand: the Bank of Thailand, the Export - Import Bank of Thailand or the Government Pension Fund and includes in the case of Ireland: the Central Bank of Ireland, the National Treasury Management Agency, the National Pension Reserve Fund and any other institution wholly owned by the Government.
99	Royalties - Rate of 5% for royalties received for use of or right to use any copyright. Rate of 10% for the use of or the right to use industrial, commercial or scientific equipment or any patent. Rate of 15% for the use of or the right to use any trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.



Footnotes	
100	Dividends - Maximum rate of 15% applies. Reduced rate of 10% applies where the beneficial owner is a company which controls directly 25% or more of the voting power in the company paying the dividends. Reduced rate of 5% where dividends are paid out of profits which are subject to the full rate of corporation tax.
101	Interest - Maximum rate of 15% applies. Reduced rate of 10% where the interest is paid on a debt claim for a period exceeding two years or where the interest is received by a financial institution.
102	Dividends - Maximum rate of 15% applies. Reduced rate of 5% where the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends.
103	Interest - Maximum rate of 10% applies. Reduced rate of 5% applies where interest is paid in connection with the sale on credit of industrial, commercial or scientific equipment or on any bank loan. Reduced rate of 0% applies where the beneficial owner of the interest is the government or any agency authorised by the government or such interest is paid in respect of any loan or debt claim made or guaranteed by the government.
104	Royalties - Maximum rate of 10% applies. Reduced rate of 5% applies where royalties are paid in respect of any copyright of scientific work, any patent, trade mark, secret formula, process or information concerning industrial, commercial or scientific experience.
105	Dividends - Maximum rate of 15% applies. Reduced rate of 5% applies where the beneficial owner is a company which holds directly or indirectly at least 10% of the voting power in the company paying the dividends.
106	Dividends - The general rule is that a maximum rate of 15% applies and a reduced rate of 5% applies where the beneficial owner is a company which holds directly at least 10% of the voting power in the company paying the dividends. However, special provisions apply in the case of Regulated Investment Companies and Real Estate Investment Trusts.
107	Dividends - Maximum rate of 10% applies. Reduced rate of 5% where the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends.
108	Dividends - Maximum rate of 10% applies. Reduced rate of 5% where the beneficial owner is a company which holds directly at least 70% of the voting power of the company paying the dividends.
109	Interest - Maximum rate of 10% applies. Reduced rate of 0% applies where interest is paid in the case of Ireland, to the government, the Central Bank, the National Treasury Management Agency, the National Pension Reserve Fund and any other statutory body. In the case of Vietnam, the reduced rate applies to interest paid to the government, State Bank, Bank for Investment and Development Support.
110	Royalties - Rate of 5% applies where royalties are paid as consideration for the use of, or the right to use, any patent, design or model, plan, secret formula or process, or for information concerning industrial or scientific experience. Rate of 10% applies where royalties are paid in consideration for the use of, or the right to use, a trade mark or for information concerning commercial experience. Rate of 15% applies in all other cases.
111	Interest - Maximum rate of 10% applies. Reduced rate of 0% where the beneficial owner is in the case of Ireland, the government, the Central Bank, the National Pension Reserve Fund or any other financial institution wholly owned by Ireland. In the case of Zambia, the reduced rate applies to the government, the Bank of Zambia, the National Pension Scheme Authority and any other financial institution wholly owned by Zambia.
112	Royalties - Maximum rate of 10% applies. Reduced rate of 8% in the case of royalties received in respect of any copyright of scientific work, any patent, trade mark, design or model, plan, secret formula or process or information concerning industrial, commercial or scientific experience.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

In our experience, clients generally conduct a tax due diligence review of the three most recent tax periods across all tax heads notwithstanding that the statute of limitations period can be up to five years (and indefinite in certain circumstances).

Nº.	Legal/Commercial	Query
1	Tax (General)	Please confirm how tax, including Corporation Tax ("CT"), Capital Gains Tax ("CGT"), stamp duty, Value Added Tax ("VAT") and payroll taxes under the pay as you earn system ("PAYE"), is managed by the Target Company (i.e. is it managed internally or externally by advisors appointed to assist in a preparatory or review role).
2	Tax (General)	Please advise if there have been any historical Revenue audits across all tax heads (including but not limited to CT, CGT, stamp duty, VAT and PAYE). If so, please provide a summary of how it / they concluded.
3	Tax – (General)	Confirmation that all corporation tax, VAT and Payroll returns and payments have been made on time (i.e. printouts from the Revenue Online Service for each tax head showing dates of filings, tax liability, payment amounts and dates) for the three most recent tax years filed and any tax payments or filings made in respect of the current tax year.
4	Tax – (General)	Copies of any significant or material correspondence with Irish Revenue under any tax head including CT, CGT, stamp duty, VAT and PAYE (e.g. submissions, rulings, concessions, and questions from Irish Revenue etc.).
5	Tax – (General)	Copies of any significant or material tax advice or opinions from advisors in respect of any tax head including CT, CGT, stamp duty, VAT and/or PAYE. This should include any advice concerning: The tax profile of the Company; The tax treatment of any particular transaction or item; and/or Any restructuring, reorganisation or financing undertaken.
6	Tax – CT, CGT and Stamp Duty	Please provide copies of the final financial statements for the three most recent tax years. If there are management accounts available for the current year, please also provide these.
7	Tax – CT, CGT and Stamp Duty	Please provide copies of the final Irish corporate tax returns for the three most recent tax years.
8	Tax – CT, CGT and Stamp Duty	Please provide copies of the final Irish corporate tax computations for the three most recent tax years.
9	Tax – CT, CGT and Stamp Duty	Please provide details of the approach the Target Company takes towards Irish transfer pricing legislation and how it maintains appropriate documentation in respect of the same. If the Target Company qualifies for the SME exemption in respect of transfer pricing legislation, please confirm that the conditions required to avail of the exemption have been satisfied on a continuous basis.
10	Tax – CT, CGT and Stamp Duty	Please provide details of any claims for R&D Tax Credits, if applicable.
11	Tax – CT, CGT and Stamp Duty	Please provide details of any qualifying assets held by the Target Company under Ireland's IP regime (Section 291A TCA 1997).

Nº.	Legal/Commercial	Query
12	Tax – CT, CGT and Stamp Duty	Please provide details of any reliefs or exemptions claimed by the Target Company in relation to CT, CGT and/or SD. Please confirm if any relief or exemption claimed by the Target Company remains open to and subject to any clawback provisions?
13	Tax – CT, CGT and Stamp Duty	Details of any tax losses or other tax attributes being carried forward to date (not otherwise available from the above requested information).
14	Tax – CT, CGT and Stamp Duty	Please provide details of any interest, dividend or royalty payments made by the Target Company.
15	Tax – CT, CGT and Stamp Duty	Please provide details in relation to any withholding taxes applied on any interest, dividend or royalty payments and copies of the relevant withholding tax returns, if applicable.
16	Tax – CT, CGT and Stamp Duty	Please provide details of any interest relief claimed by the company under Section 247 TCA 1997 (interest as a charge), if applicable.
17	Tax – CT, CGT and Stamp Duty	Details of any activities undertaken abroad including: Details of any foreign employees employed by any Target Company. Details of any foreign offices or permanent establishments abroad.
18	Tax – CT, CGT and Stamp Duty	Details of where board meetings / management decisions for the company are held and made for the three most recent tax years. Please provide copies of the board minutes of the company for meetings for the three most recent tax years.
19	Tax – Value Added Tax	Please provide a sample of VAT returns and all supporting information for three randomly selected return periods for each of the relevant Target Companies who are obliged to file VAT returns.
20	Tax – Value Added Tax	Please provide copies of the Annual Return of Trading Details for the three most recent tax years.
21	Tax – Value Added Tax	Please provide details of any foreign VAT registrations, if applicable.
22	Tax – Value Added Tax	Please provide details of any VAT Group Registrations, if applicable.
23	Tax – Value Added Tax	Please provide a summary of the VAT treatment of the primary revenue streams. Where there are multiple revenue streams, please provide a summary and the associated VAT treatment of each stream. Does the Target Company provide any services to customers outside of Ireland? If so, please provide any relevant details. Are there any VAT exempt activities undertaken by the Company?
24	Tax – Value Added Tax	Is the Target Company satisfied that it is maintaining adequate records in relation to input credits being claimed? Are records kept in line with VAT regulations?
25	Tax – Value Added Tax	If there are any VAT exempt activities, has input VAT on directly attributable expenses been allocated against taxable and exempt activities appropriately?

Nº.	Legal/Commercial	Query
26	Tax – Value Added Tax	If there are any VAT exempt activities, is the Target Company satisfied that its recovery ratio is correct concerning the allocation between exempt and taxable services?
27	Tax – Value Added Tax	If there is more than one activity, how does the Target Company apportion between the various elements of the business and what is the basis for apportionment? Who reviews the process and has ultimate responsibility for ensuring the apportionment is correct?
28	Tax – Value Added Tax	Is each Target Company satisfied that adequate records are being kept in relation to its VAT exempt activities?
29	Tax – Value Added Tax	Has any input VAT been deducted in relation to exempt VAT activities?
30	Tax – Value Added Tax	Has any input VAT been deducted which is specifically disallowable for VAT purposes, for example: Food, drink, accommodation or personal services, entertainment expenses, petrol
31	Tax – Value Added Tax	Has any VAT been reclaimed in relation to expenditure incurred in connection with any share transactions or restructurings?
32	Tax – Value Added Tax	Has the Target Company acquired a business from a VAT registered person?
33	Tax – Value Added Tax	Has the Target Company transferred assets as a transfer of business in the period under review?
34	Tax – Value Added Tax	How does the Target Company account for VAT in respect of its bad debts?
35	Tax – Value Added Tax	How does the Target Company account for VAT in respect of any refunds or discounts to customers?
36	Tax – Value Added Tax	How does each Target Company account for VAT in respect of vouchers?
37	Tax – Value Added Tax	How does each Target Company account for VAT in respect of inter-group charges?
38	Tax – Value Added Tax	How does the Company account for VAT in respect of the supply of food to employees, if applicable?
39	Tax – Value Added Tax	Are invoices issued on time (i.e by the 15th day of the month following the month of supply of services or receipt on account)?
40	Tax – Value Added Tax	Does the Target Company account for VAT on a cash receipts basis? If so, is there written Revenue approval to apply the cash receipts basis?
41	Tax – Payroll Taxes (PAYE and PRSI)	Please provide copies of the annual payroll return for the three most recent tax years.
42	Tax – Payroll Taxes (PAYE and PRSI)	Please provide details of any foreign employment tax registrations.
43	Tax – Payroll Taxes (PAYE and PRSI)	Directors Fees Is all directors' remuneration subject to payroll tax? Are any other benefits provided to the directors?
44	Tax – Payroll Taxes (PAYE and PRSI)	Please provide details of any arrangements between the Target Company and its directors?

Nº.	Legal/Commercial	Query
45	Tax – Payroll Taxes (PAYE and PRSI)	Please provide details of any arrangements between the Target Company and its shareholders?
46	Tax – Payroll Taxes (PAYE and PRSI)	Consultants Are there any individuals who are retained under consultancy arrangements (i.e. not under an employment contract)? If so, what steps are taken to ensure that the individuals are deemed to be carrying on a business of their own and are not de facto employees of the Target Company? Are there appropriate contracts in place?
47	Tax – Payroll Taxes (PAYE and PRSI)	Are there any significant benefits provided to employees (cash or non-cash)?
48	Tax – Payroll Taxes (PAYE and PRSI)	Travel Expenses
49	Tax – Payroll Taxes (PAYE and PRSI)	Expenses
50	Tax – Payroll Taxes (PAYE and PRSI)	Credit cards Do any employees have credit cards? Is PAYE operated on non-business expenditure? Are you satisfied that any personal expenses are not being borne by any Target Company?
51	Tax – Payroll Taxes (PAYE and PRSI)	Do any employees undertake business entertainment and is the reimbursement of such expenses vouched by receipts?
52	Tax – Payroll Taxes (PAYE and PRSI)	Are any accommodation expenses paid on behalf of employees?
53	Tax – Payroll Taxes (PAYE and PRSI)	Are any relocation expenses ever paid to employees?
54	Tax – Payroll Taxes (PAYE and PRSI)	Do any employees avail of any beneficial loans or is there any arrangement whereby employees can avail of goods or services below market value?
55	Tax – Payroll Taxes (PAYE and PRSI)	Are you satisfied that each Target Company is deducting PRSI under the correct contribution class?
56	Tax – Payroll Taxes (PAYE and PRSI)	Please confirm whether there have been any redundancies in recent years?
57	Tax – Payroll Taxes (PAYE and PRSI)	Please advise if there are any share remuneration schemes in place within any Target Company.

IRELAND

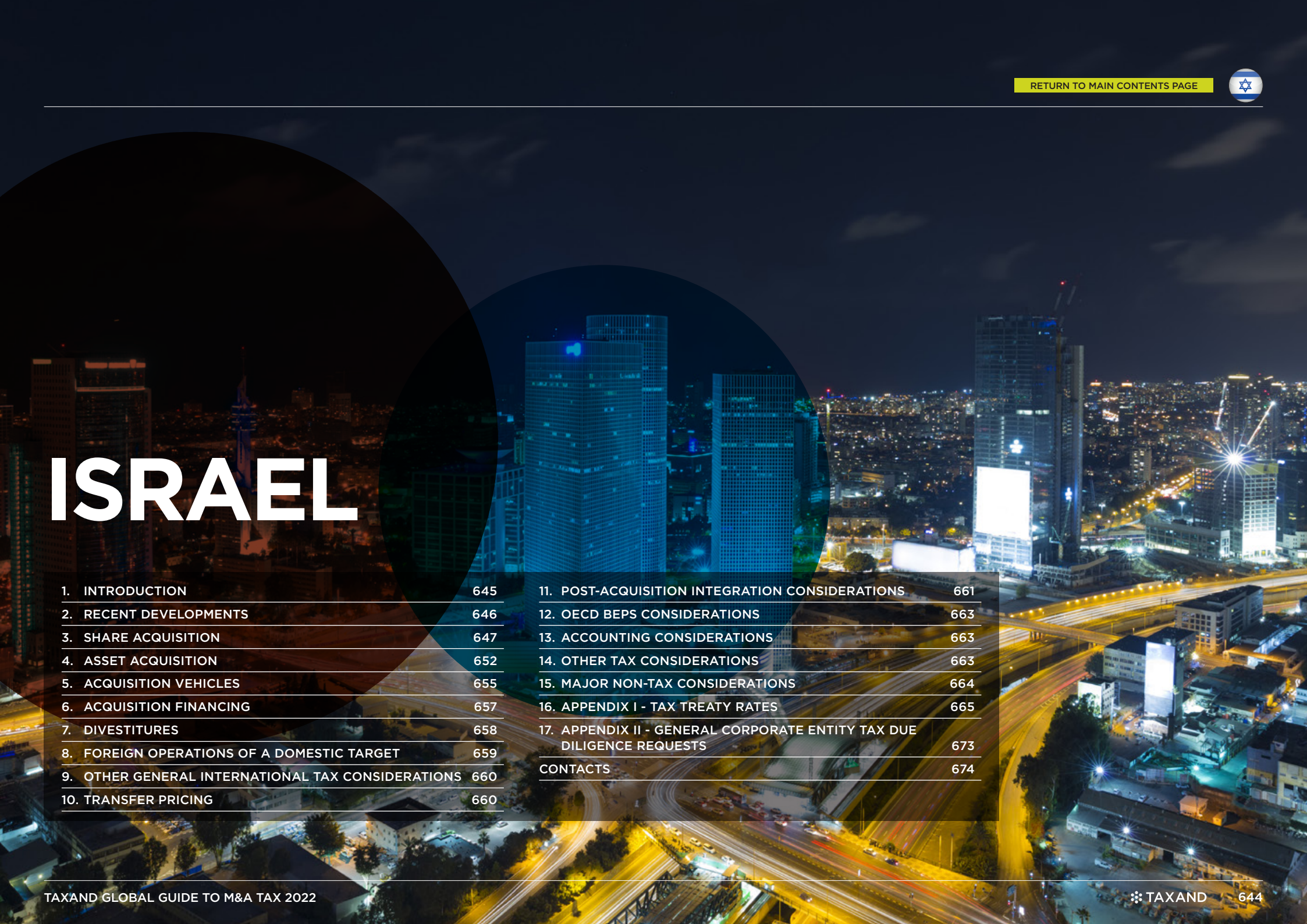
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ISRAEL

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ISRAEL

1. INTRODUCTION

a. Forms of Legal Entity

The main forms of legal entities doing business in Israel are companies (which are opaque for tax purposes and, therefore, are separate from their shareholders) and partnerships (which are treated as transparent for tax purposes).

Israel has a two level corporate tax regime. Companies are taxed on their income and shareholders are taxed upon distribution of dividends by companies to them. Partnerships, on the other hand, are subject to only one level of tax, i.e. the partnership is a look-through and only the partners are subject to tax with respect to the partnership's income (as classified in the hands of the partnership) pro rata based on their holdings in the partnership.

There are other entities that may be utilised, including other forms of transparent entities for tax purposes such as family companies, trusts, and house companies (special companies suitable for investments in real estate).

b. Taxes, Tax Rates

The general corporate income tax rate is 23%, which generally applies to all types of a company's income, including capital gains. Dividends paid from one Israeli resident company to another are generally exempt from tax, to the extent dividends are distributed from income generated or accrued in Israel and subject to regular corporate income tax rates. Dividends that an Israeli resident company receives from abroad are subject to the standard 23% corporate tax rate, with the ability to generally obtain a direct and indirect foreign tax credit with respect to taxes withheld abroad. Moreover, there are preferential corporate tax rates that may be applicable subject to meeting certain conditions.

As noted above, partnerships are transparent for tax purposes and thus, no tax applies at the partnership level. Individuals (such as partners in partnerships) are subject to tax at progressive rates up to 47%, with an additional 3% surtax applicable to individuals with annual income over a certain threshold (roughly USD203,000 in 2022).

VAT is charged on transactions in Israel and on the importation of goods into Israel, currently at a rate of 17%. VAT is generally reclaimable by a registered "dealer" to the extent paid for the generation of income that is subject to VAT. Certain transactions may qualify for a zero rate VAT.

c. Common divergences between income shown on tax returns and local financial statements

Israeli tax returns are generally based on financial statements, which are reconciled in order to meet tax law requirements.

A significant difference between financial statements and tax returns is the exclusion of certain intercompany dividends from the taxable income. Dividends distributed to an Israeli resident company by another Israeli resident company out of Israeli source income is exempt from tax.

Tax returns also typically diverge from financial statements with respect to deduction of expenses, as follows:

(a) Wages, management fees, linkage differential, interest or other payments made by a company that is owned by less than five persons to controlling shareholders who hold 10% or more of any of the "means of control" of a company (which generally includes the right to vote, receive profits, nominate a director or general manager of the company, receive assets upon liquidation or instruct someone who holds any of the aforesaid rights regarding the manner in which he or she is to exercise such right(s), all regardless of the source of such right) are deductible



only if paid to such controlling shareholder within the same tax year in which a deduction is claimed, or wages income was included in the tax return of the controlling shareholder and the applicable withholding tax was deducted and remitted to the Israel Tax Authority ("ITA") within three months after the end of the tax year;

(b) Any income payable to a foreign resident is deductible as an expense if it was paid in the tax year in which the deduction is claimed, or the tax withholding with respect to such income was deducted within three months after the end of the tax year and was remitted to the ITA in a timely manner;

(c) Research and development expenses are generally amortisable over a period of three years for tax purposes (unless certain approvals have been obtained allowing a deduction of the expenses in the year in which they were incurred).

In addition, deductions for depreciation of capital assets are allowed only in accordance with the rates prescribed in the applicable Israeli regulations and such rate may differ from depreciation for accounting purposes. Specifically, Israeli regulations do not allow taxpayers to claim a deduction for intangible assets, except for certain specific cases provided for in Israeli legislation (such as a deduction of patents or knowledge over a period of eight years by "Industrial Companies", subject to certain conditions and limitations included in the Law for Encouragement of Industry (Taxes) 1969 and a deduction of goodwill over a period of 10 years, subject to certain conditions and limitations included in the Income Tax Regulations (Depreciation Rate for Goodwill) 2003).

2. RECENT DEVELOPMENTS

Israel recently adopted legislation that provides preferential tax rates to technology and hi-tech companies in relation to income derived from intellectual property development activities that are conducted in Israel. Under this legislation, such companies that develop their intellectual property in Israel can benefit from preferential tax rates, subject to meeting certain conditions that aim to limit such benefits to cases where the intellectual property is indeed developed in Israel.

The ITA established a committee that has recently submitted recommendations for significant reforms to Israel's international tax regime. If enacted into law, these recommendations would have a significant impact on matters such as residency of individuals, CFCs, foreign tax credits, reporting obligations and hybrid mismatches.

Israel has recently adopted new tax treaties and amended certain others. Israel has also ratified the Multilateral Convention to Implement Tax Treaty Related ("MLI") measures to prevent Base Erosion and Profit Shifting ("BEPS"), which was signed by the Minister of Finance on 7 June 2017.

More recently, Income Tax Regulations (Accelerated Depreciation during the Coronavirus Period) (Temporary Provision), 5780-2020 were finalised. These regulations aim to induce economic activity in Israel during the coronavirus crisis, although they are not limited to businesses that suffered losses, and benefits thereunder are available to any business that satisfies the conditions in said regulations.

Israel has not adopted any specific provisions or guidelines relating to Covid-19 measures aside from a few ad hoc filing extensions and certain grants and subsidised loans to financially assist businesses.

3. SHARE ACQUISITION

a. General Comments

From a buyer's perspective, an asset sale is generally preferable because it allows the buyer to purchase the business and the assets without having to assume all of the company's historical tax liabilities (which is the case when the buyer purchases the shares of the company and essentially acquires the company as a whole). In addition, the buyer can get a step up in the purchased assets (a new cost basis) which is generally amortisable over a certain period of time. For sellers, on the other hand, asset deals are generally less advantageous because there are two levels of tax: at the company level, in respect of the sale of the assets, and then at the shareholder level upon distribution of a dividend.

From a buyer's perspective:

- Liabilities: all historical tax liabilities of the acquired company are assumed (usually subject to indemnity for pre-closing taxes and breach of and tax representations and warranties that are included in the share purchase agreement and can help mitigate).
- The acquired company's basis in its assets remains unchanged. Any future transfer of assets (e.g. sale of intellectual property of the company post-acquisition) is a taxable event at the company level and will give rise to additional taxes.

From a seller's perspective:

- If the company was established on or after 1 January 2012, the applicable capital gains tax for individual shareholders is 25%, increasing to 30% for shareholders who hold 10% or more any of the means of control of such company, plus, in each case, a 3% surtax applicable to individuals with annual income over a certain threshold (roughly USD203,000 in 2022). If the company was established prior to 1 January 2012, the tax rate will be calculated on a linear basis (subject to the date of purchase and date of sale). If the seller is a company that is subject to tax in Israel with respect to the share purchase transaction, the gain will generally be subject to a 23% corporate tax rate. Non-Israeli residents are generally exempt from tax on capital gains, subject to meeting certain conditions.

b. Tax Attributes

In general terms, tax losses and other tax attributes of a target company may be carried over indefinitely.

While net operating loss carry forwards survive a company's change of ownership, courts in Israel have held that when the sole objective of an acquisition of a company is to utilise its carried forward losses, and the purchase lacks a business and commercial purpose, there are limitations on the utilisation of losses and such losses will often not be allowed to offset taxable income of the company following the change of ownership. These court decisions rely heavily on general anti-avoidance provisions under Israeli tax law, such as the authority granted to the ITA to disregard a transaction if it is artificial.

Tax attributes cannot be transferred between entities. That said, in certain circumstances such as a post-acquisition merger, the tax attributes are effectively transferred to another entity, albeit subject to certain limitations on the ability to utilise such tax attributes.

c. Tax Grouping

Tax grouping is generally not allowed under Israeli law. An exception applies, however, in the case of an Israeli-resident "industrial" company or a company that is a holding company of industrial companies. An industrial company is a company that receives at least 90% of its revenues from an industrial facility engaged in manufacturing activities, including software and other high-tech companies' activities. An industrial company, or an industrial holding company, may file a consolidated tax return on behalf of itself and its industrial company subsidiaries, provided that all the industrial companies included in the consolidated group are part of a single assembly line or manufacturing process.

d. Tax Free Reorganisations

Israeli tax law includes two main types of tax free reorganisations that are applicable to M&A transactions. Note that some other types of reorganisations, such as a tax deferred, hive down of assets or a spin off of a subsidiary to a parent company, are also available but are less common in the context of M&A transactions.

The first reorganisation is a merger, which is defined as a statutory merger, in which there is a transfer of all assets and liability of a company ("transferor company") to another company ("surviving company"), followed by a winding-up without liquidation of the transferor company, or an acquisition of at least 80% of the share capital of a company (the transferor company in this case) in exchange for shares of the acquirer (the surviving company in this case) (a "Merger Reorganisation").

The Merger Reorganisation takes the form of a rollover relief, so it constitutes, strictly speaking, a tax deferral rather than a tax exemption. The following conditions need to be satisfied in order for the Merger Reorganisation to qualify for tax free treatment:

(a) Business and economic purpose. The principle objective of the Merger Reorganisation is to enable joint management and operation of the businesses of the companies participating in the Merger Reorganisation. Improper tax avoidance or tax reduction must not be one of the principal purposes of the Merger Reorganisation.

(b) Continuity of assets. The majority of assets (by value) transferred in the Merger Reorganisation to the surviving company from the transferor company and the majority of the assets (by value) owned by the surviving company immediately prior to the merger, must not be sold during a period of two years beginning on the date of the Merger Reorganisation (the "Required Period"). During the Required Period, such assets must continue to be used in the ordinary course of the surviving company's business. In certain circumstances, a replacement of assets will not be deemed a sale of assets for these purposes. It is also possible for the merging companies to apply to the Director of the ITA to exclude certain assets or categories of assets for the purpose of this test, and the Director may grant approval subject to conditions. Assets for these purposes do not include stock or inventory and certain tradeable securities.

(c) Continuity of economic activity. The main economic activity of each of the merging companies immediately prior to the Merger Reorganisation must continue in the surviving company during the Required Period.

(d) Proportionate issuance of shares in the surviving company. In the course of the Merger Reorganisation, the surviving company must issue shares carrying equal rights to the shareholders of the transferor company in proportion to their holdings in the transferor company.

(e) Value of merging companies. There are two requirements pertaining to the relative value of each of the companies participating in the Merger Reorganisation: i) holders of rights in each merging company must hold together at least 10% of the market value of the rights in the surviving company on the date of the merger; ii) the market value of each merging company may not exceed nine times the market value of the other merging company, on the date of the merger. These requirements may be waived for certain parent-subsidiary or sister-company mergers.

(f) Consideration. Cash consideration may be utilised in a merger but will be taxable in the hands of the recipients. The cash portion of the merger consideration is generally limited to 40% of the total merger consideration, yet it is possible for one or more shareholders to receive only cash consideration in exchange for all of their shares in the transferor company (with the 40% limitation applying only to the remaining shareholders).

(g) Required documentation. Each merging company and their shareholders must submit to the ITA reports detailing, inter alia, the facts relating to the Merger Reorganisation, Merger Reorganisation agreements, any opinions, financial statements, reports on the designation of the transferred assets, and any valuations conducted for purposes of the Merger Reorganisation. These reports and documents must generally be submitted within 30 days of the Merger Reorganisation date, or within 60 days if the Merger Reorganisation was pre-approved by the ITA.

(h) Continuity of interest requirement. All of the holders of equity rights in the merging companies must hold together, immediately after the merger, all of the rights in the surviving company. In addition, during the Required Period, the equity rights held by all or part of the rights holders in the merging companies on the merger date, should not be less than 25% of each of the equity rights in the surviving company. In other words, any sale of, and/or issuance of shares in, the surviving company during the Required Period shall not be deemed to violate the tax free merger continuity of interest requirement, if the rights in the surviving company held by the original rights holders (at the time of the merger) in the merging companies do not fall below 25% of each of the rights in the surviving company. These provision will not apply with respect to an upstream parent-subsidiary merger. In addition, equity rights that are publicly traded on a securities exchange will be disregarded for the purpose of the continuity of interest requirements, unless such rights held by a controlling shareholder (generally defined as a person that holds 5% of the vote or value of a company) other than certain institutional investors.

(i) The date of the merger. Generally, a Merger Reorganisation can take place, for tax purposes, at the end of the tax year. However, subject to certain conditions, a Merger Reorganisation can also be carried out at the end of each quarter of the year (i.e. 31 March, 30 June and 30 September). To the extent a quarterly merger is carried out, additional financial statements and tax returns are required to be prepared.

(j) Pre-ruling. Certain Merger Reorganisations require an advance authorisation by the ITA in order to qualify for tax free treatment, including if i) the absorbing company is a foreign resident, or ii) one or more of the companies participating in the Merger Reorganisation does not generate or is not expected to generate income that is classified as business income. In addition, taxpayers are allowed to approach the ITA in order to obtain a pre-ruling confirming the eligibility of the Merger Reorganisation to tax-exempt treatment. The ITA is allowed to include additional conditions and limitations in the pre-ruling confirmation.

The second typical reorganisation of an M&A transaction is an exchange of shares of a company in exchange for shares of a publicly traded company (a "Share-swap Reorganisation"). In a Share-swap Reorganisation, the taxable event for the seller of shares is deferred until the earlier of i) the actual sale of the share-consideration or ii) the end of the so-called "postponement period". The postponement period is 24 months after the date of the share exchange or six months after the lapse of a statutory lock-up period, whichever is later, with respect to 50% of the share-consideration and 48 months after the date of the share-exchange or six months after the lapse of a statutory lock-up period, whichever is later, with respect to the remaining 50% of the share-consideration.

The following conditions need to be satisfied in order for the Share-swap Reorganisation to qualify for tax free treatment:

(a) Proportionate consideration. The ratio of the fair market value of the sold shares to the fair market value of the acquiring company immediately after the share-swap equals the ratio of the fair market value of the consideration shares and any additional cash consideration to the fair market value of the acquiring company immediately after the share-swap.

(b) Equal rights. All consideration shares hold equal rights.

(c) Sale of all shares. All of the shares and rights to acquire shares held by the transferor have been exchanged in the share-swap transaction, unless the ITA approved otherwise.

(d) Pre-ruling. The ITA must authorise in advance the tax free treatment of a Share-swap Reorganisation. The ITA is allowed to include additional conditions and limitations in the pre-ruling confirmation.

(e) Trustee. The share-consideration must be deposited with an Israeli resident trustee, pre-approved by the ITA, that will be responsible for the payment of any taxes related to the share-consideration as a result of the sale or deemed sale of such shares.

e. Purchase Agreement

Share purchase agreements in Israel are generally based on US-style agreements and contain the following sections relating to taxes:

- Withholding Rights: Buyer's right to generally withhold from payments to the sellers. In Israel, there is a market practice of utilising paying agents in M&A transactions. Pursuant to guidance published by the ITA, buyers can pay the consideration to the paying agent and essentially "shift" the withholding obligations from the consideration payable to the sellers to the paying agent. Sellers are required to approach the ITA and obtain a certificate of exemption from (or reduced rate of) withholding to prevent withholding at a 30% default withholding rate. Purchase agreements typically set forth the mechanics of the engagement of the paying agent and the withholding procedures.
- Tax Representations & Warranties: These are normally provided with respect to the company's tax history. There are typically general representations as well as more specific or detailed representations, depending on the due diligence and the company's tax status.
- Covenants: Covenants relating to tax matters are usually included in the share purchase agreements and cover issues such as filing of tax returns, payment of taxes, amending tax returns, controlling any tax contests with the tax authorities and any other matters, including matters specific to the deal at hand.

- Indemnification: It is common for share purchase agreements to include indemnification provisions requiring sellers to indemnify the buyer for:
  - Taxes of the company for the tax period up to the closing of a transaction;
  - Any breach of the tax representations and warranties or the tax covenants provided therein;
  - Any under-withholding from payments to the sellers (i.e. for taxes that should have been withheld but inadvertently were not; and
  - Any other specific tax items or matters that would require a specific indemnity.

  Tax representations are normally treated as so called "fundamental representations" in that they are typically not subject to general indemnity limitations, but capped at the aggregate consideration. Claims of indemnity for taxes are usually allowed until the expiration of the statute of limitations with respect to such taxes. It is also common that a certain percentage of the consideration remains in escrow, which funds can be used to satisfy any indemnification claims.
- Miscellaneous: At times, transactions may have specific matters that need to be addressed separately, such as provisions for obtaining specific tax rulings allowing deferral of the tax event in certain share-exchange transactions where the deal consideration is paid wholly or partially in kind, addressing withholding with respect to equity-based compensation and the sale of shares by employees or a tax ruling that is relevant only for public deals (i.e. when the acquired company is publicly traded).

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

There are generally no transfer taxes on share transfers in Israel, unless the target company is classified as a real property-rich company (referred to as an "Igud Mekarke'in" in Hebrew ("IM")). In this instance, there is acquisition tax levied on the buyer (currently at a rate of 6% of the fair market value of the real property in Israel). The determination of whether or not the company qualifies as an IM depends on the nature of the assets held by the company (bearing in mind that long term leases for more than 25 years count as real property assets for this purpose). Upon the sale of shares of an IM, the sellers are subject to capital gains tax, while the buyer is subject to said acquisition tax. In addition, there are potential VAT implications upon the sale of shares in an IM.

g. Share Purchase Advantages

This type of purchase is generally advantageous for sellers because there is only one level of tax, as opposed to two levels of tax in asset deals (see below). Share purchase deals are generally more common in Israel than asset deals. For foreign non-strategic purchasers (such as private equity and venture capital funds) seeking to exit their investment after the target company appreciates in value, a share purchase is preferable because they can generally benefit from a capital gains exemption upon the sale of the shares of the target company.

h. Share Purchase Disadvantages

The acquired company's cost basis in its assets remains unchanged. Any tax liabilities of the acquired company remain with the acquired company and are essentially assumed by the buyer. As noted above, from a seller's perspective, there are two layers of tax in an asset deal, as opposed to one layer in a share purchase transaction.

4. ASSET ACQUISITION

a. General Comments

Asset acquisitions allow buyers to acquire specific assets and choose which liabilities to assume and, thus, benefit from more certainty with respect to pre-closing tax liabilities. Moreover, buyers generally benefit from a step up in the cost basis of the acquired assets, which can generally be amortised over a period of time. For sellers, on the other hand, asset deals are generally less advantageous because there are two levels of tax: at the company level, in respect of the sale of the assets, and then at the shareholder level upon distribution of a dividend.

From a buyer's perspective:

- Asset transactions and transfers of businesses as a going concern are generally subject to VAT as well as an acquisition tax in case of a transfer of real estate. Such VAT may be reclaimed by "dealers" registered for Israeli VAT purposes.
- The book value of the acquired assets is stepped up, resulting in higher depreciation, although higher depreciation may result in lower distributable reserves.
- Acquired goodwill may generally be depreciated over a period of 10 years (certain limitations apply).
- Acquired intellectual property may generally be depreciated over a period of eight years, but only in case of an acquisition by a company that is regarded as an Industrial Company under the Israeli Encouragement of Industry (Taxes) Law, 5729-1969.
- Interest for financing the acquisition of assets, as well as other expenses incurred in the acquisition, can generally be deducted.

From a seller's perspective:

- The target is subject to capital gains tax (at the corporate income tax rate, currently 23%) on the built-in gain in each of the sold assets (capital losses and NOLs can generally be offset against capital gains).
- Historical tax liabilities generally remain with the target company.
- The distribution of the consideration received by the target company to its shareholders is likely to create an additional layer of tax to the sellers (for example, for individuals or non-Israeli companies who are subject to tax on the dividend).

b. Purchase Price Allocation

A purchase price allocation is generally needed in order to be able to determine the depreciation of the cost basis in the assets. The asset purchase agreement will generally address the issue of who prepares the purchase price allocation (e.g. buyer, with seller's consent, the two parties together, etc.).

There are no rules in Israel that govern the manner in which the purchase price allocation should be prepared for tax purposes. Generally, the purchase price allocation follows the accounting and is based on the fair market value of the various acquired assets. The tax authorities may challenge the valuation of each of the assets and/or the purchase price allocation.

c. Tax Attributes

Tax attributes are generally not transferred in an asset acquisition and such attributes remain with the target company. Buyers, however, are generally entitled to depreciate the acquired assets based on the stepped-up cost and the depreciation periods are reset (i.e. the buyer begins a new depreciation period).

d. Tax Free Reorganisations

Tax-free transfers of assets within groups are generally limited under Israeli tax law. Companies may contribute certain assets to subsidiaries on a tax free basis, subject to meeting certain conditions. In addition, it is possible to implement certain internal reorganisations (including spin offs and splits) on a tax free basis subject to meeting applicable requirements.

e. Purchase Agreement

Asset purchase agreements in Israel generally contain the following sections relating to taxes:

- Withholding Rights: Buyer's right to withhold from payments to the sellers. Sellers are required to present the buyer with a certificate of exemption from (or reduced rate of) withholding issued by the ITA to prevent withholding at a 30% default withholding rate. Corporate sellers of assets typically have on file so called "services and assets" withholding certificates (blanket withholding certificates that are issued on an annual basis to corporate taxpayers) and that generally provide for an exemption from withholding. Services and assets certificates can normally be used by sellers in an asset deal, as long as the consideration is in cash and the transfer of the funds is made to an Israeli bank account.
- Tax Representations and Warranties: These are normally provided with respect to the company's assets and business. They are normally limited in scope compared with representations and warranties contained in a share purchase agreement, but include specific representations such that the acquired assets do not constitute real estate rights that could trigger real property transfer taxes.
- Covenants: Covenants relating to tax matters are usually included in the asset purchase agreements and cover issues such as filing of tax returns, preventing liens relating to taxes on the acquired assets, issuing VAT invoices to the buyer, allocation of responsibility for any transfer taxes (particularly VAT), and any other matters that may be relevant or specific to the deal at hand (e.g. a purchase price allocation that the parties want to ensure is reported consistently to the tax authority).
- Indemnification: It is common for asset purchase agreements to include indemnification provisions requiring sellers to indemnify the buyer for:
  - Taxes relating to the business or the acquired assets for the tax period up to the closing of a transaction
  - Any breach of the tax representations and warranties or the tax covenants provided therein
  - Any under-withholding from payments to the sellers (i.e. for taxes that should have been withheld but inadvertently were not, and
  - Any other specific tax items or matters that would require a specific indemnity.

Pre-closing tax liabilities are typically defined in asset purchase agreements as part of the so called "Excluded Assets" (i.e. those that are not being transferred to or assumed by the buyer and for which the seller continues to be responsible). Tax indemnities are typically not subject to limitations, with the indemnity normally capped at the entire consideration. Claims of indemnity for taxes are usually allowed until the expiration of the statute of limitations with respect to such taxes. It is also common that a certain percentage of the consideration remains in escrow, which funds can be used to satisfy any indemnification claims.

f. Depreciation and Amortisation

The acquisition of assets generally results in a step up in the cost basis of the acquired assets. The book value of the acquired assets is stepped up resulting in depreciation over an applicable of time. Depreciation periods are set for tax purposes and are not necessarily compatible with depreciation for accounting purposes.

g. Transfer Taxes, VAT

The sale of assets is generally subject to VAT. With respect to a sale of assets to an Israeli resident, the VAT rate is 17%, which may be reduced to zero in case of a non-Israeli buyer. An Israeli buyer that is registered as a dealer for Israeli VAT purposes may be entitled to reclaim the VAT amount. The VAT liability is legally borne by the seller (but can commercially be allocated differently in the asset purchase agreement), and should generally be disclosed to the tax authorities until the 15th of the month following the month in which the transaction takes place.

Transfer taxes apply in the case of a sale of real estate assets, at the rate of 6% to the buyer and the corporate income tax rate (currently 23%) applicable to the capital gain of the corporate seller. Each party should report the transaction to the tax authorities within 30 days of signing the transaction, and pay the applicable tax within 60 days of signing the transaction.

h. Asset Purchase Advantages

Asset acquisitions allow buyers to acquire specific assets and choose which liabilities to assume and thus benefit from more certainty with respect to pre-closing tax liabilities. Moreover, buyers will generally benefit from a step up in the cost basis of the acquired assets, which can generally be amortised over a period of time.

i. Asset Purchase Disadvantages

Asset deals are generally less advantageous for sellers because there are two levels of tax: at the company level, in respect of the sale of the assets, and then at the shareholder level upon distribution of a dividend.

5. ACQUISITION VEHICLES

a. General Comments

The most common acquisition vehicles in Israel are corporate entities, either a domestic company or foreign company (or other entity that is treated as a corporation for Israeli tax purposes).

Israeli resident companies are exempt from tax on certain dividends distributed to them by other Israeli resident companies, as described below.

Foreign resident companies are generally subject to tax by way of withholding on dividends distributed to them by an Israeli resident company at a rate of 25% or 30%, depending on the ownership percentage, which rate may be reduced under an applicable tax treaty, subject to meeting any eligibility and limitation on benefit requirements. Foreign companies may be entitled to an exemption from capital gains tax on the sale of securities of Israeli resident companies, as described further below.

Partnerships are generally less commonly used as acquisition vehicles. However, private equity funds or venture capital funds with a presence in Israel, which are typically organised as a partnership for tax purposes, can approach the Israeli Tax Authority ("ITA") to receive a pre-ruling that regulates the tax consequences of their operations in Israel.

b. Domestic Acquisition Vehicle

An Israeli limited company is the most common domestic acquisition vehicle in Israeli M&A transactions.

An Israeli resident company is generally exempt from tax on distributions received by another Israeli resident company paid out of Israeli-source income that was subject to corporate tax. Distributions in excess of the distributable surplus of the distributing company are treated as a return of capital, up to the amount of the recipient's tax basis in the shares of the distributing company, and thereafter as a capital gain.

Interest expenses generated by an Israeli resident company in connection with the acquisition of shares are first deducted against income from dividend distributions by the subsidiary and only the excess interest expense can be capitalised to the tax basis in the shares.

Furthermore, the ITA tends to challenge Israeli holding company structures where there is no clear principal business purpose driving the acquisition structure. If the ITA concludes that the principal purpose of establishing an Israeli holding company is to receive an exemption from tax on dividend distributions (typically in order to finance interest expenses related to the acquisition of the distributing company), it is likely that the ITA will challenge the acquisition structure as being artificial.

The real capital gain from the sale of shares by an Israeli resident company is subject to tax at the corporate tax rate (currently 23%). A real gain is defined as the excess of the consideration received over the tax basis in the shares that is indexed to the Israeli Consumer Price Index.

The portion of the capital gain that is attributable to undistributed profits of the sold company, when such undistributed profits are calculated under the applicable provisions of Israeli tax law, is subject to tax at the same rates as dividend income (including the abovementioned exemption).

c. Foreign Acquisition Vehicle

A foreign limited liability company or corporation, which is treated as a company for Israeli tax purposes, is the most common foreign acquisition vehicle in Israeli M&A transactions.

Foreign companies are subject to tax by way of withholding on any dividends distributed by an Israeli resident company. The domestic withholding tax rate on distributions to a foreign resident is 25% but may be increased to 30%, if the dividend-recipient is a "substantial shareholder" (generally, a person that holds at least 10% of any of the means of control of the company, including vote or value). Dividends distributed out of "Preferred Income" or out of "Preferred Technological Income", as such terms are defined in the Law for Encouragement of Capital Investments 1959, are subject to 20% withholding tax ("WHT") or 4% WHT with respect to distributions of "Preferred Technological Income" if at least 90% of the shares of the distributing company is held by foreign residents, provided that the ITA pre-approves the reduced WHT rate (such reduced WHT rate will be available also to distributions by an Israeli holding company, provided that the profits were distributed by the holding company within one year of it receiving dividends distributed out of such preferential income by its subsidiary). In addition, WHT rates may be reduced by an applicable tax treaty, subject to the limitations in an applicable treaty, and provided that the ITA pre-approves the reduced WHT rate.

Distributions in excess of the distributable surplus of the distributing company are treated as a return of capital, up to the amount of the recipient's tax basis in the shares of the distributing company, and thereafter as a capital gain.

Foreign residents are generally exempt from capital gains tax on the sale of shares of a publicly traded company, provided that the shares of the distributing company were acquired after it was listed for trading and the capital gain is not attributable to a permanent establishment of the seller in Israel. Foreign residents are also exempt from capital gains tax on the sale of shares of a privately held company, provided that (i) the shares of the distributing company were acquired after 1 January 2009, (ii) the capital gain is not attributable to a permanent establishment of the seller in Israel, (iii) the shares were not acquired from a related party pursuant to certain tax free transactions, (iv) the majority of the value of the assets of the company, the shares of which are sold, is not attributable, at the date of the acquisition of the shares or the two years preceding to its sale, to rights related to Israeli real estate. Both of these exemptions will not be available to foreign resident entities if Israeli residents hold 25% or more of any of the means of control of such entities.

d. Partnerships and joint ventures

Partnerships and other joint ventures are not typically used as acquisition vehicles in Israeli M&A transactions. However, private equity funds and venture capital funds with a local office in Israel are generally entitled to receive a pre-ruling from the ITA, subject to certain conditions and requirements, which regulates the tax consequences related to investments in Israeli or Israeli-related companies.

The terms of the pre-ruling may change depending on the circumstances. The pre-ruling would generally provide that non-Israeli resident LPs of an eligible fund would not be subject to capital gains tax or tax filing obligations with respect to investments in eligible Israeli or Israeli-related companies, notwithstanding the fact that income may otherwise be attributable to a permanent establishment of the fund in Israel. Foreign GPs of a fund that receive a pre-ruling will generally be subject to a reduced tax rate of 15% with respect to carried interest related to investments in eligible Israeli or Israeli-related companies (and will be exempt from tax on income related to non-Israeli investments). Additional terms and conditions are included in the pre-rulings issued to funds by the ITA.

e. Strategic vs Private Equity Buyers

This section is left intentionally blank.

6. ACQUISITION FINANCING

a. General Comments

Transactions are typically financed through equity, short term debt and long-term debt, the exact composition of which depends on the tax characteristics of the buyer, the acquisition vehicle used, and the expectations of buyer regarding a future exit transaction. Equity financing generally allows buyers to claim a tax basis in the acquired shares, which may be helpful in a future sale transaction. Deductibility of interest on debt of a holding company is subject to certain limitations and the payment of interest is subject to tax withholding. Long term debt may be issued interest free, provided certain conditions are satisfied.

b. Foreign Acquirer

There are generally no limitations on ownership of equity interests in Israeli companies by foreign residents.

c. Debt

Long term debt that bears no interest (subject to certain conditions, as detailed below) is routinely used in Israeli M&A deals as a means to repatriate funds from Israel in a tax efficient manner post-closing. There are significant limitations regarding the deductibility of interest expenses by a holding company and debt pushdowns are generally treated as taxable distributions.

i Limitations on Interest Deductions

There are currently no thin capitalisation rules or other specific limitations on deductibility of interest. Under certain circumstances, interest expenses must initially be used to offset tax exempt dividend income or be capitalised to the cost basis of the acquired shares.

ii Related Party Debt

Cross border loans extended to a related party are required to bear arm's length interest. There is no minimum statutory interest rate or other safe harbours with respect to the applicable interest rate to cross-border loans. Loans granted by a parent company to a subsidiary, which have a minimum five-year maturity date and are subordinated to any other debt of the borrower, can be interest free.

Loans granted by an Israeli resident to another Israeli-resident related party must bear interest at a minimum statutory rate, which is updated annually. Loans granted by a parent company to a subsidiary, which have a minimum five-year maturity date and are subordinated to any other debt of the borrower, can be interest-free.

iii Debt Pushdown

Debt pushdown schemes are challenged by the ITA as artificial and lacking business purpose. The position of the ITA is that if third party debt is pushed down to the target company level, the target is deemed to have distributed the debt amount immediately to its shareholders; but debt extended by a related party will be recharacterised as a dividend on each loan repayment date.

d. Hybrid Instruments

Hybrid instruments are uncommon in Israeli M&A transactions.

e. Other Instruments

This section is left intentionally blank.

f. Earn-outs

Earn-outs are a common form of consideration in Israeli M&A deals. Taxpayers are generally required to report and pay tax up front on the earn-out amount, although the ITA allows taxpayers to postpone the payment of tax on earn-outs until the date in which the earn-outs are actually paid (without incurring interest and linkage differentials for late payments).

7. DIVESTITURES

a. Tax Free

There is no full participation exemption regime under Israeli tax law, although there are certain situations where intercompany dividends between Israeli companies are exempt from tax.

Divestitures generally take the form of taxable sales of business assets or shares of subsidiaries that conduct such businesses. Non-taxable acquisitions of subsidiaries in exchange for shares of the acquiring company are possible, subject to certain conditions being met. It may also be possible to implement certain non-taxable reorganisations, as more fully described above.

b. Taxable

The sale of shares or assets by a company is generally subject to capital gains tax at the corporate income tax rate (currently 23%).

The sale of shares by non-Israeli resident shareholders may be exempt from tax under an applicable tax treaty or domestic law. It should be noted that the sale of shares in a company that derives the majority of its value from Israeli real estate (which is defined broadly for this purpose) is generally not exempt from tax.

The sale of shares or assets should be reported to the tax authorities, generally within 30 days after the sale.

The sale of assets is generally subject to VAT (at the rate of 17% in the case of an Israeli buyer and potentially 0% in the case of a non-Israeli buyer), which VAT may be reclaimable by an Israeli registered dealer.

c. Cross Border

Non-Israeli resident sellers are generally subject to the same tax rates as Israeli-resident sellers. However, certain tax exemptions may be available for non-Israeli resident sellers under an applicable tax treaty or domestic law, such as in the case of the sale of securities of an Israeli company (detailed rules apply). In case of an asset sale to a non-Israeli resident, the applicable VAT rate may be reduced to 0%.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Israel has a worldwide tax system, meaning that Israeli residents are generally taxed on their worldwide income (with the ability to generally claim a foreign tax credit for non-Israeli sources), while non-Israeli residents are subject to tax in Israel only with respect to their Israeli-sourced income.

b. CFC Regime

There is a controlled foreign corporation ("CFC") regime in Israel. A CFC is a foreign resident company:

(i) The shares of which are not listed for trading on a stock exchange (or if listed, less than 30% of the shares or other rights have been issued to the public);

(ii) The majority of whose income in a tax year is passive income, or the majority of its profits are derived from passive income;

(iii) The passive income of which is subject to tax in the foreign jurisdiction at a rate of 15% or less; and

(iv) That is controlled by Israeli residents (i.e. Israeli residents hold more than 50% of the interests in the foreign company, or more than 40% of the interests in the foreign company and together with the holdings of related parties, hold more than 50%, or if an Israeli resident has veto power over major company decisions).

If a foreign company is a CFC, a "controlling shareholder" of the CFC (generally, a shareholder that holds 10% or more of one or more of the means of control of the CFC, taking into account certain attribution rules), is required to include in its annual income its allocable share of the CFC's undistributed profits.

c. Foreign Branches and Partnerships

Israel does not have a branch profits tax regime and Israeli domestic tax law does not provide for specific rules regarding the taxation of a branch or the allocation of income and expenses to a branch in Israel. The branches of non-Israeli entities are generally subject to tax in Israel with respect to the profits allocable to such branches (i.e. the profits sourced from Israeli activities) as if they were separate taxpayers, taking into account general transfer pricing rules and comparable market prices. A branch's after-tax profits may generally be distributed without additional tax leakage. The sale of a business and/or assets, however, by the non-Israeli resident owner of a branch is subject to capital gains tax in Israel.

d. Cash Repatriation

Repatriation of funds from a local Israeli branch to the non-Israeli headquarters can generally be done free of any additional tax cost. Repatriation of funds from an Israeli corporate subsidiary of a non-Israeli resident parent entity (i.e. distribution of dividends) is generally subject to withholding at source a rate of 25%, which is increased to 30% if at the time of the distribution, or at any time during the 12-month period preceding the distribution, the recipient of the dividend held 10% or more of any of the means of control of the company paying the dividend. A reduced rate may be applicable under a tax treaty.

Dividends paid out of income attributable to a so-called "Preferred Enterprise" are generally subject to tax at the rate of 20%, and subject to meeting certain conditions (including a minimum 90% holding threshold), to 4%. A reduced rate may be applicable under a tax treaty.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Israel generally maintains its taxing rights with respect to income generated from real property. Under the domestic source rules, ongoing income from real estate (e.g. rental income) is sourced where the real estate is used and thus, with respect to real estate in Israel, is considered as Israeli-sourced income.

Israel also has a concept of real property-rich companies, referred to as an "Igud Mekarke'in" in Hebrew). The determination of whether or not the company qualifies as an IM depends on the nature of the assets held by the company (bearing in mind that long-term leases for more than 25 years count as real property assets for this purpose). Upon the sale of shares of an IM, the sellers are subject to capital gains tax, while the buyer is subject to an acquisition tax (which is not applicable to the extent the buyer is purchasing shares of a regular company). In addition, there are potential VAT implications upon the sale of shares in an IM.

In addition, Israeli domestic law generally grants a tax exemption from Israeli capital gains tax to non-Israeli residents on the sale or transfer of shares of an Israeli company. This exemption does not apply if (among other things), the primary value (more than 50%) of such shares on the day of their acquisition and during the two years prior to their sale or transfer was derived, directly or indirectly, from real estate rights or rights in a real estate association, including long-term leases, rights to use real estate or any asset attached to real estate in Israel, a right to exploit natural resources in Israel, or a right to benefit from real estate situated in Israel. This is a lower threshold such that this exception may be applicable even if the shares being sold are not shares of an IM.

b. CbC and Other Reporting Regimes

The Israeli legislator is currently considering an amendment to existing tax law and applicable transfer pricing regulations regarding the implementation of the Master File and country by country reporting concepts and reporting obligations in Israel.

10. TRANSFER PRICING

Israel maintains a transfer pricing regime that generally follows OECD guidelines and requires related parties entering into cross-border transactions to conduct such transactions at arm's length prices compatible with fair market values. Applicable regulations provide detailed and specific guidelines with regard to the application, establishment and documentation of the arm's length conditions that apply, and further stipulate certain methods that should be used in order to determine fair market value such as the price comparison method, the profitability comparison method and the profit and loss allocation method. An updated transfer pricing study, along with an intercompany agreement based on such study, should be readily available and, upon request, submitted to the Israeli Tax Authority ("ITA"). The tax-assessing officer has the authority to demand a transfer pricing study at any time within 60 days. In addition, the taxpayer is required to describe the terms of any cross-border transaction with a party with which it has a special relationship (price, conditions and the price and conditions of an arm's length transaction) in a designated form attached to its annual tax return.

When buyers are looking to enter into an acquisition transaction, whereby the target company is part of a group of companies and has inter-company arrangements with its affiliates such as research and development or sales and marketing services, buyers will look at the transfer pricing arrangements among the target group and review these, as a due diligence item, in assessing any potential pre-closing tax exposures related to the acquisition.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

Post-acquisition integration will rely mostly on the specific facts and circumstances of each transaction and on what the goals of the acquiring entity are. Utilising hybrid entities is not that common in Israel because the main categories of legal entities are companies or partnerships. Under Israeli law, there is a general anti-avoidance provision that provides the ITA with the authority to act if it decides the principal motivation of such a transaction is tax avoidance. In addition, case law has adopted several common-law doctrines such as substance over form, step-transaction and economic and business purpose.

One area the ITA has been focusing on in cross border transactions relates to group restructurings and implementation of changes to business models, most commonly following an acquisition of an Israeli target company. A change of a business model refers mainly to circumstances under which functions, assets or risks of an entity are transferred or terminated. This matter is commonly raised in tax audits of Israeli companies that are acquired by multinational groups and, following the closing of the acquisition, the intellectual property of the Israeli acquired company is transferred, or deemed transferred, to a non-Israeli affiliate, or the entrepreneurial aspects of the acquired company (such as sales functions) are terminated. The ITA will typically examine whether such restructurings, the impact of which may reduce taxable profits in Israel, have a business purpose and legitimate and economic substance beside the main purpose of tax avoidance based on the authority and doctrines noted above. A particular area of focus is the appropriate transfer price of intellectual property of newly acquired Israeli companies that is transferred to its non-Israeli affiliates post-acquisition.

b. Use of Hybrid Instruments

Israel does not currently have any specific laws addressing hybrid instruments. As noted above, the ITA established a committee that has recently submitted recommendations for significant reforms to Israel's international tax regime, and these include rules for hybrid mismatches.

c. Principal/Limited Risk Distribution or Similar Structures

Israel maintains a transfer pricing regime that generally follows OECD guidelines and has indicated its position in a few circulars published by the ITA on transfer pricing matters.

In a first circular, which the ITA indicates is based on the OECD transfer pricing guidelines, the ITA concluded that when analysing transfer pricing matters, it will look first to the contractual arrangements between the parties and thereafter, the parties' conduct in order to ascertain if it is consistent with such contractual arrangements.

The second circular, also based on the OECD transfer pricing guidelines, presented the ITA's position with respect to a number of transactions, by adopting safe harbours (which the ITA indicates may be revisited from time to time) for the following transactions:

- Low value-adding services, having an operating profitability of net cost plus margin of 5%;
- Marketing services, having an operating profitability of net cost plus margin between 10% and 12%; and
- Low-risk distribution services, having an operating profitability of sales as turnover of between 3% and 4%.

Related party limited risk distribution agreements have been scrutinised lately and the ITA is conducting several audits on this issue.

d. Intellectual Property

The sale or disposal of intellectual property triggers an immediate tax event and subjects the selling entity to a 23% capital gains tax applicable to the gain. If the selling entity has accumulated net operating losses or deferred research and development expenses, these may generally be used to offset the capital gain.

To the extent that intellectual property is licensed, under Israel's domestic law, the income generated is treated as Israeli-sourced income and is thus subject to corporate income tax in Israel, currently at a rate of 23%, unless otherwise reduced under an applicable tax treaty.

One area the ITA has been focusing on in cross-border transactions relates to group restructurings and implementation of changes to business models, most commonly following an acquisition of an Israeli target company. The ITA will often argue that a certain licence agreement should be reclassified as an actual sale of the intellectual property, thus triggering a capital gains event. In these cases, the ITA uses the acquisition price as a benchmark for determining the value of the intellectual property deemed transferred.

e. Special Tax Regimes

Israeli law has an intellectual property regime (the "IP Regime") in Israel applicable to technology and hi-tech companies that develop their intellectual property in Israel. Companies that qualify under the IP Regime would benefit from a reduced preferential corporate tax rate of 12% on qualifying income (which rate is reduced to 7.5% in certain specified development zones). In certain cases, the applicable tax rate can be reduced to only 6%; this is generally relevant for multinationals where the turnover of the group that the company is part of is higher than NIS10 billion (roughly USD3.125 billion).

In order to be entitled to these benefits, this law sets out certain convoluted conditions, the purpose of which is to ensure that the benefits will be provided only when the intellectual property is developed in Israel and owned by the Israeli company.

Dividends distributed out of "Preferred Income" or out of "Preferred Technological Income", as such terms are defined in the Law for Encouragement of Capital Investments 1959, are subject to 20% withholding tax ("WHT") or 4% WHT with respect to distributions of "Preferred Technological Income" if at least 90% of the shares of the distributing company are held by foreign residents, provided that the ITA pre-approves the reduced WHT rate.

Lastly, certain companies may be entitled to reduced corporate tax rates even if they do not benefit from the IP Regime, such as companies that provide research and development services to non-Israeli residents.

12. OECD BEPS CONSIDERATIONS

The ITA has noted that it intends to implement the OECD's recommendations in the BEPS reports.

For example, and consistent with the BEPS recommendations, Israel has adopted the "nexus approach" under the IP Regime, in order for it not to be considered a harmful tax regime.

In addition, Israel has ratified the MLI, which was signed by the Minister of Finance on 7 June 2017.

The MLI includes provisions that will be added to existing treaties as well as replacement provisions for some of the existing provisions. Israel has chosen to implement the MLI on most of its existing treaties. Israel has submitted some reservations to the MLI provisions, including with respect to the arbitration provision.

Israel is among 136 countries that have agreed to adopt the Two-Pillar solution to address the challenges arising from the digitalisation of the economy that the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting ("BEPS") introduced.

13. ACCOUNTING CONSIDERATIONS

Generally, Israeli tax accounting follows the applicable GAAP, unless stipulated specifically otherwise under an applicable tax law. According to Israeli accounting principles, some companies are required (and other companies are allowed) to implement IFRS, rather than Israeli GAAP.

The submission of consolidated financial statements or tax returns is available in Israel only for certain industrial companies.

In the case of business combinations, no basis step-up or goodwill will be recognised for Israeli tax purposes, even if these will be recognised for accounting purposes.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Israeli companies are allowed to distribute dividends up to the amount of accumulated earnings or the earning of the last two years, and provided that the company will have sufficient funds to meet its obligations and liabilities following the distribution (as determined by the board of directors). Distributions in excess of distributable reserves require court approval.

Dividend distributions are subject to tax withholding, which may be reduced under an applicable tax treaty or domestic law, provided the ITA authorises a reduced or zero rate of withholding in advance. Distributions in excess of distributable reserves are treated first as return of capital, up to the amount of the tax basis of the applicable recipient in the shares of the distributing company, and capital gain thereafter. Capital gains are generally exempt from tax in the hands of foreign residents.

Distribution of dividends by an Israeli company to another Israeli company is not subject to tax and no withholding tax is required with respect to such dividends. However, if the dividend distributed is out of income that was not subject to corporate tax at the distributing company level (such as accounting reserves generated as a result of revaluation of appreciated real estate) or out of foreign source income, it is subject to full corporate tax.

M&A transactions may result in deemed distributions in cases of debt pushdown.

b. Application of Regional Rules

Payment of consideration for shares of an Israeli resident, or payment of consideration to any person in exchange for the acquisition of shares in any Israeli resident company or foreign resident company, the majority of the value of which is attributable to assets situated in Israel, is subject to Israeli tax withholding, unless the payee presents a withholding certificate issued by the ITA that exempts the payor from such a withholding obligation.

In order to comply with withholding obligations and allow sellers to obtain the required withholding certificate, it is customary in Israeli transactions to use the services of a local paying agent. If the applicable seller wishes to obtain a withholding certificate, the local paying agent retains the consideration, typically for 180 days after closing or until such time that the relevant seller obtains a withholding certificate that allows payment of consideration without withholding.

c. Tax Rulings and Clearances

As noted above, withholding certificates need to be obtained and presented in any Israeli M&A transaction. The timeline for obtaining a certificate varies and can be between a few weeks up to several months. Certain transactions may require obtaining a tax ruling in advance. Specifically, tax rulings are required in transactions in which employees holding equity based compensation rollover to the buyer or a parent entity of the buyer (and the equity-based compensation is substituted for new equity rights in the buyer's group) or in certain transactions that involve a tax free reorganisation.

Pre-rulings may take several months to obtain, depending on the circumstances. However, the ITA routinely issues interim tax rulings that deal with the withholding tax aspects of the transaction, in order to allow closing of a transaction until the final tax ruling is obtained.

15. MAJOR NON-TAX CONSIDERATIONS

Under the Israeli Companies Law 1999 ("ICL"), any foreign entity can incorporate either a subsidiary company (which could be a limited liability company with a sole shareholder) or register a "foreign company" in Israel (i.e. a branch/office).

The ICL does not include any obligation whereby an individual (including entity) is required to incorporate a private company, but rather states that any individual has the right to incorporate a company. Accordingly, it is for the individual concerned to decide if the appropriate resolution should refer to the incorporation of a company, particularly since the decision will be influenced by essentially practical legal considerations, such as tax matters, etc.

With respect to the registration of a "foreign company" (i.e. branch/office), under Section 346 of the ICL, a foreign company shall not maintain a place of business in Israel, unless registered (i.e. a branch/office).

There is relatively limited discussion in the leading textbooks and case law with respect to the interpretation of the phrase "place of business" and there is no binding precedent of the Supreme Court in this regard. It appears (both from case law and leading textbooks) that the prohibition is not on actually carrying out business in Israel in general, but rather on maintaining a place of business or having a permanent physical association or relationship to Israel. However, it seems that in light of evolving developments in international trade, the above interpretation of "place of business" might be broadened if this matter were brought before the court today for its determination to also include online presence in certain specific circumstances (e.g. significant online presence addressing Israelis, etc.).

16. APPENDIX I - TAX TREATY RATES

General note: the table below includes the rates under the assumption that both the payor and the payee are a company that is not owned by the government or a REIT.

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Albania	5 / 15	10	5	[1]
Armenia	0 / 5 / 15	10	5 / 10	[2], [3]
Australia	0 / 5 / 15	5 / 10	5	[4], [5]
Austria	0 / 10	0 / 5	0	[6], [7]
Azerbaijan	15	10	5 / 10	[8], [9]
Belarus	10	5 / 10	5 / 10	[10], [11]
Belgium	15	15	0 / 10	[12]
Brazil	10 / 15	15	10 / 15	[13], [14]
Bulgaria	10 / 7.5-12.5	5 / 10	7.5-12.5	[15], [16], [17]
Canada	0 / 5 / 15	0 / 5 / 10	0 / 10	[18], [19], [20]
China	10	7 / 10	10	[21]
Croatia	5 / 10 / 15	5 / 10	5	[22], [23]
Czech Republic	5 / 15	10	5	[24]
Denmark	0/10	0 / 5	0	[25], [26]
Estonia	0 / 5	5	0	[27]
Ethiopia	5 / 10 / 15	5 / 10	5	[28], [29]
Finland	5 / 10 / 15	10	10	[30]
France	5 / 10 / 15	5 / 10	0 / 10	[31], [32], [33]
Georgia	0 / 5	5	0	[34]
Germany	5 / 10 / 15	0 / 5	0	[35], [36]
Greece	0	10	10	
Hungary	5 / 15	0	0	[37]
India	10	10	10	
Ireland	10	5 / 10	10	[38]
Italy	10 / 15	10	0 / 10	[39], [40]
Jamaica	15 / 22.5	15	10	[41]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Japan	5 / 15	10	10	[42]
Korea, Republic of	5/ 10 / 15	7.5 / 10	2 / 5	[43], [44], [45]
Latvia	5 / 10 / 15	5 / 10	5	[46], [47]
Lithuania	5 / 10 / 15	10	5 / 10	[48], [49]
Luxembourg	5 / 10 / 15	0 / 5 / 10	5	[50], [51]
Macedonia	5 / 15	10	5	[52]
Malta	0 / 15	0 / 5	0	[53], [54]
Mexico	5 / 10	10	10	[55]
Moldova	5 / 10	5	5	[56]
Netherlands	5 / 10 / 15	10 / 15	5 / 10	[57], [58], [59]
Norway	25	25	10	[60]
Panama	5 / 15 / 20	0 / 15	15	[61], [62]
Philippines	10 / 15	10	15	[63]
Poland	5 / 10	5	5 / 10	[64], [65]
Portugal	5 / 10 / 15	10	10	[66]
Romania	15	10	10	
Russia	10	10	10	
Serbia	5 / 15	10	5 / 10	[67], [68]
Singapore	5 / 10	7	5	[69]
Slovakia	5 / 10	5 / 10	5	[70], [71]
Slovenia	5 / 10 / 15	5	5	[72]
South Africa	25	23	0/15	[73]
Spain	10	5 / 10	5 / 7	[74], [75]
Sweden	0	25	0	[76]
Switzerland	5 / 10 / 15	5 / 10	5	[77], [78]
Taiwan	10	7 / 10	10	[79]
Thailand	10 / 15	10 / 15	5 / 15	[80], [81], [82]
Turkey	10	10	10	
Ukraine	5 / 10 / 15	5 / 10	10	[83], [84]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
United Arab Emirates	0 / 5 / 15	0 / 5 / 10	12	[85], [86]
United Kingdom	0 / 5 / 15	0 / 5 / 10	0	[87], [88]
United States	12.5 / 15 / 25	10 / 17.5	10 / 15	[89], [90], [91]
Uzbekistan	10	10	5 / 10	[92]
Vietnam	10	10	5 / 7.5 / 15	[93]

Footnotes	
1	Dividends - 5% rate paid to a company that directly holds at least 25% of the capital of the distributing company for a period of 365 days prior to the distribution date. 15% rate applies In case of a distribution from a real estate investment fund, the withholding tax if the recipient directly owns less than 10% of the capital of the fund (specific calculation rules apply).
2	Dividends - 0% rate paid to a pension plan that does not hold directly or indirectly more than 25% of the capital or voting power of the payer company; 5% rate applies to dividends paid to a company that holds directly at least 25% of the capital of the payer company; otherwise - 15%.
3	Royalties - 5% rate payable for the use of, or right to use, any patent, trademark, design or model, plan or secret formula or process, or industrial, commercial, or scientific information or equipment; 10% rate applies to royalties payable for the use of, or right to use, any copyright of literary, artistic, or scientific work, including cinematograph films and films or tapes for television or radio broadcasting.
4	Dividends - 0% rate paid by an Israeli company to an Australian pension fund (or a resident) that holds directly less than 10% of the voting power of the payer company. 5% rate applies to dividends paid to an Australian company that holds directly at least 10% of the voting power of the payer company throughout a 365-day period. Otherwise - 15%. The 15% rate also applies to distributions made by an Israeli real estate investment fund to a recipient that holds directly less than 10% of the capital of the fund; otherwise - domestic rate applies.
5	Interest - 5% rate paid by an Israeli company to the following recipients, as long as the beneficial owner of the interest is not in a position to control or influence the key decision-making of the payer: i) an independent financial institution; ii) a recognised Australian pension fund (or a resident of Australia) deriving such interest from the carrying on of complying superannuation activities. Otherwise - 10%.
6	Dividends - 0% rate including distributions by private foundations, paid to a company (besides a partnership) that holds directly at least 10% of the capital of the payer company; otherwise - 10%.
7	Interest - 0% rate applies to a pension fund or similar arrangement or on corporate bonds traded on a stock exchange in the state in which the issuing company is resident; otherwise - 5%.
8	Dividends - 15% rate applies to dividends, other than distributions made by real estate investment trusts.
9	Royalties - 5% rate paid for a patent, model or design, plan, secret formula or process; or for the use of, or the right to use, commercial, industrial or scientific equipment; or for information concerning industrial, commercial or scientific experience; otherwise - 10%.
10	Interest - 5% rate applies to interest paid in connection with the sale on credit of industrial, commercial or scientific equipment or on a bank loan; otherwise - 10%.
11	Royalties - 5% rate applies to royalties paid in respect of copyrights on literary, artistic or scientific works or for industrial, commercial or scientific equipment or road transport vehicles; otherwise - 10%.

Footnotes	
12	Royalties - 0% rate applies to copyright royalties and other payments for the use of, or the right to use, literary, dramatic, musical or artistic works; otherwise - 10%.
13	Dividends - 10% rate applies to dividends paid to a company that holds directly or indirectly at least 25% of the capital of the payer company; otherwise - 15%.
14	Royalties - 10% rate applies to all royalties, excluding trademarks, that are subjected to a 15% rate
15	Dividends - 10% rate applies to dividends paid out of profits that are exempt from tax or subject to a lower tax rate due to measures to encourage investment; otherwise - minimum of 7.5% and maximum 12.5%.
16	Interest - 5% rate applies to interest on a loan from a bank or other financial institution; otherwise - 10%.
17	Royalties - Minimum rate of 7.5% and a maximum rate of 12.5%.
18	Dividends - 0% rate applies to dividends paid to an organisation that was constituted and is operated exclusively to administer or provide benefits primarily to Canadian-resident individuals and does not hold more than 10% of the capital or voting power of the payer company; 5% rate applies to dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; otherwise - 15%.
19	Interest - 0% rate applies to interest paid to an organisation that was constituted and is operated exclusively to administer or provide benefits primarily to individuals under a pension plan, that holds the shares as an investment and is either generally exempt from, or not subject to, tax and that does not hold more than 10% of the capital or voting power of the payer company; 5% rate applies to interest paid on arm's length terms to a financial institution; otherwise - 10%.
20	Royalties - 0% rate applies to i) copyright royalties in respect of the production or reproduction of any literary, dramatic, musical or other artistic work (excluding royalties of motion picture films, videotape or other means of reproduction for use in connection with television broadcasting); ii) royalties for the use of, or the right to use, computer software or any patent or for information concerning industrial, commercial or scientific experience; otherwise - 10%.
21	Interest - 7% rate applies to interest received by a bank or financial institution; otherwise - 10%.
22	Dividends - 5% rate applies to dividends paid to a company that holds directly at least 25% of the capital of the payer company; 10% rate applies to dividends that are paid to a company (that is a resident of Israel) that holds directly at least 10% of the capital of the payer company and the dividends are paid out of profits that are subject to tax in Israel at a rate lower than the normal rate of Israeli company tax; otherwise - 15%.
23	Interest - 5% rate applies to interest paid on bank loans; otherwise - 10%.
24	Dividends - maximum 5% rate paid to a company that holds directly at least 15% of the payer company; otherwise - 15%.
25	Dividends - 0% rate applies to dividends paid to a company that holds directly at least 10% of the capital of the payer company for an uninterrupted period at least one year, with the dividends declared within that period; otherwise - 10%.
26	Interest - 5% rate, with exemptions provided for pensions and qualifying corporate bonds.
27	Dividends - 0% rate applies to dividends paid to a company that holds directly at least 10% of the capital of the payer company; otherwise - 5%.
28	Dividends - 5% rate applies to dividends paid to a company that holds directly at least 10% of the capital of the payer company; 10% rate applies to dividends paid to a company that holds directly at least 10% of the capital of the payer company (that is a resident of Israel, and the dividends are paid out of profits that are subject to tax in Israel at a rate lower than the normal rate of Israeli company tax); otherwise - 15%.

Footnotes	
29	Interest - 5% rate applies to interest paid on bank loans; otherwise - 10%.
30	Dividends - 5% rate applies to dividends paid to a company that controls directly at least 10% of the voting power of the payer company; 10% rate applies if the payer is a resident of Israel and the dividends are paid out of profits that are subject to tax in Israel at a lower rate than the normal Israeli company tax rate; otherwise - 15%.
31	Dividends - 5% rate applies to dividends paid to a company that holds directly or indirectly at least 10% of the capital of the payer company; the 10% rate applies if that company is a resident of Israel and the dividends are paid out of profits that are subject to tax in Israel at a rate lower than the normal Israeli company tax rate; otherwise - 15%.
32	Interest - maximum 5% rate applies to interest paid with the sale on credit of industrial, commercial or scientific equipment or on a bank loan; otherwise - 10%.
33	Royalties - 0% rate applies for royalties that are paid for the use of, or the right to use copyrights (excluding cinematograph films); otherwise - 10%.
34	Dividends - 0% rate applies to dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise - 5%.
35	Dividends - 5% rate applies to dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; otherwise - 10%. If the payer company is a real estate investment company, the rate is 15% where distributions are paid to a recipient that holds directly less than 10% of the capital of the payer company.
36	Interest - 0% rate applies where interest is paid on corporate bonds traded on a stock exchange in the source state, or to a pension fund; otherwise, the rate is 5%.
37	Dividends - 5% rate applies to dividends paid to a recipient that owns at least 10% of the company paying the dividends; otherwise - 15%.
38	Interest - 5% rate applies to interest paid in connection with the sale on credit or on a bank loan; otherwise - 10%.
39	Dividends - 10% rate applies to dividends to a recipient that owns at least 25% of the company paying the dividends; otherwise - 15%.
40	Royalties - 0% rate applies to royalties paid for copyrights. Otherwise - 10%.
41	Dividends - 15% rate applies to dividends paid to a company that owns at least 10% of the company paying the dividend; otherwise - 22.5%.
42	Dividends - 5% rate applies to dividends paid to a company that holds at least 25% of the voting shares of the payer company during the a six-month period immediately before the end of the accounting period for which the distribution of profits takes place; otherwise - 15%.
43	Dividends - 5% rate applies to dividends paid to a company that owns at least 10% of the company paying the dividends; the 10% rate applies to dividends paid to a company that holds directly at least 10% of the company, where that company is a resident of Israel and the dividends are paid out of profits that are subject to tax in Israel at a rate lower than the normal Israeli company tax rate; otherwise - 15%.
44	Interest - 7.5% rate applies to interest received by a bank or financial institution; otherwise - 10%.
45	Royalties - 2% rate applies to royalties paid for industrial, commercial or scientific equipment; otherwise - 5%.
46	Dividends - 5% rate applies to dividends paid to a company that holds at least 10% of the capital of the payer company; 10% rate applies to dividends paid to a company that holds directly at least 10% of the capital of the payer company, where that payer company is a resident of Israel and the dividends are paid out of profits that are subject to tax in Israel at a rate lower than the normal Israeli company tax rate; otherwise - 15%.

Footnotes	
47	Interest - 5% rate applies to interest on bank loans; otherwise - 10%.
48	Dividends - 5% rate applies to dividends paid to a company that controls directly at least 10% of the voting power of the payer company; 10% rate applies to dividends paid to a company that holds directly at least 10% of the capital of the payer company, where that payer company is a resident of Israel and the dividends are paid out of profits which by virtue of provisions in the Israeli Law of Encouragement of Investments in Israel are exempt from tax or subject to tax at a rate that is lower than the normal rate of Israeli company tax; otherwise -15%.
49	Royalties - 5% rate applies to royalties paid for use of, or for a right to use, industrial, commercial or scientific equipment; otherwise - 10%.
50	Dividends - 5% rate applies to dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the payer company; 10% rate applies to dividends paid to a company that holds directly at least 10% of the capital of the payer company, where that payer company is a resident of Israel and the dividends are paid out of profits which by virtue of provisions in the Israeli Law of Encouragement of Investments in Israel are exempt from tax or subject to tax at a rate that is lower than the normal rate of Israeli company tax; otherwise - 15%.
51	Interest - 0% rate applies to interest paid to the seller of any industrial, commercial, or scientific equipment, or of any merchandise sold on credit; 5% rate applies to interest paid on bank loans; otherwise - 10%.
52	Dividends - 5% of the gross amount of the dividends if the beneficial owner of the dividends is a company that directly holds at least 25% of the capital of the company paying the dividends; 15% of the gross amount of the dividends in all other cases.
53	Dividends - 0% rate applies to dividends paid by a company that is a resident of Israel to a Malta company that holds directly at least 10% of the capital of the payer company; otherwise - 15% on dividends paid by an Israel company to a Malta resident.
54	Interest - 5% rate, with an exemption for corporate bonds traded on a stock exchange in the source state that are issued by a company that is a resident of the source state.
55	Dividends - 5% rate applies to dividends paid to a company that holds at least 10% of the capital of the payer company; otherwise - 10%.
56	Dividends - 5% rate applies to dividends paid to a company that holds directly at least 25% of the capital of the payer company; otherwise - 10%.
57	Dividends - 5% rate applies to dividends paid to a company whose capital is wholly or partially divided into shares and that holds directly at least 25% of the capital of the payer company; 10% rate applies to dividends paid to a company that, in addition to holding directly at least 25% of the capital of the payer company, the payer company is a resident of Israel, and the dividends are paid out of profits that are subject to tax in Israel at a rate lower than the normal Israeli company tax rate due to measures to encourage investment; otherwise - 15%.
58	Interest - 10% rate applies to interest paid to a bank or financial institution; otherwise - 15%.
59	Royalties - 10% rate applies to royalties regarding cinematograph films and films or videotapes for radio or television broadcasting; otherwise - 5%.
60	Dividends - 25% withholding tax rate where dividends are paid by an Israeli company to a resident of Norway.
61	Dividends - 5% rate applies to dividends paid to a pension fund; 20% rate applies to dividends distributed by an REIT where the recipient holds directly less than 10% of the capital of the REIT payer; otherwise - 15%.
62	Interest - 0% rate applies to pension fund; otherwise - 15%.
63	Dividends - 10% rate applies to dividends paid to a company that holds directly at least 10% of the capital of the payer company; otherwise - 15%.
64	Dividends - 5% rate applies to dividends paid to a recipient that holds directly at least 15% of the capital of the payer company; otherwise - 10%.

Footnotes	
65	Royalties - 5% rate applies to royalties paid for use of, or for a right to use, industrial, commercial or scientific equipment; otherwise - 10%.
66	Dividends - 5% rate applies to dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; 10% rate applies to dividends paid to a company that in addition to holding directly at least 25% of the capital of the payer company, the payer company is a resident of Israel, and the dividends are paid out of profits that are subject to tax in Israel at a rate lower than the normal Israeli company tax rate due to measures to encourage investment; otherwise - 15%.
67	Dividends - 5% rate applies to dividends paid to a company that holds directly at least 25% of the capital of the payer company throughout a 365-day period that includes the date of payment of the dividends; otherwise - 15%.
68	Royalties - 5% rate applies to royalties paid for the use of, or the right to use, copyright of literary, artistic, or scientific work, including cinematograph films and films or tapes used for radio or television broadcasting; 10% rate applies to royalties paid for the use of, or right to use, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information (know-how) concerning industrial, commercial, or scientific experience.
69	Dividends - 5% rate applies to dividends paid to a company that holds directly at least 10% of the capital of the payer company; otherwise - 10%.
70	Dividends - 5% rate applies to dividends paid to a company that holds directly or indirectly at least 10% of the capital of the payer company; 10% rate if the dividends are paid out of profits that have been taxed at a rate not exceeding 15% in accordance with tax incentive laws; otherwise - 10%.
71	Interest - 5% rate applies to interest paid to a financial institution; otherwise - 10%.
72	Dividends - 5% rate applies to dividends paid to a company (other than a partnership) that holds at least 10% of the capital of the payer company; 10% rate applies to dividends paid out of profits taxed at a rate that is lower than the normal corporate tax rate to a company that holds at least 10% of the capital of the payer company; otherwise - 15%.
73	Royalties - 0% rate applies to royalties, except royalties regarding cinematograph or television films, if they are subject to tax in the residence state; otherwise - 15%.
74	Interest - 5% rate applies to interest in connection with the sale on credit of industrial, commercial or scientific equipment, or on a bank loan; otherwise - 10%.
75	Royalties - 5% rate applies to royalties paid for use of, or the right to use, copyrights of literary, dramatic, musical, artistic works and for the use of or right to use industrial, commercial or scientific equipment; otherwise - 7%.
76	Dividends - 0% rate applies where dividends are paid to a resident of Sweden out of income that has been subject to Israeli income tax; if not, the dividends may be taxed at a rate not exceeding the rate of income tax normally imposed on the income of an Israeli company.
77	Dividends - 5% rate applies to dividends paid to a company that holds directly or indirectly at least 10% of the capital of the payer company; 10% rate applies to dividends paid to a company that holds directly or indirectly at least 10% of the capital of the payer company and that company is a resident of Israel and the dividends are paid out of profits that are subject to a tax rate in Israel that is lower than the normal rate of Israeli company tax; otherwise - 15%.
78	Interest - 5% rate applies to interest on bank loans; otherwise - 10%.
79	Interest - 7% rate applies to interest on bank loans; otherwise - 10%.
80	Dividends - 10% rate applies where the recipient holds at least 25% of the capital of the payer company; otherwise - 15%.

Footnotes	
81	Interest - 10% rate applies to interest received by a financial institution (including an insurance company); otherwise - 15%.
82	Royalties - 5% rate applies to royalties paid for use of, or the right to use, copyrights of literary, dramatic, musical, artistic or scientific works (excluding cinematograph films or films or tapes used for radio or television broadcasting); otherwise - 15%.
83	Dividends - 5% rate applies to dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the payer company; the 10% rate applies to dividends paid to a company that holds directly at least 10% of the capital of the payer company and the dividends are paid out of profits that are subject to tax in Israel at a rate lower than the normal rate of Israeli company tax; otherwise - 15%.
84	Interest - 5% rate applies to interest paid on bank loans; otherwise - 10%.
85	Dividends - 0% rate applies to dividends paid to a pension plan; 5% rate applies to dividends paid to a company that holds directly at least 10% of the capital of the payer company throughout a 365-day period that includes the date of payment of the dividends; otherwise - 15%.
86	Interest - 0% rate applies to interest paid to a pension plan unless the pension plan holds 50% or more of the capital of the payer company, in which case the rate is 5%; otherwise - 10%.
87	Dividends - 0% rate applies to dividends paid to a pension scheme; 5% rate applies to dividends paid to a company (other than a partnership or a real estate investment trust) that holds directly at least 10% of the capital of the payer company throughout a 365-day period that includes the date of payment of the dividend (for the purpose of computing that period, changes in ownership that directly result from a corporate reorganisation of the company that holds the shares or the payer company are not taken into account); otherwise - 15%.
88	Interest - 0% rate applies to interest paid to a pension scheme and on corporate bonds traded on a stock exchange (subject to certain conditions); 5% rate applies to interest on bank loans; otherwise - 10%.
89	Dividends - 12.5% rate applies to dividends paid out of income derived during any period for which the payer company is not entitled to a reduced tax rate under Israel's Encouragement of Capital Law and certain other requirements are met, including a holding percentage of at least 10% during the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), subject to additional requirements. 15% rate applies to dividends paid out of income derived during any period for which the payer company is entitled to a reduced tax rate under Israel's Encouragement of Capital Law and certain other requirements are met; otherwise - 25%.
90	Interest - 10% rate applies to interest on a loan from a bank, savings institution or insurance company; otherwise - 17.5%.
91	Royalties - 10% rate applies to royalties paid for copyrights or film; the15% rate applies to industrial royalties.
92	Royalties - 5% of the gross amount of the royalties that consist of payments of any kind received as a consideration for the use, or the right to use, any copyright of literary, artistic, or scientific work (excluding cinematograph films).
93	Royalties - 5% rate applies to royalties paid for a patent, design or model, plan, secret formula or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience; 7.5% rate applies to payments for technical fees; otherwise - 15%

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

In the scope of a due diligence process, purchasers would generally ask for information regarding open tax years in accordance with the applicable statute of limitation period. Generally, the statute of limitation periods are as follows:

- Income tax: Four years as of the end of the tax year in which the applicable tax return was submitted (e.g. if the tax return for tax year 2020 was submitted in October 2021, the statute of limitation lapses on 31 December 2025, assuming the taxpayer is subject to a calendar year tax year).
- Withholding tax: Four years as of the end of the tax year in which the applicable withholding tax return was submitted, or the lapse of the statute of limitation period for income tax purposes of the relevant tax year, whichever is later.
- VAT: Five years after the submission of the monthly VAT return.

Nº.	Sub-Category	Description of Request	
1	Tax Due Diligence	Income tax and other	Please provide copies of the financial statements and tax returns of the company for all open tax years.
2	Tax Due Diligence	Income tax	Please provide extracts from the Income Tax Authority's computerised database.
3	Tax Due Diligence	Income tax and other	Please provide details regarding the periods for which the company has final assessments and details regarding assessments issued to the company and audits that it underwent.
4	Tax Due Diligence	Income tax and other	Please provide any tax rulings or opinions obtained by the company.
5	Tax Due Diligence	Income tax and other	Please provide details regarding the company's tax planning.
6	Tax Due Diligence	Income tax and tax incentives	Please provide information regarding any grant, incentives or beneficiary tax regime that the company benefits from.
7	Tax Due Diligence	Withholding tax	Please provide information regarding the company's withholding tax policies.
8	Tax Due Diligence	Income tax	Does any group company have a PE in Israel?
9	Tax Due Diligence	Income tax	Please provide copies of all transfer pricing studies obtained by the group and intercompany agreements between group entities.
10	Tax Due Diligence	Income tax	Please provide details regarding each non-Israeli group company, including the number of employees it employs in Israel and outside Israel, its activity, the identity of its managers and the place in which its board of directors meets.
11	Tax Due Diligence	Transfer taxes	Please confirm that none of the group companies owns any Israeli real estate.
12	Tax Due Diligence	VAT	Please elaborate on the company's VAT positions and policies and extracts from the VAT Authority's computerised system.
13	Tax Due Diligence	Equity based compensation	Please provide copies of all option/share/award agreements/notices between the company and the grantees.

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1. INTRODUCTION

Both resident and non-resident entities are subject to corporate income tax ("CIT" or "IRES") at a rate of 24%. Resident legal entities are taxed on their worldwide income while non-resident entities are subject to tax only on Italian sourced income.

a. Forms of Legal Entity

The Italian resident legal entities liable to corporate income tax are (i) companies (joint-stock corporations, limited liability companies, partnerships limited by shares, cooperative companies and mutual insurance companies and societas Europaea) and (ii) legal entities other than companies (including, for instance, certain governmental entities) and trusts, whether or not their sole or main business purpose is the exercise of business activities, regardless the nature of the business activity, as well as undertakings for collective investment. Partnerships (simple partnerships, general partnerships and limited partnerships) other than partnerships limited by shares are fiscally transparent and are not liable to corporate income tax. Indeed, the partners are taxed on their share of the partnership's profits.

b. Taxes, Tax Rates

For Italian tax resident entities, the corporate income tax is levied on the profit/loss before tax as shown in the financial statements, increased by positive adjustments and decreased by negative adjustments in accordance with tax regulations.

For non-Italian resident entities, the corporate income tax is levied on the single income derived in Italy. In case of non-Italian resident companies having a PE in Italy, such companies are subject to IRES with respect to the taxable income attributable to the PE.

In addition, Italian tax resident entities are subject to IRAP (regional tax on productive activities) that is levied on a taxable base that is computed depending on the type of taxpayer and on the type of activity carried out, so there are specific rules for companies, banks and financial institutions, insurance companies, partnerships and sole proprietorships. For commercial and manufacturing companies the standard rate is 3.9% and is levied on the taxable base computed as the difference between the revenues and costs recorded under letters A) and B) of the Profit and Loss accounts drawn up according to Italian GAAP with add-backs for certain costs.

Non-resident companies having a PE in Italy are also subject to IRAP.



2. RECENT DEVELOPMENTS

a. General Comments

Legislative Decree no. 49/2020 implemented Directive 2017/1852 on tax dispute resolution mechanisms in the European Union. The new provisions will apply to mutual agreement procedure requests submitted from 1 July 2019 onwards in relation to questions of dispute regarding income or capital earned in a tax year commencing on or after 1 January 2018.

Legislative Decree no. 100/2020 implemented Directive 2018/822 (DAC6) amending the European Union Mutual Assistance Directive as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. Reporting deadlines are generally in line with the deadlines provided by DAC6, taking into account also Directive 2020/876, which provides for an optional deferral of time limits because of the COVID-19 pandemic. On 10 February 2021, Italian tax authorities published guidelines on DAC6 rules providing interpretations and examples on the mentioned measures.

Italian tax authorities' Regulation 23 November 2020 has amended the rules on Transfer Pricing documentation providing specific requirements in order to benefit from penalty protection in case of transfer pricing adjustments. The new rules apply from fiscal year 2020.

Italian Budget Law for 2021 introduced a provision according to which dividends and/or capital gains derived by qualifying EU/EEA investment funds from Italian equity investments are not subject to income tax in Italy. The new measure applies to dividends distributed and capital gains realised from 1 January 2021.

Italian Budget Law for 2021 amended the international tax ruling procedure introducing (i) an optional roll-back according to which taxpayers can opt to extend the agreement to previous fiscal years which are still open to tax assessment and (ii) an administrative filing fee: the ruling request is subject to an administrative fee which ranges from EUR10,000 and EUR50,000 based on the revenues of the group.

Law Decree no. 146/2021 as amended by Italian Budget Law for 2022 replaced the patent box regime with a super deduction for research and development costs. In particular, research and development costs related to qualifying intangible assets (i.e. software subject to copyright, patents and design subject to legal protection) are increased by 110% for CIT and IRAP purposes.

Italian Budget Law for 2022, among other measures, (i) increased the annual threshold for offsetting tax credits against other types of tax liabilities to EUR2 million and (ii) reorganised personal income tax, reducing the number of tax rates from five to four and modifying some tax deductions.

Law Decree no. 17/2022 reintroduced for individuals and non-commercial entities the step up regime for the tax values of plots of land and participations in non-listed companies held as of 1 January 2022.



b. Covid tax measures

Italy has introduced various tax measures and incentives to address the economic effects of the coronavirus outbreak such as tax credits (e.g. tax credit for expenses incurred in renting business properties, tax credit for capital contributions in certain companies, tax credits for expenses incurred for sanitising and adapting workplaces), deferral of tax payments and agreements with certain Countries (Austria, France, Switzerland) on the taxation of frontier workers.

Among the Covid tax measures, article 110 of Law Decree 104/2020 introduced the possibility for Italian GAAP companies to step up the values of tangible and intangible fixed assets as well as participations in the 2020 financial statements, provided that the assets were included in the 2019 financial statements. The step up can be executed only for accounting purposes or for both accounting and tax purposes, in the latter case a 3% substitute tax is due. Higher tax values are recognised for amortisation/depreciation purposes starting from fiscal year 2021, while for capital gain/loss purposes the are recognised from fiscal year 2024.

The equity reserve posted in the 2020 financial statements against the step up is taxable in case of distribution (unless a further 10% substitute tax is paid to render this reserve freely distributable).

In addition, both Italian GAAP and IAS/IFRS companies can realign the tax value of tangible and intangible fixed assets (including goodwill) as well as participations included in the 2019 financial statements to their higher accounting value. A 3% substitute tax is due on the difference between the accounting value and the tax value of the mentioned assets. Following the realignment, higher tax values are recognised for amortisation/depreciation purposes starting from fiscal year 2021, while for capital gain/loss purposes from fiscal year 2024.

An amount of equity reserves equal to the realignment is deemed to be fully taxable in case of their distribution (unless a further 10% substitute tax is paid to render these reserves freely distributable).

Law Decree no. 73/2021 introduced a tax incentive for capital increases occurred in fiscal year 2021. In particular, capital increases up to EUR5 million which occurred in fiscal year 2021 benefit from a 15% notional interest deduction instead of the 1.3% ordinary notional interest deduction. Recapture rules have been introduced to prevent temporary capital increases from benefitting from this incentive.



3. SHARE ACQUISITION

a. General Comments

A share deal is an agreement transaction whereby a seller transfers shares or quotas of a company which owns the business or the assets the purchaser is interested in, (generally) for cash consideration. The transaction may concern an existing company or a newly incorporated company in which the relevant business is first included through an extraordinary transaction (i.e. a spin off or a demerger).

As a share acquisition is an equity transaction, it does not directly affect the assets of the company the shares of which are transferred (target company).

Italian companies are entitled to benefit from a 95% participation exemption (i.e. only 5% of the capital gain on the disposal of shares in another company is subject to corporate income tax) if the following requirements are met:

(i) The shareholding has been held at least since the first day of the 12th month prior to the disposal;

(ii) The shares were booked by the seller as a long-term investment (fixed financial asset) in the first balance sheet of its holding period (no minimum percentage is required);

(iii) The owned company is not resident in a jurisdiction which has a privileged tax regime;

(iv) The owned company is carrying on a real business activity (e.g. other than real estate companies or intangible portfolio companies).

The requirement under iii) must be met over the entire holding period or over the previous five tax years where the buyer is not an associated entity. If this condition is not met, the company can still prove (through a tax ruling) that the holding of the shares in the "low taxed" company has not resulted, since the beginning of the holding period, in shifting income to the low tax regime. If no tax ruling application has been filed or if the outcome of the tax ruling was negative, the taxpayer can still take the position that the acquisition of the shares in the low taxed company was not made to shift income to the low tax regime, but it has to disclose the information in its income tax return. However, where the entity is established in a jurisdiction which has a privileged tax regime, if the resident controlling company proves that the non-resident entity carries on a substantial economic activity supported by staff, equipment, assets and premises, the capital gain realised is fully subject to CIT but an indirect tax credit is granted for foreign taxes paid by the non-resident entity on relevant income.

The requirement under iv) must be fulfilled throughout the three fiscal years prior to the sale.

Capital losses realised upon the disposal of shares that qualify for the participation exemption are not deductible in the hands of the corporate seller.

If the requirements provided for the participation exemption regime are not satisfied, the capital gain upon disposal of shares is fully subject to CIT at the ordinary rate in the same year or, if the shares were booked as fixed financial assets in the last three financial years, in equal instalments over a period up to five years. In this case, corporate sellers may fully deduct capital losses arising from the disposal of shares that would not be eligible for the participation exemption.

In case the seller is non-resident in Italy, see section 7.c. Capital gains are not subject to IRAP.

b. Tax Attributes

In principle, tax losses can be carried forward without any time limit but can be used to offset only 80% of taxable income in any subsequent year. Tax losses realised in the first three years from the establishment of the company can be carried forward without any time limit and can be used to fully offset the taxable income in any subsequent year provided that they relate to a new business activity.

In order to tackle the abusive trading of tax losses, limitations on the carry forward of tax losses apply when the following conditions are both met:

- A majority of the voting shares in the loss company is transferred; and
- The main activity carried out by the company is changed from the one carried out in the fiscal years when losses were suffered. The change in the activity has to occur in the fiscal year in which the shares are transferred, during the previous two years, or the following two years.

Nevertheless, even if the above conditions are met, a company can still carry forward losses if (i) it did not reduce employees below 10 units during the two years preceding the transfer of shares and (ii) it satisfies the so called "vitality test". The vitality test is satisfied if the company's P&L account of the fiscal year preceding the one in which the change of control occurs shows both gross receipts (and other proceeds deriving from the main activity) and labour costs (and related social security contributions) higher than the 40% of the average of the same receipts and costs of the two previous financial years.

No limitations on the carry forward of the tax losses occur in case of change of business activity in the absence of any transfer of shares.

c. Tax Grouping

The Italian tax consolidation regime provides for the determination of a single taxable basis, which is the sum of the taxable bases of the group entities, taken into consideration at their full amount, irrespective of the percentage of participation held by the consolidating company. As a consequence, taxable profits and losses realised by each company during the period of tax consolidation are offset. Conversely, tax losses suffered by each company before entering the domestic tax consolidation can be utilised only by the company that incurred them.

Other benefits of the regime are that (i) certain tax attributes (such as excess interest limitation) not used by the company creating them can be surrendered to the fiscal unity and (ii) the limitations to carry forward the tax losses in case of merger do not apply to the tax losses incurred during the consolidation when the merger occurs between consolidated entities.

In order to apply for the tax consolidation regime, the following condition must be met:

- The parent entity must hold, directly or indirectly, more than 50% of the share capital of the subsidiary and must be entitled, directly or indirectly, to more than 50% of the profits. Said percentages should be computed taking into consideration the demultiplication effect due to a chain control and excluding the shares without voting rights (and the profits related to them).
- The parent and the subsidiaries must have the same fiscal year;
- The election must be made jointly by the parent and by each subsidiary;
- The election for the domestic tax consolidation must be made in the tax return filed in the first fiscal year to which the consolidation applies; and
- Each subsidiary must elect to be domiciled for tax purposes at the domicile of the parent company.



A non-Italian resident company may apply for the tax consolidation regime as consolidating entity if (i) is resident in a country that has a tax treaty in force with Italy that allows an adequate exchange of information, and (ii) carries on a business activity in Italy through a permanent establishment, whether or not this permanent establishment has, among its assets, the shares in the resident subsidiaries.

In addition, a non-resident company that does not have a permanent establishment in Italy and, directly or indirectly, controls two or more Italian resident subsidiaries may opt for the horizontal tax consolidation regime if, among others:

- It is a resident of a Member State of the European Union or an EEA State having a double tax treaty in force with Italy that allows an adequate exchange of information between the competent tax authorities; and
- It is incorporated under one of the legal forms as listed in the Annex I, Part A, to the Parent Subsidiary Directive.

Upon certain conditions, also newly acquired companies can adhere to the Italian tax consolidation regime, as consolidated companies, starting from the year in which the consolidating company or entity acquires its control.

The above regime applies only for CIT purposes, whereas IRAP remains applicable on a stand-alone basis.

d. Tax Free Reorganisations

Once the share acquisition has been performed, the companies may decide to carry out a corporate restructuring.

Italian law provides for a tax neutral regime applicable to some qualifying corporate restructurings, such as mergers and demergers. Under this tax neutral regime, capital gains taxation is deferred, and the acquiring entities receive a carryover basis in the assets acquired.

More in particular, the merger of Italian resident companies is a tax neutral transaction. Therefore, the merger would not give rise to taxable gains or deductible losses on the assets of the merged company.

As a consequence, the merging company would inherit the same tax values of the merged company's assets and liabilities as these had before the merger, (i.e. there is no step up in the tax value of assets). In addition, the merging company would take up all tax attributes and obligations of the merged company (e.g. depreciation/amortisation, value of inventory, tax credits, tax deferral on capital gains, reserves and provisions).

Same principles are applicable to demergers.

In transactions which allow the transfer of tax attributes (like mergers and demergers), particular attention has to be paid to the limitation rules which apply to tax losses and excess interest carried forward.

The main caveat in tax neutral restructurings is the rule regarding "abuse of law" (Article 10-bis of Law n. 212/2000) which is applicable to transactions lacking economic substance which realise undue tax benefits and consequently can be disallowed by the tax administration.

In particular, such qualifies as abusive "one or more transactions lacking any economic substance which, despite being formally compliant with the tax rules, achieve essentially undue tax advantages."



Transactions are deemed to lack economic substance when they imply facts, actions and agreements, even related to each other, that are unable to generate significant business consequences other than tax advantages. Indicators of lack of economic substance are the inconsistency between the qualification of the individual transactions and their legal basis as a whole and the choice to use certain legal instruments not consistent with the ordinary market practice.

Tax advantages are deemed to be undue where they consist of benefits that, even if not immediate, are achieved in conflict with the purpose of the relevant tax provisions and the principles of the tax system.

In any case, a transaction is not abusive if is justified by not-negligible business purposes (other than of a tax nature) including those aimed at improving the organisational and managerial structure of the business.

In any case, it seems that the Italian tax authorities, with recent Resolutions, are becoming more permissive in this regard by allowing business restructuring (such as demerger followed by sale of the participations) previously considered as abusive.

Taxpayers may request a ruling to determine whether a planned transaction may constitute abuse of law. No criminal charges would be imposed on the "abuse of law" behaviour.

If after the share deal the target company is subsequently merged with the acquiring company, the possible merger deficit (disavanzo di fusione – i.e. the difference between the cost of cancelled shares and the book value of the net assets of the absorbed company) can be used to step up the value of the assets from an accounting point of view. Such step up is not relevant for tax purposes unless the company exercises one of the following options regarding, in full or in part, one or more assets:

- The absorbing company is entitled to step up the tax value of the tangible and intangible assets received by paying a substitute tax at the rate of 12% on the portion of the step up in value up to EUR5 million, 14% on the portion of the step up from EUR5 million to EUR10 million and 16% on the portion of the step up in value exceeding EUR10 million. The option for the step-up can be elected in the tax return of the year in which the merger occurs or in that of the following tax year. The stepped up tax values are effective starting from the fiscal year in which the option is exercised, subject to a recapture rule if the assets are disposed within the four fiscal years following the one in which the option is exercised;
- According to another specific provision, the step up may affect the tax value of intangible assets (goodwill, trademarks and other intangible assets) and is granted by paying a substitute tax of 16%. This specific regime allows the taxpayer to apply a depreciation period of five years for deducting goodwill and trademarks instead of the ordinary 18 years period. The substitute tax must be paid within the deadline for the payment of the CIT due for the fiscal year in which the merger occurs (i.e. the last day of the 6th month of the following fiscal year). The stepped up tax values are effective starting from the fiscal year in which the substitute tax is paid, subject to a recapture rule if the assets are transferred within the fourth fiscal year following the one in which the option is exercised. The higher depreciation/amortisation can be deducted starting from the fiscal year following the one in which the substitute tax is paid;
- In addition, if the absorbing company inherits a participation from the absorbed company and includes it in its consolidated financial statement ("CFS"), the step up may affect the values of goodwill, trademarks and other intangibles recognised in such CFS and implicitly embedded in the value of that participation. The step up at stake is notional and can be deducted by the absorbing company. This regime can be applied in the same periods and is subject to the same recapture rules already mentioned under the bullet above but the depreciation/amortisation can be deducted starting from the second fiscal year following the one in which the substitute tax is paid.



e. Purchase Agreement

The Sale and Purchase agreement would typically include a standard suite of warranties and indemnities on the basis that in a share sale the historical tax liabilities move with the entity to the purchaser, as such suitable protections are typically required.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

In a share deal, a financial transaction tax at a 0.2% rate applies to transfers of shares of joint stock companies (società per azioni) having their legal seat in Italy, even if not carried out on financial markets. The financial transaction tax applies to any transfer of shares for consideration (i.e. not only sales, but also exchanges and contributions of shares fall, in principle, within the scope of this tax). If the transfer takes place on regulated markets or multilateral trading facilities, the tax rate is reduced to 0.1%.

The tax is due to be paid by the purchaser and must be levied by the intermediaries which are involved in the execution of the transaction (e.g. banks, fiduciary companies and investment companies, public notaries involved in the drawing up or authentication of deeds). The tax on financial transactions does not apply to the transfer of shares between companies of the same group nor to the transfers arising from corporate/business restructurings.

In addition, the transfer of shares is exempt from VAT and a fixed registration tax of EUR200 is levied.

g. "Purchase accounting" applicable to share acquisitions

No specific rules are applicable.

h. Share Purchase Advantages

The capital gain realised by the seller can be subject to a reduced income tax burden depending upon the type of seller; particularly, it could be beneficial for domestic companies (when the conditions for the participation exemption regime are applicable) and for foreign companies (if a double tax treaty relief for capital gains is applicable).

In a share deal the tax attributes carried forward (losses, interests paid exceeding limits, tax credits, etc.) stay with the company acquired and can be part of the deal, even if they are subject to certain limitation rules aimed to avoid the "trade" of attributes; please note that if the majority of the shares of a company are transferred and there is a change in the company's activity prior or after such transfer, the prior years' tax losses expire unless certain requirements are met.

A share deal is not subject to indirect taxes, unless the shares of an Italian joint stock company (società per azioni) are sold, in which case a 0.2% tax (financial transaction tax) has to be applied.



i. Share Purchase Disadvantages

In a share deal all the contingent tax liabilities remain in the company whose shares are sold for the statute of limitations period, i.e until December 31st of the fifth year following the filing of the tax return for 2016 onwards (for fiscal years until 2015 the reference is to the fourth year subject to a potential extension to eighth year in case of criminal proceedings) and therefore the buyer should in principle seek guaranties of the tax risks.

In a share deal, in principle there is no step up of the value of assets unless certain extraordinary transactions are carried out and/or a specific option is exercised which implies the payment of a substitute tax.

The deal may not include all the assets/liabilities of a company and therefore a preliminary carve out into a specific company may be needed which might have some tax costs. However, the contribution of a going business into a company in exchange for shares is a tax neutral transaction that does not change the tax values of the companies involved and allows the seller in principle the possibility to apply the participation exemption regime on the subsequent sale of the new shares.

4. ASSET ACQUISITION

a. General Comments

Such transaction concerns the acquisition of single assets or more frequently of a going concern previously identified between the parties.

The sale of a going concern may give rise to a taxable capital gain or a deductible tax loss, determined as the difference between the sale price (net of any directly attributable ancillary expenses) and the tax value of the business, which is included in the ordinary CIT basis. If the seller has owned the business for more than three years, it may elect to tax the capital gain in equal instalments over a period of up to five years. Any capital gain or capital loss is not relevant for IRAP purposes.

The sale of single assets is subject to almost the same rules. However, in such a case, the capital gain (loss) is also relevant for IRAP purposes.

b. Purchase Price Allocation

In the case of acquisition of single assets, the buyer may not book any goodwill for either accounting or tax purposes, but it may step up the value of the single assets acquired to their purchase price and depreciate/amortise them accordingly.

In the case of acquisition of a going concern, the buyer must book the assets purchased according to the value agreed between the parties. A specific portion of the price paid may be attributed to the goodwill. If the buyer and the seller just indicate the overall consideration paid for the business and therefore, they do not clearly identify the price paid for any individual asset that belongs to the business, the purchase price allocation must be coherent with the fair value of the assets. In any case, there are no specific rules for allocating the purchase price to the individual assets included in the business.

c. Tax Attributes

In an asset deal the tax attributes (tax losses or unused interest) remain on the selling company as are usually not transferable to the buyer.

However, in some cases, certain tax attributes, such as VAT plafond (which is the right of exporters to purchase goods and services without being charged VAT by their suppliers), are transferred to the buyer along with the relating business unit or assets.



d. Tax Free Reorganisations

The transfer of a going concern may be realised by way of transfer of the business to be sold into a specific Newco and then sale of the shares of such Newco.

This can be done through the contribution of the going concern to a Newco in exchange for Newco's shares, which is a fully tax neutral transaction because (i) for the receiving company the tax cost of the assets received is the same as for the contributing company and (ii) for the contributing company the tax cost of the Newco shares received is equal to the original tax cost of the net assets contributed. The receiving company may optionally step up the assets for tax purposes by applying the substitute tax provided by the optional regimes (see section 3.d.).

The contributing company may subsequently benefit from the 95% participation exemption on a sale of the Newco shares to a third party even before the one year minimum holding period has passed, if the going concern was held for that period. The contribution in kind followed by the sale of Newco shares is explicitly ruled by the law as a non-abusive practice for income tax purposes.

From an indirect tax point of view the contribution in kind in exchange for shares is subject to a fixed amount (EUR200) for registration tax purposes (and for transfer taxes purposes if buildings are involved). According to the new article 20 of the Registration tax code, the decision of the Constitutional Court no. 158/2020 and recent Italian tax authorities' resolutions, the transaction should not be recharacterised as a direct sale of going concern and no abuse of law may be assessed in the absence of merger between the purchasing company and the NewCo.

e. Purchase Agreement

No specific rules are applicable.

f. Depreciation and Amortisation

As a consequence of the assets acquisition, the buyer may step up the tax value of the assets received to the price paid. Consequently, the buyer may amortise and depreciate the assets on their new tax values.

In general, tangible assets may be depreciated only on a straight line basis and the maximum yearly rates of depreciation cannot exceed the ones set by the Ministry of Economy and Finance. The rate depends on the type of property and on the sector of the taxpayer's activity. Amortisation of intangible assets is subject to specific rules, depending on the nature of the asset.

If part of the purchase price paid is attributed to the goodwill, such value is recognised for accounting and tax purposes. From an accounting viewpoint, the goodwill acquired can be amortised over its useful life, or, if such life cannot be reliably estimated, over at most 10 years. For tax purposes, the goodwill must be amortised over no less than 18 financial years.

g. Transfer Taxes, VAT

In an asset deal, indirect taxes depend upon the type of transaction.

If a going concern is transferred, no VAT is applicable and a registration tax is applied on the market value of the assets transferred, including goodwill, net of liabilities transferred, as reported in the accounting books of the company. The applicable tax rate depends on the nature of assets transferred. Movable property, goodwill, patents and trademarks, inventory, etc., are taxed at the rate of 3%, while real estate assets are taxed mainly at the rate of 9%. In any case, if the purchase price is not specifically allocated to the various assets transferred, the registration tax is levied at the highest rate among those applicable to such assets. Transfer taxes are levied at EUR100 when an immovable property is included in the going concern.

The transfer of single assets (i.e. not a business as a going concern), by a VATable person will likely be subject to VAT. In the case of transfer of a real estate, registration, and transfer taxes are levied either proportionally or in a fixed amount depending on the kind of immovable property (commercial or residential) and the VAT regime applied (exempt or subject to VAT).

The sale of a commercial building is VAT exempt. However, the transaction is subject to VAT when:

- The vendor is the construction enterprise or has performed substantial building works and the sale occurs within five years from the end of the construction/ renovation; or
- The vendor has explicitly opted in the deed of transfer for the application of the VAT.

The sale of a residential building is VAT exempt. However, the transaction is subject to VAT when:

- The vendor is the construction enterprise or has performed substantial building works and the sale occurs within five years from the end of the construction/ renovation;
- The vendor is the construction enterprise or has performed substantial building works, the sale occurs after five years from the end of the construction/ renovation and it has explicitly opted for the application of the VAT;
- The sale of social housing when the application for VAT have been expressed in the deed of transfer.

h. Asset Purchase Advantages

The buyer obtains the step up for tax purposes in the tax depreciable basis of assets transferred corresponding to the purchase price paid allocated to each asset.

The tax attributes (tax losses or undetected excess interest expenses) remain with the selling company and are not transferred to the buyer, and this may represent an advantage for the seller in particular if the conservation of such tax attributes in a share deal is not possible due to the rules on “trade” in tax attributes.

The contingent tax liabilities relating to the assets or the going concern transferred remain, as a general rule, with the selling company. However, pursuant to Article 14 of Decree no. 472/1997, the buyer of a going concern is jointly and severally liable with the seller for the most recent tax liabilities in an amount not exceeding the value of the assets. A tax certificate stating the amount of tax liabilities attached to the going concern can be requested from the Italian tax authorities and the buyer’s liabilities are limited to the amount stated in the certificate. These liability rules do not apply if the asset deal occurs in a pre-bankruptcy regulated procedure.



i. Asset Purchase Disadvantages

The capital gain (loss) realised by the selling company is taxable (deductible) for corporate tax purposes at IRES ordinary rates (in the case of assets owned for more than three years, the gain may be deferred over at most five fiscal years) and is not subject to IRAP if the asset deal consists of a going concern.

When the asset deal is realised through the transfer of a going concern, no VAT is applied and the value of the going concern, net of liabilities, is subject to a registration tax. Other ancillary taxes are due when real estate is involved; the transfer taxes are usually paid by the buyer, but both parties are jointly and severally liable for the payment of registration tax (which is generally applied at a 3% rate, except for real estate assets which are mainly subject to 9%).

5. ACQUISITION VEHICLES

a. General Comments

The Italian Civil Code ("ICC") specifically allows Merger Leverage Buy Out ("MLBO") transactions. In particular, under Article 2501-bis of the ICC, in case of a MLBO transaction:

- The merger plan must set out the financial resources available to repay the company's financial indebtedness post-merger;
- A report by the independent auditor of one of the companies involved in the merger must certify the correctness of the accounting figures contained in the merger plan;
- A report by the boards of directors of each of the companies involved in the merger must illustrate and justify the merger from an economic and legal standpoint and contain an economic and financial plan demonstrating the sustainability of the post-merger indebtedness; and
- A report by an independent expert must attest that the above boards of directors' sustainability analysis is reasonable.

b. Domestic Acquisition Vehicle

Generally, in leveraged buyout transactions ("LBO"), the acquisition of a target company is normally carried out through a newly set up Italian resident special purpose vehicle ("SPV") which is funded partially by equity, generally of minimum amount and partially by debt. After the acquisition, the SPV and the target company are usually merged, either in the form of direct merger or reverse merger, with the purposes of pushing down the debt which transfers the tax deduction of the interest expenses from the SPV to the company resulting from the merger. Such restructurings are allowed from both a tax and civil perspective.

Alternatively, if the target company is not merged into the SPV, the two companies elect for the tax consolidation regime which allows the group to offset (i) the SPV's tax losses against the target's taxable income and (ii) the SPV's excess interest against the target's excess 30% tax EBITDA.

Italian tax authorities' guidelines no. 17/2019 clarified that, in the context of an MLBO transaction, if the SPV qualifies as a pure holding company it does not have the right to deduct input VAT.

c. Foreign Acquisition Vehicle

In LBO transactions, the Italian SPV may be held by a foreign holding company. In such a case, particular attention should be given to its substance in order to avoid the risk of assessments from the Italian tax authorities (see section 14.b.).



d. Partnerships and joint ventures

The use of partnerships as domestic acquisition vehicles is not advisable due to the joint and unlimited liability of the partners for the social obligations.

Partnerships (simple partnerships, general partnerships and limited partnerships) other than partnerships limited by shares are fiscally transparent and are not liable to corporate income tax. Indeed, the partners are taxed on their share of the partnership's profits.

e. Strategic vs Private Equity Buyers

No specific rules are applicable.

6. ACQUISITION FINANCING

a. General Comments

In principle, taxpayers are free to finance the acquisition by way of capital or debt.

However, the Italian tax authorities with the Circular Letter No. 6/2016 have clarified that shareholder loans may be recharacterised when their economical and juridical substance allow to align them to equity contributions, that is to say when, having regard to the specific economical and juridical context, the investment would not be expected to be structured by providing for a shareholder loan instead of an equity contribution.

In particular, a shareholder loan might be recharacterised as equity when, for example:

- Payment of interest and repayment of capital must occur after the repayment of capital and interest on third party debt;
- Financial covenants of third-party debt treat shareholders loans as equity; or
- Payment of interest and repayment of capital is subject to the same constraints as provided for distributions of dividends and equity reserves.

b. Equity

Resident companies and permanent establishments of non-resident entities may benefit from an allowance for corporate equity (so called "ACE"), which consists of a deduction from corporate income tax of a deemed interest computed by applying a certain rate to the net equity increases arising after 2010 (equity contributions and undistributed profits less reductions of equity with respect to shareholders). Starting from fiscal year 2019 the rate applicable in computing the ACE benefit is 1.3%.

For dividends paid to non-resident shareholders, see section 7.c.



c. Debt

As a consequence of the implementation of the ATAD Directives n. 1164/2016 and 952/2017, the rules concerning the deductibility of interest expenses have been amended with effect from 2019. According to the new Article 96 of the Italian tax code, net interest expenses (i.e. interest expenses less interest income), including those capitalised in the cost of the assets, are deductible up to an amount equal to 30% of EBITDA. The EBITDA is calculated by applying the tax rules and therefore, by considering the items of the profit and loss account in accordance with the provisions regarding the determination of the taxable business income.

Interest expenses exceeding the 30% EBITDA threshold is not deductible in the relevant fiscal year but is carried forward to the following fiscal years, without any time limit and may be deducted in a subsequent fiscal year if and to the extent 30% of EBITDA is higher than net interest expense in that fiscal year. If 30% of EBITDA exceeds net interest expense, such excess can be carried forward for a maximum of five years to offset future excess interest. On the other hand, interest income exceeding the interest expenses may be carried forward to subsequent taxable periods and used to compensate future interest expenses.

In addition, excess interest expense generated by one company in a tax consolidation may be offset against the excess 30% of EBITDA of another company within the tax consolidation. In other words, the computation of the non-deductible interest is performed at the level of the single entity but the amount, in principle, not deductible on a standalone basis may be transferred to the consolidating entity and deducted if and to the extent another company has in excess of 30% EBITDA.

The above is applicable only for CIT purposes while for regional tax ("IRAP") interest expenses cannot be deducted.

The rules described apply to entities subject to CIT, with the exclusion of banks and financial undertakings (for which interest expenses are entirely deductible) and insurance companies or parent companies of insurance groups (for which interest expenses are deductible up to a 96% limit of the amount of the interest expense).

In the case of interest expenses paid by enterprises to non-resident persons, the zero WHT is applied if the interest is paid on a loan that qualifies as medium to long term debt and the lender is a (i) financial institution established in a EU Member State, (ii) insurance company established and authorised under the law of a EU Member State, (iii) foreign institutional investor, whether or not subject to tax, set up in a country included in the Italian white list and subject to regulatory supervision in its country of establishment.

In the other cases, interest payments to a foreign lender are in principle subject to a final WHT of 26%. However, it is possible to reduce the final WHT by invoking the benefit of the Tax Treaty between Italy and the State of residence of the beneficial owner. In addition, in accordance with the EU Interest & Royalties Directive, interest payments are exempt to the extent of their arm's length value, provided that (i) the lender is the beneficial owner of the interest, (ii) the lender takes one of the legal forms listed in the Annex of the Directive, (iii) the lender is a resident of a Member State, (iv) the lender has maintained a direct minimum holding of 25% in the capital of Italian company for an uninterrupted period of at least one year and (v) the lender is subject to corporate income tax. It is worth noting that for financing acquisitions, any bank (or other qualified lenders) loan for a term of more than 18 months that is concluded in Italy is optionally subject to a 0.25% substitute tax (imposta sostitutiva) applied on the amount of the loan. This tax also replaces all other indirect taxes potentially due on guaranties like mortgages, pledges, etc., related to the bank loan whose ordinary tax regime could be (in some cases) much more burdensome.



d. Hybrid Instruments

The Legislative Decree No. 142 of 29 November 2018, implementing the ATAD Directives n. 1164/2016 and 952/2017, introduced new provisions targeting hybrid mismatches.

The provisions of the Decree are, in many cases, almost identical to those of the ATADs and are targeted to hybrid mismatch between associated enterprises, between the head office and the permanent establishment, between two or more permanent establishments of the same entity or arising from structured arrangements that may lead to:

- Deduction/non-inclusion ("DNI") outcomes such as (i) "hybrid financial instruments" where a deductible payment is not treated as taxable income under laws of the recipients jurisdiction; (ii) "hybrid transfer" where differences in the tax treatment result in the underlying financial instrument being treated as held by more than one taxpayer; (iii) "disregarded payments made by hybrid entities" where the difference in treatment of the hybrid payer results in a deductible payment being disregarded when received; (iv) "payments made to a reverse hybrid entity" where payments made to an intermediary are not taxable on receipt due to hybrid effect and (v) "disregarded branch structure".
- Double deduction outcomes ("DD") such as (i) "deductible payment made by a hybrid entity", (ii) "deductible payment by a dual resident" where a deductible payment made by a dual-resident triggers a second deduction in the other jurisdiction.
- Indirect deduction/non-inclusion ("indirect DNI") such as "imported hybrid mismatches" where the effect of a hybrid mismatch between two states is shifted to a third state.

The Decree essentially states that when a hybrid mismatch results in a DD, (i) if Italy is the investor jurisdiction, the deduction shall be denied in Italy and (ii) if Italy is the payer jurisdiction and the deduction is not denied in the investor jurisdiction, the deduction shall be denied in Italy. In addition, when a hybrid mismatch results in a DNI, (i) if Italy is the payer jurisdiction, the deduction shall be denied in Italy and (ii) if Italy is the payee jurisdiction and the deduction is not denied in the payer jurisdiction, the amount of the payment shall be included in the taxable income in Italy. Finally, when a hybrid mismatch results in an indirect DNI, Italy shall deny the deduction of the payment which, directly or indirectly, funds expenditure involving a hybrid mismatch, unless one of the jurisdictions involved in the transaction or series of transactions has made an equivalent adjustment in respect of such hybrid mismatch.

These rules applied generally from tax year 2020. However, the rules addressing reverse hybrid arrangements will only apply from tax year 2022.

On 26 January 2022, Italian tax authorities published guidelines on hybrid mismatches rules providing interpretations and examples on the measures.



e. Other Instruments

In principle, the payment of interest due on bonds is subject to a withholding tax ("WHT") of 26% (Article 26 of the Presidential Decree 600/1973). Such withholding tax may be reduced by the tax treaties currently in force between Italy and the state of residence of the recipient. In addition, under certain circumstances (see Section 6.c), the zero WHT provided by the Interest and Royalty Directive would apply.

In the case of Bonds issued by the so called "Large Issuers" (i.e. banks, companies listed in regulated markets or admitted to multilateral trading facilities of EU member States or adhering to the EU economic space agreement included in the "white list" and public companies converted into stock companies) a substitute tax of 26%, instead of the WHT must be applied by the intermediaries intervening in the payment (Legislative Decree n. 239/1996).

However, such substitute tax should not be applicable to some foreign Investors (entities residents in White Lists countries, international entities or bodies incorporated pursuant to international agreements executing in Italy, central banks or investment bodies managing official reserves of Italy) and some Italian Investors (Capital companies, Cooperative companies, investment funds and pension funds).

In the case of Bonds issued by companies who are not considered to be "Large Issuers", the regime provided for the Large Issuers, including the exclusion from the substitute tax for foreign holders is also applied to (i) bonds that are listed in regulated markets or admitted to multilateral exchange systems of EU member States or adhering to the EU economic space agreement included in the "white list" or (ii) unlisted bonds held exclusively by qualified investors.

f. Earn-outs

In general, earn-outs are considered as part of the purchase price and therefore are subject to the same tax regime of the capital gains (see section 3.a. and 7.c.).



7. DIVESTITURES

a. Tax Free

Share deal

Italian companies are entitled to a 95% participation exemption (i.e. only 5% of the capital gain on the disposal of shares in another company is subject to IRES at the rate of 24%) provided certain conditions are met (please see section 3.a for more details).

Capital losses realised upon the disposal of shares that qualify for the participation exemption are not deductible in the hands of the corporate seller.

If the requirements provided for the participation exemption regime are not satisfied, the capital gain (loss) upon disposal of shares is fully taxable (deductible) for CIT purposes at the ordinary rate. In case of a gain, if the shares were booked as fixed financial assets in the last three financial years, the capital gain may be taxable in equal instalments over a period up to five years.

In case the seller is non-resident in Italy, see section 7.c.

Capital gains are not subject to IRAP.

b. Taxable

In the case of a share deal, if the requirements provided for the participation exemption regime are not satisfied, the capital gain (loss) upon disposal of shares is fully taxable (deductible) for CIT purposes at the ordinary rate. In case of a gain, if the shares were booked as fixed financial assets in the last three financial years, the capital gain may be taxable in equal instalments over a period up to five years.

Asset Deal

The sale of a going concern may give rise to a taxable capital gain or a deductible tax loss, determined as the difference between the sale price (net of any directly attributable ancillary expenses) and the tax value of the business, which is included in the ordinary CIT basis. If the seller has owned the business for more than three years, it may elect to tax the capital gain in equal instalments over a period of up to five years. Any capital gain or capital loss is not relevant for IRAP purposes.

The sale of single assets is subject to almost the same rules. However, in such a case, the capital gain (loss) is also relevant for IRAP purposes.



c. Cross Border

For foreign shareholders the taxation of profit repatriation and of capital gains on exit are relevant.

Outbound dividends are subject to a final WHT of 26%, except in the following cases:

- Zero WHT where the EU Parent Subsidiary Directive 2011/96/EU is applicable;
- A 1.375% (reduced to 1.20% for distribution of profits earned from 2017 onwards) WHT on dividends paid to EU companies or to companies of the European Economic Area providing exchange of information, if they are subject to ordinary income tax in their country;
- A reduced rate (generally 5% or 10%) may be provided by the applicable tax treaty.

Italian Budget Law for 2021 introduced a provision according to which dividends and/or capital gains derived by qualifying EU/EEA investment funds from Italian equity investments are not subject to income tax in Italy. The new measure applies to dividends distributed and capital gains realised from 1 January 2021.

Starting from 1 January 2019, capital gains realised on the sale of both substantial and non-substantial participations are subject to a final substitute tax of 26% on the whole amount of the capital gain.

However, capital gains on the disposal of a non-substantial participation is not subject to tax in Italy if one of the following conditions is met:

- The sale concerns "non-qualified" participations held in an Italian listed company; or
- The sale concerns "non-qualified" participations held in an Italian company and the seller is a resident of a white listed country.

Qualified participations are those representing more than:

- 2% of the voting rights or 5% of the capital (economic rights), in the case of participations in listed companies; or
- 20% of the voting rights or 25% of the capital (economic rights), in the case of other participations.

In any case, the capital gain realised by a foreign company on the disposal of a participation in an Italian company is not taxable in Italy if an applicable tax treaty grants the exclusive right to tax the gain to the State of residence of the holding company.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

A resident company is subject to corporate income tax on a worldwide basis. The full amount of foreign income is generally included in the taxable basis to corporate income tax.

b. CFC Regime

As a consequence of the implementation of the ATAD Directives n. 1164/2016 and 952/2017, the CFC legislation has been amended. According to the new rules, a foreign subsidiary is considered controlled if the shareholder either holds the majority of voting rights (or sufficient voting rights to exercise an influence over the subsidiary) or is entitled to more than 50% of the subsidiary's profits.

A controlled foreign subsidiary may be subject to CFC rules provided that:

- The foreign entity's effective tax rate is lower than 50% of the effective tax rate that would have been applicable in Italy should the foreign entity be tax resident in Italy; and
- The proceeds received by the foreign entity are originated for more than one third from passive income sources (interest, dividend, royalties, capital gains) plus financial lease income, assurance, bank and other financial activities, income from low value added sale of goods and provision of services to related parties.

If a foreign subsidiary falls within the CFC legislation its income should be redetermined pursuant to Italian tax rules and taxed in the hands of the Italian shareholder in proportion to its shareholding.

However, the CFC legislation may be disapplied if the shareholder is able to demonstrate that the CFC exercises an effective economic activity in its State of residence by means of personnel, equipment and premises.

On 27 December 2021, the Italian tax authorities published guidelines on CFC rules providing interpretations and examples on the measures.

c. Foreign branches and partnerships

If a resident company derives income through a foreign permanent establishment, such profits are included in its taxable income. To relieve double taxation, the Italian tax code provides an ordinary credit system based on a per country limitation, namely the credit is calculated separately with respect to income derived from each foreign country.

Starting from the fiscal year 2016, resident companies may opt for the branch exemption regime according to which income derived through foreign permanent establishments are exempt from corporate income tax. The election cannot be revoked and automatically extends to all of the company's permanent establishments ("all in" principle).

The election should be made when the first foreign permanent establishment ("PE") is formed and for already existing permanent establishments, the election should have been made by the end of the fiscal year 2017. For companies already having a foreign PE, the election should have been made before the end of fiscal year 2017. Therefore, such election cannot be made anymore, unless the company liquidates all the existing PE and creates new ones.



The Italian branch exemption regime provides rules aimed at recapturing tax losses derived through the permanent establishments in the fiscal years before the election.

If a permanent establishment benefits from a low tax regime in the foreign jurisdiction (as defined for CFC purposes), the branch exemption regime may trigger the application of CFC rules and therefore, unless the CFC rules can be disapplied (see Section 8.b), the permanent establishment's income is not exempted but is imputed to the resident company under the CFC rules.

As far as partnerships are concerned, all foreign transparent entities are treated for Italian income tax purposes as opaque.

d. Cash Repatriation

In general, foreign dividends are treated in the same manner as domestic dividends. This means that 95% of the dividends are not included in the IRES taxable base on the condition that the dividends have not been fully or partially deducted in the country of source. The exemption regime is in line with provisions of the EU Parent-Subsidiary Directive, but it also applies for dividends received from third countries (unless the rule explained below comes into play) at the sole condition that such dividend have not been fully or partially deducted in the country of source.

However, such exemption is not applicable if the non-resident company that distributes the dividends benefits from a low tax regime. Starting from the fiscal year 2019, a foreign regime is considered as low tax regime if: (i) in case of controlled subsidiaries, the foreign effective tax rate is lower than 50% of the effective tax rate that would apply if that entity were a tax resident of Italy or (ii) in case of non-controlled subsidiaries, if the nominal foreign tax rate is lower than 50% of the nominal Italian tax rate. In any case, EU or EEA States are not considered as low tax States.

The full taxation of the dividends is excluded if, alternatively, the taxpayer can prove that (i) the foreign entity carries on a substantive economic activity supported by staff, equipment, assets and premises or (ii) the investment in the foreign entity did not achieve the result of shifting income to low tax jurisdictions. If the first exception applies, only 50% of the dividends distributed to Italian resident companies are included in the corporate tax base and an indirect tax credit is granted to the controlling shareholder.

In any case, dividends distributed by controlled foreign entities are exempt in Italy up to the amount of profits that have been already taxed in Italy under the CFC rules.



9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

In the context of the Multilateral Instrument ("MLI") (see section 12.), Italy has provisionally decided to apply Article 9(4). Under that provision, gains derived from the alienation of shares (or comparable interests such as interests in a partnership or trust) – which, at any time during the 365 days preceding the alienation, derived more than 50% of their value directly or indirectly from immovable property – may be taxed in the State where the immovable property is situated.

The status of the MLI is described in section 12.

b. CbC and Other Reporting Regimes

Italy has already implemented the recommendation provided by the BEPS Action 13 introducing the obligation of the country by country reporting for companies and entities (of an MNE Group whose consolidated annual turnover is at least EUR750 million) that are (i) the ultimate parent entity of an MNE Group that is resident in Italy for tax purposes, (ii) a subsidiary of an MNE Group, provided that the ultimate parent entity is resident in a State that: 1) has not implemented CbC reporting rules; or 2) does not have a Qualifying Competent Authority Agreement with Italy; or 3) does not exchange information gathered under the CbCr rules. The information to be provided are in line with Section III of Annex III of the Directive 2016/881.

10. TRANSFER PRICING

Pursuant to the Italian transfer pricing rules, for CIT and IRAP purposes any transactions between Italian companies and their foreign related entities should be priced at fair market value. In that respect, proper transfer pricing documentation (master and local file) should be prepared by the resident company.

The existence of the TP documentation must be declared in the tax return by checking the relevant box and would allow the taxpayer to obtain penalty protection. Accordingly, in the absence of TP documentation, if any finding is raised on transfer pricing, the Italian resident company cannot obtain such protection and penalties from 90% to 180% of the unpaid taxes would apply.

Transfer pricing rules in Italy have been reviewed by Law Decree 50 of 24 April 2017 that amended the relevant provisions by rephrasing the arm's length principle as is contained in Article 9 of the OECD Model Tax Convention.

On 14 May 2018, the Italian Ministry of Economy and Finance issued a Decree containing guidelines for the application of the arm's length principle. In particular, the Decree:

- Provides for a definition of "Associated enterprises" which, in line with the Glossary of the 2022 OECD Transfer Pricing Guidelines and art. 9 of the OECD Model Tax Convention;
- Provides for an explanation of the "comparability principle" and of the five comparability factors described in paragraph 1.36 of the 2022 OECD Transfer Pricing Guidelines;
- Describes the five transfer pricing methods providing guidance, in line with Chapter II of the 2022 OECD Transfer Pricing Guidelines, for the selection of the most appropriate method to be used in the circumstances of the case;
- Qualifies, as arm's length range, the range of values resulting from the application of the most appropriate method to independent comparable transactions. However, the Decree does not specify the point within the arm's length range to which the Italian tax authorities must refer in order to make the consequent adjustment (e.g. median or any point in the range);
- Introduces the simplified approach for low value adding services based on a 5% mark up on direct and indirect costs.

In addition, on 30 May 2018, the Italian tax authorities released the Regulation implementing the request for unilateral downward Transfer Pricing adjustment (so called corresponding adjustment). Indeed, according to article 31-quater of Presidential Decree 600/1973, in case of a foreign primary Transfer Pricing adjustment, the Italian tax authorities can recognise a downward adjustment not only in execution of a Mutual Agreement Procedure but also upon formal request by the taxpayer.

Italian tax authorities' Regulation 23 November 2020 has amended the rules on Transfer Pricing documentation providing specific requirements in order to benefit from penalty protection in case of transfer pricing adjustments. The new rules apply from fiscal year 2020.

On 26 November 2021, Italian tax authorities published guidelines on Transfer Pricing documentation rules providing interpretations on the mentioned measures.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

In general, Italian partnerships are not subject to corporate income tax but are only liable to IRAP. Indeed, for income tax purposes, the taxable income is computed in the hands of the partnership, but it is taxed in the hands of the partners in proportion to their interest in the partnership's profits.

On the other hand, non-resident partnerships are always treated as opaque entities and therefore, are subject to Italian corporate income tax for income sourced in Italy.

It is worth noting that the Legislative Decree No. 142 of 29 November 2018, implementing the ATAD Directives n. 1164/2016 and 952/2017, introduced new provisions targeting hybrid mismatches (see section 6.d.).

b. Use of Hybrid Instruments

According to the Italian tax code, an instrument should be classified for tax purposes as equity when the remuneration is linked entirely to the issuer's profits. In addition, if the issuer is not resident in Italy, the remuneration should not be deductible by the issuer in the foreign jurisdiction.

On the other hand, an instrument should be classified for tax purposes as "bonds or similar securities" when it provides an unconditional obligation to repay the principal amount at maturity and there is no direct or indirect right for bondholders to control or participate in the management of the issuer.

It is worth noting that the Legislative Decree No. 142 of 29 November 2018, implementing the ATAD Directives n. 1164/2016 and 952/2017, introduced new provisions targeting hybrid mismatches (see section 6.d).

c. Principal/Limited Risk Distribution or Similar Structures

There are no specific rules dealing with cross-border business restructuring from a transfer pricing perspective in Italy, nor have the Italian tax authorities issued any specific guidance in this regard. In particular, there is no specific guidance on the conversion of a full-fledged distributor into a commissionaire or low risk distributor.

However, usually Italy is involved in business restructuring as the "exit country".

In these cases, the Italian tax authorities tend to focus their analysis on the factual changes in the economic reality of the restructured entity, irrespective of what has been contractually agreed. In principle, if certain functions and risks are stripped out in favour of a foreign affiliate, such a transfer should not itself trigger taxable profit in Italy.

However, the conclusion might be different if, for example, a distributor had recently made significant investments and had not yet been able to obtain a reasonable return thereon. Furthermore, the conclusion might be different if the cross border business restructuring could be regarded as triggering the transfer of a going concern or as triggering the transfer of an intangible.



d. Intellectual property (licensing, transfers, etc.)

Generally, the transfer of the ownership of intangibles gives rise to a capital gain (loss) that is taxable (deductible) for income tax purposes. In addition, if the intangible is transferred to an affiliated company, the transfer should be at arm's length.

The Italian Budget Law 2015 introduced an optional patent box regime, which granted a 50% exemption to income derived from the exploitation or the direct use of a qualifying IP both for corporate income tax ("IRES") and local tax purposes ("IRAP"). In addition, the regime granted a 100% exemption on capital gains arising from the sale of qualifying IP under certain conditions. However, Law Decree no. 146/2021 as amended by Italian Budget Law for 2022 replaced the patent box regime with a super deduction for research and development costs. In particular, research and development costs related to qualifying intangible assets (i.e. software subject to copyright, patents and design subject to legal protection) were increased by 110% for CIT and IRAP purposes.

e. Special tax regimes

No specific rules are applicable.

12. OECD BEPS CONSIDERATIONS

Italy signed the Multilateral Instrument ("MLI") during the formal signing ceremony on 7 June 2017 but has not ratified the MLI yet. It is worth mentioning that Italy made the reservation provided in Article 35(7)(a) of the MLI according to which the entry into effect of the MLI occurs 30 days after the notification that Italy has completed "its internal procedures for the entry into effect of the provisions of this Convention with respect to that specific Covered Tax Agreement".

As far as BEPS Action 6 is concerned, in the MLI Italy expresses its preference to apply PPT only, except for those tax treaties that already contain provisions that deny all of the benefits that would otherwise be provided where the principal purpose or one of the principal purposes of any arrangements or transactions, or of any person concerned with the latter was to obtain those benefits.

According to the PPT, a treaty benefit should be denied when one of the principal purposes of any arrangement or transaction was to obtain those benefits, unless it is established that granting such benefit would be in accordance with the object and purpose of the treaty provision.

- In addition, most of the recommendations provided by the other BEPS Action Plans have already been introduced into Italian laws, such as: (i) a digital service tax in line with the EU Directive Proposal; (ii) anti-hybrid mismatches rules in line with ATAD; (iii) CFC rules in line with ATAD; (iv) an interest limitation rule in line with ATAD; (v) a Patent box regime in line with BEPS Action 5; (vi) a new definition of permanent establishment in line with BEPS Action 7; (vii) mandatory disclosure rules in line with DAC6; (viii) country by country reporting obligations in line with Directive 2016/881; (ix) tax dispute resolution mechanisms in line with Directive 2017/1852.

13. ACCOUNTING CONSIDERATIONS

a. Combinations

As a general rule, Italian companies must adopt Italian GAAP. Certain Italian companies, such as listed companies, banks, financial intermediaries, are obliged to adopt IAS/IFRS, while others, for example companies that prepare consolidated accounts, are only entitled.

According to the Italian GAAP, assets and liabilities of the merged entity must be recognised in the first financial statement at the values recorded in the accounts at the date that the merger becomes effective. If a merger deficit results, where possible it must be used to step up the book value of the transferred assets (up to the limit of their market value) and the difference must be allocated to goodwill. If a merger surplus results, it must be booked in a specific either in a specific reserve of the net equity or in a specific provision for risks when it is linked to negative economic forecast.

In case of companies adopting IAS/IFRS, mergers between companies "not under common control" must be booked following the so called "acquisition method" (IFRS 3) according to which it must be identified an "acquiror" which should (i) measure the cost of the acquisition at fair value, (ii) allocate that cost to the acquired identifiable assets and liabilities on the basis of their fair values, (iii) allocate the rest of the cost to goodwill.

On the other hand, mergers between companies "under common control" should be booked following the so called "predecessor method" (IFRS 3) which involves accounting for the assets and liabilities of the acquired business using existing carrying values, as shown in consolidated financial statements.

With regards the contribution of a going concern, from an accounting standpoint, the receiving company should:

- Book the assets and liabilities pertaining to the transferred going concern;
- Record an increase of the net equity.

As far as the record of the net equity increase is concerned, it should be pointed out that it is not compulsory for the receiving company to book the whole increase to Share Capital since it has the option to book part of such increase to a "share premium reserve" fully available for the distribution.

The main issue to be faced by the receiving company is the identification of the correct value of the assets and liabilities pertaining to the going concern that should be booked in the mandatory accounting books.

Indeed, the ICC does not specify whether it is compulsory to book the going concern at the value resulting from the sworn report ("evaluation at fair value") or it is possible to take the accounting values as booked in the financial statement of the contributing company ("evaluation at cost").

In general, the assets and the liabilities could be booked for an amount at most equal to the value resulting from the sworn report. According to the predominant Doctrine, the receiving company could, alternatively, book the assets and liabilities pertaining to the going concern at fair value or at cost. In addition, it should be considered whether it is possible to book goodwill if the value of the going concern is higher than the sum of the values of the single assets and liabilities transferred.



The Doctrine is unanimous to confirm that the beneficiary of a going concern contribution could also take into account the value of the goodwill. In the opposite case, when badwill comes to light from a contribution, such deficit should, first of all, reduce (increase) the value of the overestimated (underestimated) assets (liabilities) pertaining to the going concern and later, should be booked in a specific provision for risks.

b. Divestitures

No specific rules are applicable.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

For tax purposes, dividends include the distributions of profits derived from the participation in the capital or equity of a company and the proceeds from domestic or foreign securities and financial instruments that are fully tied to the economic results of the issuer (or of other companies belonging to the same group as the issuer) that are fully not deductible in the computation of income of the non-resident issuer.

In addition, sums or the market value of assets received by shareholders in the event of withdrawal, reduction of excessive capital or liquidation of the company constitute dividends to the extent they exceed the tax basis of the participation held by the individual shareholder.

b. Substance Requirements for Recipients

Although no specific substance requirements are provided by law, great attention is paid by the Italian tax authorities to the real substance of foreign holding companies and in some cases to the application of the tax presumptions by which a foreign company may be deemed to be tax resident in Italy.

In Circular Letter no. 6/2016 the Italian tax authorities clarified that they may apply full domestic WHT on dividends or disallow the tax treaty exemption on capital gains if foreign intermediate holding companies have:

- A light organisational structure, do not perform a real activity and do not have any decisional autonomy from a substantial viewpoint; or
- A conduit financial structure regarding the transaction, in which a substantial correspondence between what is cashed in and out of the company is arranged.

In addition, it should be noted that the Italian Supreme Court decision no. 14756/2020 and the Italian tax authorities' resolution no. 88/2019 in interpreting the beneficial ownership requirement under the Interest and Royalty Directive made reference to the judgement of the Court of Justice of the European Union on the Danish cases (i.e. joined cases C-115/16, C-118/16, C-119/16 and C-299/16).

Finally, please note that in certain cases foreign companies may be deemed to be tax resident in Italy. There is a rebuttable presumption according to which a foreign company is deemed to be tax resident in Italy if (i) the foreign company directly controls an Italian resident company and (ii) the foreign company is directly or indirectly controlled by Italian residents or its Board of Directors consists mainly of Italian resident individuals.

c. Application of Regional Rules

No specific rules are applicable other than those specified in the previous sections.



d. Tax Rulings and Clearances

Italian tax law provides for the following different types of tax ruling:

- General ruling. Taxpayers may file a tax ruling request if the interpretation of tax rules is unclear (interpello ordinario puro) or the correct qualification of a case is unclear (interpello qualificatorio). Moreover, taxpayers may file a tax ruling request in relation to the fulfilment of the conditions necessary for the application of specific tax regimes (interpello probatorio) or related to the application of the abuse of law provision to a specific case (interpello antiabuso) as well as in order not to apply specific anti-avoidance rules (interpello disapplicativo). Italian tax authorities have 90 days (120 in certain cases) to reply.
- International ruling. Taxpayers may file an international tax ruling request in order to conclude with the Italian tax authorities advance agreements in relation to: (i) transfer pricing; (ii) entry or exit values in case of transfer of residence; (iii) attribution of profits and losses to Italian or foreign permanent establishments; (iv) existence of an Italian permanent establishment; (v) tax treatment of income, such as dividends, interest, royalties or other items of income, paid to/ received from non-resident companies. Italian tax authorities do not have a time limit within which to find an agreement, which is generally reached in approximately 18 24 months.
- Ruling on new investments. Both resident and non-resident taxpayers that intend to make in Italy a new investment, which is equivalent to at least EUR20 million and with a significant and long-lasting impact on employment may file a ruling request in order to obtain confirmation regarding the tax implications of their investment plan and the related extraordinary transactions. According to the ministerial implementing decree and the Circular letter no. 25/2016, the scope of the ruling may include for example: realisation of new economic activities or extension of the existing ones; diversification of the production of an existing business; restructuring of an existing business to overcome or to prevent a crisis; transactions involving the participation in an enterprise; leveraged buyout transactions. Italian tax authorities have 120 days to reply.

Italy implemented Directive 2015/2376 regarding mandatory automatic exchange of information on advance cross border rulings and advance pricing arrangements.

15. MAJOR NON-TAX CONSIDERATIONS

No specific rules are applicable.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends	Interest*	Royalties	Footnote Reference
Albania	10%	0% / 5%	5%	[1]
Algeria	15%	0%/15%	5%/15%	[1], [2]
Argentina	15%	0% / 20%	10% / 18%	[1], [3]
Armenia	5%/10%	0%/10%	7%	[4], [5]
Australia	15%	10%	10%	
Austria	15%	0% / 10%	0% / 10%	[1], [6]
Azerbaijan	10%	10%	5%/10%	[7]
Bangladesh	10% / 15%	0% / 10% / 15%	10%	[8], [9]
Barbados	5% / 15%	0% / 5%	5%	[1], [8]
Belarus	5% / 15%	0% / 8%	6%	[1]
Belgium	15%	15%	5%	
Bosnia and Herzegovina	10%	10%	10%	[10]
Brazil	15%	15%	15% / 25%	[11]
Bulgaria	10%	0%	5%	
Canada	5% / 15%	10%	5% / 10%	[12], [13]
Chile	5% / 10%	4% / 5% / 10% / 15%	2% / 5% / 10%	[14], [15]
China (People's Rep.)	10%	10%	10%	
Chinese Taipei	10%	10%	10%	
Colombia	5% / 15%	0% / 5% / 10%	10%	
Congo (Rep.)	8%/15%	0%	10%	[8]
Croatia	15%	0% / 10%	5%	[1]
Cyprus	15%	10%	0%	[16]
Czech Republic	15%	0%	0% / 5%	[17]
Denmark	0% / 15%	0% / 10%	0% / 5%	[1], [2], [18]
Ecuador	15%	0% / 10%	5%	[1]
Egypt	/	0% / 25%	15%	[1], [19]
Estonia	5% / 15%	0% / 10%	0% / 5% / 10%	[1], [8], [20], [21]
Ethiopia	10%	0% / 10%	20%	[1], [22]

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Jurisdiction	Dividends	Interest*	Royalties	Footnote Reference
Finland	10% / 15%	0% / 15%	0% / 5%	[1], [23], [24]
France	5% / 15%	0% / 10%	0% / 5%	[2], [25], [26]
Georgia	5% / 10 %	0%	0%	
Germany	10% / 15%	0% / 10%	0% / 5%	[3], [26]
Ghana	5% / 15%	10%	10%	[8]
Greece	15%	0% / 10%	0% / 5%	[1], [3]
Hong Kong	10%	0% / 12,5%	15%	[1]
Hungary	10%	0%	0%	
Iceland	5% / 15%	0%	5%	[25]
India	15% / 25%	0% / 15%	20%	[1], [8]
Indonesia	10% / 15%	0% / 10%	10% / 15%	[1], [27]
Ireland	15%	10%	0%	
Israel	10% / 15%	10%	0% / 10%	[2]
Ivory Coast	15%	15%	10%	
Jamaica	5% / 10%	0% / 10%	10%	
Japan	10% / 15%	10%	10%	[28]
Jordan	10%	0% / 10%	10%	[1]
Kazakhstan	5% / 15%	0% / 10%	10%	[1], [8], [29]
Korea (Rep.)	10% / 15%	0% / 10%	10%	[1]
Kuwait	5%	0%	10%	[19], [30]
Kyrgyzstan	15%	0%	0%	[31]
Latvia	5% / 15%	10%	0% / 5% / 10%	[8], [32]
Lebanon	5% / 15%	0%	0%	[25]
Lithuania	5% / 15%	10%	0% / 5% /10%	[8], [33]
Luxembourg	15%	0% / 10%	10%	[1]
Malaysia	10%	15%	15%	
Malta	15%	0% / 10%	0% / 10%	[1], [17]
Mauritius	5% / 15%	/	15%	[19]
Mexico	15%	0% / 10% /15%	0% / 15%	[1], [2], [34]

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Jurisdiction	Dividends	Interest*	Royalties	Footnote Reference
Moldova	5% / 15%	5%	5%	
Mongolia	5% / 15%	10%	5%	
Montenegro	10%	10%	10%	[10]
Morocco	10% / 15%	0% / 10%	5% / 10%	[1], [2]
Mozambique	15%	0% / 10%	10%	[1]
Netherlands	5% / 10% / 15%	0% /10%	5%	[1], [35]
New Zealand	15%	0% / 10%	10%	[1], [36]
North Macedonia	5% / 15%	0% / 10%	0%	[1]
Norway	15%	0% /15%	5%	[1]
Oman	5% / 10%	0% / 5%	10%	[1], [37]
Pakistan	15% / 25%	0% / 30%	30%	[1], [38]
Panama	5% / 10%	0% / 5% /10%	10%	[39]
Philippines	15%	0% / 10% / 15%	25%	[40], [41]
Poland	10%	0% / 10%	10%	[1]
Portugal	15%	0% / 15%	12%	[1]
Qatar	5% / 15%	0% / 5%	5%	[1], [18]
Romania	0% / 5%	0% / 5%	5%	[1], [42]
Russia	5% / 10%	10%	0%	[43]
San Marino	0% / 15%	0% / 13%	0% / 10%	[1], [25], [44]
Saudi Arabia	5% / 10%	0% / 5%	10%	[1], [18]
Senegal	15%	0% / 15%	15%	[1]
Serbia	10%	10%	10%	[10]
Singapore	10%	12.50%	15% / 20%	[3]
Slovak Republic	15%	0%	0% / 5%	[17]
Slovenia	5% / 15%	0% / 10%	5%	[1]
South Africa	5% / 15%	0% / 10%	6%	[1], [18]
Spain	15%	0% / 12%	4% / 8%	[1], [2]
Sri Lanka	15%	0% / 10%	10% / 15%	[1], [3]
Sweden	10% / 15%	0% / 15%	5%	[1], [45]

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Jurisdiction	Dividends	Interest*	Royalties	Footnote Reference
Switzerland	15%	12.5%	5%	
Syria	5% / 10%	0% / 10%	18%	[26], [46]
Tajikistan	15%	0%	0%	
Tanzania	10%	15%	15%	
Thailand	15% / 20%	0% / 10% / -	5% / 15%	[3], [47]
Trinidad and Tobago	10% / 20%	10%	0% / 5%	[3]
Tunisia	15%	0% / 12%	5% / 12% / 16%	[1], [48]
Turkey	15%	15%	10%	
Turkmenistan	15%	0%	0%	[31]
Uganda	15%	0% / 15%	10%	[1]
Ukraine	5% / 15%	0% / 10%	7%	[1], [49]
United Arab Emirates	5% / 15%	0%	10%	
United Kingdom	5% / 15%	0% / 10%	8%	[12], [26]
United States	5% / 15%	0% / 10%	0% / 5% / 8%	[26], [50], [51]
Uruguay	5% / 15%	0% / 10%	10%	[8], [52]
Uzbekistan	10%	0% / 5%	5%	[1]
Venezuela	10%	0% / 10%	7% / 10%	[1], [3]
Vietnam	5% / 10% / 15%	0% / 10%	7,5% / 10%	[1], [53], [54]. [55]
Zambia	5% / 15%	10%	10%	

Footnotes:	
*	Many treaties provide for the 0% rate for certain types of interest, e.g. interest paid to the State, local authorities, central bank, credit institution or in relation to sales on credit. Such exemptions are not considered in this column.
[1]	Interest - The 0% rate applies, inter alia, to interest paid by public bodies.
[2]	Royalties - The lower rate applies to copyright royalties, excluding films, etc.
[3]	Royalties - The lower rate applies to copyright royalties.
[4]	Dividends- The rate applies if the recipient company has owned directly at least 10% of the capital (totalling at least USD 100,000 or the equivalent in other currency) in the distributing company paying the dividends for at least 12 months preceding the date the dividends were declared.
[5]	Royalties - The zero rate applies, inter alia, to interest paid by public bodies and interest paid on bank loans, not represented by bearer instruments.



Footnotes:	
[6]	Royalties - The higher rate applies if the recipient company owns more than 50% of the capital in the distributing company.
[7]	Royalties - The lower rate applies to royalties for computer software, patents, trademarks etc., and industrial, commercial or scientific equipment etc.
[8]	Dividends -The rate applies if the recipient company owns at least 10% of the capital in the distributing company.
[9]	Interest - The zero rate applies to interest paid by public bodies. The 10% rate applies to interest derived by a bank or other financial institution (including an insurance company).
[10]	The treaty with the former Yugoslavia remains applicable with respect to Bosnia and Herzegovina, Serbia and Montenegro.
[11]	Royalties - The higher rate applies to trademarks.
[12]	Dividends - The rate applies if the recipient company controls directly or indirectly at least 10% of the voting power in the distributing company.
[13]	Royalties - The lower rate applies to royalties for computer software or any patent or information concerning industrial, commercial or scientific experience.
[14]	Interest - The interest rates under the treaty are 5% and 15%. The 5% rate applies to interest from loans granted by banks and insurance companies, bonds or securities that are regularly and substantially traded on a recognized securities market and to interest in relation to sales on credit. However, by virtue of a most favoured nation clause, under the Chile and Japan treaty the rates are reduced as follows: - from 1 January 2017, the rate for certain types of interest is reduced to 4% (restrictions may apply to back-to-back loans); and - from 1 January 2019, the general rate is reduced to 10%.
[15]	Royalties - The 5% rate applies to royalties for industrial, commercial or scientific equipment. However, by virtue of a most favoured nation clause, the rate is reduced to 2% for such royalties. Under the Chile and Japan treaty, the rate for such royalties is 2%.
[16]	Dividends - The rate under the treaty, by virtue of a most favoured nation clause, may be reduced.
[17]	Royalties - The higher rate applies to royalties for patents, trademarks, etc., and industrial, commercial or scientific equipment, etc.
[18]	Dividends - The lower rate applies if the recipient company has owned at least 25% of the capital in the distributing company for at least 12 months.
[19]	Dividends - The domestic tax rate applies; there is no reduction under the treaty.
[20]	Royalties - The 5% rate applies to equipment leasing.
[21]	Royalties - The rates under the treaty are 5% and 10%. However, by virtue of a most favoured nation clause the rates are reduced to 0% for royalties (as defined). Under the 2014 amending protocol of the Estonia-Switzerland treaty, the rate is 0%.
[22]	Royalties - A most favoured nation clause may be applicable with respect to royalties.
[23]	Dividends - The rate applies if the recipient company owns directly more than 50% of the capital in the distributing company.
[24]	Royalties - The higher rate applies to royalties for films, patents, trademarks, and industrial, commercial or scientific equipment, etc.
[25]	Dividends - The rate applies if the recipient company has owned at least 10% of the capital in the distributing company for at least 12 months.
[26]	Interest - The 0% rate applies to interest paid by public bodies and trade credits, and to interest arising from the sale of equipment.
[27]	Royalties - The lower rate applies to equipment leasing and royalties for know-how.



Footnotes:	
[28]	Dividends - The lower rate applies if the recipient company has owned at least 25% of the voting shares in the distributing company for at least 6 months.
[29]	Interest and Royalties - A most favoured nation clause may be applicable with respect to interest and royalties.
[30]	Dividends- The 5% rate applies if the recipient company holds 75% or more of the capital of the distributing company in the distributing company.
[31]	Italy applies the treaty with the former USSR in relations with Kyrgyzstan and Tajikistan. The position regarding the applicability of this treaty between Italy and Turkmenistan remains unclear: Italy no longer applies it, while, in practice, Turkmenistan generally continues to apply it.
[32]	Royalties - The rates for royalties under the treaty are 5% for equipment leasing and 10% in all other cases. However, by virtue of a most favoured nation clause the rate is reduced to 0%. Under the Japan-Latvia treaty the rate is 0%.
[33]	Royalties - The rates for royalties under the treaty are 5% for equipment leasing and 10% in all other cases. However, by virtue of a most favoured nation clause, from 1 January 2019, the rates for certain types of royalties are reduced to 0% (the definition of royalties should also be considered when determining the applicable rates). Under the Japan- Lithuania treaty the rate is 0% for certain types of royalties.
[34]	Interest - The general rate under the treaty is 15%. However, by virtue of a most favoured nation clause, the rate is reduced to 10%. Under the Mexico-Portugal treaty, the general rate is 10%.
[35]	Dividends - The lower rate applies if the recipient company has owned more than 50% of the voting rights in the distributing company for at least 12 months. The higher rate applies if it the recipient company has owned more than 10% of the voting rights in the distributing company for at least 12 months.
[36]	A most favoured nation clause may be applicable with respect to dividends, interest and royalties. The MFN clause states that if New Zealand concludes a convention with another OECD member state with a lower rate, New Zealand shall inform the government of Italy and shall enter into negotiations with a view to providing comparable treatment.
[37]	Dividends - The lower rate applies if the recipient company owns directly at least 15% of the capital in the distributing company.
[38]	Interest and Royalties - A most favoured nation clause may be applicable with respect to interests and royalties.
[39]	Interest - The zero rate applies to interest paid as a result of financing provided in connection with agreements concluded between the governments of the contracting states. The 5% rate applies to interest derived by a bank.
[40]	Interest - The zero rate applies to interest on public bonds paid by public bodies. The 10% rate applies to interest on other public issues of bonds.
[41]	Royalties - A most favoured nation clause may be applicable with respect to royalties.
[42]	Dividends - The lower rate applies if the recipient company has owned directly at least 10% of the capital in the distributing company for at least 2 years.
[43]	Dividends - The rate applies if the recipient company owns directly at least 10% of the capital in the distributing company and the value of the holding exceeds USD 100,000.
[44]	Interest - The zero rate applies to interest paid by public bodies and interest paid to a foreign company which has owned directly at least 25% of the capital in the distributing company for at least 12 months.
[45]	Dividends - The lower rate applies if the recipient company owns directly at least 51% of the capital in the distributing company.



Footnotes:	
[46]	Royalties - A most favoured nation clause may be applicable with respect to royalties.
[47]	Interest - The zero rate applies to interest paid by public bodies. The 10% rate applies if the recipient company is a financial institution (including an insurance company) and the distributing enterprise engages in an industrial undertaking. In some cases, there is no limitation under the treaty.
[48]	Royalties - The 5% rate applies to copyright royalties, excluding films, etc. The 16% rate applies to trademarks, films, and industrial, commercial or scientific equipment.
[49]	Dividends - The rate applies if the recipient company owns at least 20% of the capital in the distributing company.
[50]	Dividends - The 5% rate applies if the recipient company has owned more than 25% of the voting stocks in the distributing company for at least 12 months.
[51]	Royalties - The zero rate applies to copyright royalties (excluding computer software, films, tapes, etc.). The 5% rate applies to patent royalties. The 8% rate applies to films, etc.
[52]	Interest - The zero rate applies, inter alia, to interest paid to financial institutions on loans of at least 3 years for the financing of investment projects or to public financial institutions.
[53]	Dividends - A most favoured nation clause may be applicable with respect to dividends, interest and royalties.
[54]	Dividends - The 5% rate applies if the recipient company owns directly at least 70% of the capital in the distributing company. The 10% rate applies if the direct holding is at least 25%.
[55]	Royalties - The lower rate applies to royalties for technical services.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Starting from fiscal year 2016, tax assessments must be served/assessed by 31 December of the fifth year following the one in which the tax return was filed (e.g. 31 December 2022 in relation to fiscal year 2016). The statute of limitations is seven years if no return was filed (e.g. 31 December 2024 in relation to fiscal year 2016). These time frames should be considered when determining the period for which documents are requested during tax due diligence processes.

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Tax contact person available to discuss income and non-income tax matters.
2	Tax Due Diligence	General	A current organisation chart, including all entities by full legal name, jurisdiction, date and place of formation, entity type, class of shares, and ownership percentages. Include a full history of each entity in the structure.
3	Tax Due Diligence	General	Copy of Tax Audit reports (Processi verbale di constatazione).
4	Tax Due Diligence	General	Tax Assessments and similar (Avvisi di accertamento, avvisi di liquidazione, irrogazione sanzioni, cartelle di pagamento etc.).
5	Tax Due Diligence	General	Status of tax litigation including copies of Tax Court decisions.
6	Tax Due Diligence	General	Details of any preliminary restructuring necessary to effect the proposed acquisition of the Company, including any plan to remove cash/settle intercompany balances. Include any related tax analysis.
7	Tax Due Diligence	General	A schedule of related party transactions including the amounts and description of each, to the extent not reflected in the financial statements.
8	Tax Due Diligence	General	Transfer pricing documentation.
9	Tax Due Diligence	General	If the Company has been involved in any extraordinary transactions (e.g. merger, acquisition etc.) company deeds, public deeds and tax clearances should be provided, together with a brief narrative description of the transactions. In particular, the description should describe the substance and economic purpose of the transactions in order to evaluate compliance with tax avoidance provisions.
10	Tax Due Diligence	General	Information and documentation related to any interest, royalties, dividend and director fees paid to non- resident persons.
11	Tax Due Diligence	General	Details of dividends paid to the shareholder during the open FYs.
12	Tax Due Diligence	General	Copy of rulings signed with the tax authorities, if any.
13	Tax Due Diligence	General	Copies of memoranda, opinions, ruling requests, or other documentation regarding tax positions taken by the Company and its affiliates relating to any material transactions or tax planning ideas.
14	Tax Due Diligence	General	Trial balance sheets.
15	Tax Due Diligence	General	Financial statements.
16	Tax Due Diligence	Income tax	Tax returns (IRES).

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Nº.	Category	Sub-Category	Description of Request
17	Tax Due Diligence	Income tax	Tax returns (IRAP).
18	Tax Due Diligence	Income tax	Filing receipts of the tax returns -IRES.
19	Tax Due Diligence	Income tax	Filing receipts of the tax returns – IRAP.
20	Tax Due Diligence	Income tax	Payments receipts of the IRES and IRAP due.
21	Tax Due Diligence	Income tax	Details of the transition from book income to taxable income for CIT purposes (positive and negative tax adjustments).
22	Tax Due Diligence	VAT	VAT returns.
23	Tax Due Diligence	VAT	Please provide the "Liquidazioni periodiche IVA" forms.
24	Tax Due Diligence	VAT	Filing receipts of the VAT returns.
25	Tax Due Diligence	VAT	Payment receipts of VAT due.
26	Tax Due Diligence	VAT	Schedules of monthly VAT due computation.
27	Tax Due Diligence	WHT agent's return	Withholding tax returns (Modelli 770).
28	Tax Due Diligence	WHT agent's return	Filing receipts of the Withholding tax returns.

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JAPAN

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1. INTRODUCTION

a. Forms of Legal Entity

The most common types of legal entities are *kabushiki kaisha* ("KK") and *godo kaisha* ("GK"), each being a corporation to be established under the Companies Act of Japan. Both of them are taxpayers.

b. Taxes, Tax Rates

There are various national and local taxes applicable to corporate income and the overall rate of those taxes depends on the locality and the amount of stated capital of the taxpayer corporation. A corporation with stated capital of more than YEN100 million faces a lower rate (around 30% in terms of the overall effective rate of those taxes, which may vary depending on the locality) although it becomes subject to taxes on something other than corporate income (such as capital amount). On the other hand, a corporation with stated capital of YEN100 million or less faces a higher rate of taxes on corporate income (around 34% in terms of the overall effective rate of those taxes, which may vary depending on the locality) while not becoming subject to those taxes which a corporation with stated capital of more than JPY100 million becomes subject to.

In addition to taxes on corporate income, consumption tax, which is essentially a value added tax, is levied at the rate of either 8% or 10% (depending on the type of goods and services).

For individuals, income is subject to national and local income taxes at progressive rates, the maximum rate is 55.945%.

c. Common divergences between income shown on tax returns and local financial statements

There are several causes of difference between profits reported in the financial statements and taxable income.

The common divergences include the following:

- Permanent adjustments: entertainment expenses exceeding certain thresholds, donation expenses exceeding certain thresholds, certain remuneration to certain individuals in managerial positions, certain taxes on corporate income, government penalties, dividends excluded from taxable income for mitigating double taxation on multiple layers of corporations.
- Temporary adjustments: generally slower recognition of bad debt losses, impairment losses not recognised for tax purposes, allowances reserved above certain thresholds, depreciation expenses above certain thresholds.

2. RECENT DEVELOPMENTS

a. Adjustment of Tax Basis in Subsidiary's Shares

In response to a case where a famous company has taken advantage of favorable tax treatment on dividends by making its subsidiary pay a large sum of dividends and subsequently realising a large amount of capital losses upon disposition of the devalued shares of the subsidiary, tax basis adjustment has become necessary in certain cases where a substantial amount of dividends (exceeding 10% of the tax basis of the shares before the adjustment) is received from a subsidiary which has newly become a subsidiary within the last ten years.

b. Introduction of Invoice System for VAT

An invoice requirement will be introduced for taking input tax credits on consumption tax (Japanese VAT) in October 2023. Until then, Japan has a rather unique system for input tax credits, in which, a taxpayer can take an input tax credit for any inputs used in providing its goods and services subject to consumption tax, even if the merchant (which can be an individual or a corporation) providing the inputs is exempt from consumption tax (because it is a small merchant and is therefore not paying consumption tax on the inputs as a taxpayer). After the introduction of the invoice requirement, a taxpayer can take input tax credit based only on a qualified invoice issued by a registered merchant which cannot be an exempt merchant (subject to certain exceptions) and there could be considerable impacts on the business of especially small merchants although there is a transitional measure making input tax credit partially available for inputs from exempt merchants for a limited period of time.

c. Introduction of Share Delivery Transaction

A new corporate reorganisation transaction to be conducted between Japanese corporations ("KK") under the Companies Act of Japan, which is called share delivery, is now available as a way of acquiring another Japanese corporation and making it a subsidiary by issuing shares (or delivering treasury shares) of the acquiring Japanese corporation free of tax. A share delivery transaction is usually conducted as a takeover bid offering shares as consideration, but by following the rules for a share delivery transaction under the Companies Act. Legal issues that existed in using shares as consideration in a take-over bid before the introduction of share delivery transactions are now resolved and a tax-free treatment is made available.

3. SHARE ACQUISITION

a. General Comments

From a buyer's perspective:

There is no step up in basis of the assets of the target company as gains in the assets of the target company are not realized in a share acquisition (except in certain tax-unqualified corporate reorganisation transactions conducted under the Companies Act).

From a seller's perspective:

A seller is taxed on any capital gains realised in selling its shares (difference between the value of the consideration and the tax basis of the shares) except in certain ta -free transactions. Tax on individuals' capital gains is levied at a flat rate and is usually favorable to taxpayers compared to tax on ordinary income levied at progressive rates. A corporate seller's capital gains are taxed in the same way as ordinary income and there is no favorable treatment like the one in receiving dividends from another corporation (which can be applied in an asset deal accompanying liquidation of the company which has sold assets).

b. Tax Attributes

Net operating losses carried forward by the target company are generally kept intact in a share acquisition although there is a certain rule depriving a company of its net operating losses carried forward in the case of a change of control under certain situations.

c. Tax Grouping

The Japanese Corporation Tax Act allows tax consolidation of all (but not a part) of corporations in a group of Japanese corporations headed by a Japanese corporation holding directly or indirectly all of the shares of the other corporations in the group for the purpose of corporation tax (which is a national tax).

There is no tax consolidation available for local taxes although corporations electing tax consolidation for corporation tax can effectively take benefit of tax consolidation in respect of local taxes calculated based on the amount of corporation tax.

A corporation entering a group of corporations electing tax consolidation as a result of a share acquisition shall take part in the tax consolidation of the group from the time it becomes a wholly-owned subsidiary of the head entity of the group.

d. Tax Free Reorganisations

There are some types of corporate reorganisation transactions for share acquisition conducted between Japanese corporations (basically KK, but in some, GK may participate as well) under the Companies Act of Japan, which can be made tax free by satisfying certain conditions. A share for share exchange transaction, in which a company acquires all the shares of another company from the existing shareholders and makes it a wholly-owned subsidiary is an example of such corporate reorganisation transactions conducted under the Companies Act of Japan and the existing shareholders are not taxed in receiving only shares of the company becoming the wholly-owning parent in exchange for the shares of the company becoming the wholly-owned subsidiary.



e. Purchase Agreement

It is normal to provide representations and warranties regarding tax compliance of the target. In addition, it is becoming more frequent to provide special tax indemnities taking into account the statute of limitations for tax claims.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

There are no indirect taxes, stamp duties or similar on transfer of shares.

g. Share Purchase Advantages

Net operating losses carried forward by the target company are generally kept intact in a share acquisition subject to certain exceptions. Moreover, compared to an asset purchase, a share transfer is usually less costly, less time consuming and less administrative burdensome.

h. Share Purchase Disadvantages

Any existing liabilities of the target company will continue to exist.

There is no step up in basis of the assets of the target company.

4. ASSET ACQUISITION

a. General Comments

From a buyer's perspective:

Except in certain tax free transactions, purchased assets are stepped up in basis and if there is a difference between the total value of individual assets purchased (minus the amount of assumed liabilities) and the value of the consideration for the purchase, such difference is generally recognised as goodwill amortisable over the period of five years.

From a seller's perspective:

A seller is taxed on any gains realised in selling the assets (in the same way as ordinary income) except in certain tax free transactions, but if the seller company is liquidated or the proceeds of the sale are distributed to its shareholders after the sale of the assets, a corporate shareholder of the seller company (which would have become a seller in a share deal) can take advantage of the dividend received exclusion.

b. Purchase Price Allocation

The purchase price is allocated in accordance with the fair market value of each asset and if there is a difference between the total value of individual assets purchased (minus the amount of assumed liabilities) and the value of the consideration for the purchase, such difference is generally recognised as goodwill.

c. Tax Attributes

Net operating losses of the seller are not transferred to the buyer. Difference between the total value of individual assets purchased (minus the amount of assumed liabilities) and the value of the consideration for the purchase, which is recognized as goodwill, is amortisable over the period of five years.

d. Tax Free Reorganisations

There are some types of transactions for an asset acquisition which can be made tax free by satisfying certain conditions. A contribution in kind transaction, in which assets are acquired in consideration for shares of the acquirer (either newly issued shares or treasury shares of the acquirer) is an example of such transaction which can be made tax free by satisfying certain conditions.

e. Purchase Agreement

It is less frequent to provide representations and warranties regarding tax compliance of the seller than in the case of a share acquisition because the seller's tax liabilities are basically not assumed by the buyer in an asset acquisition.

For transferring contracts (such as contracts with customers of the business the buyer intends to assume by acquiring assets from the seller), it is basically necessary to obtain consent of the counterparties to the contracts and it is frequently provided in a purchase agreement how to deal with the necessity of such consent.

f. Depreciation and Amortisation

It is possible to apply a shorter depreciation period as secondhand goods for acquired assets if the useful life is estimated to be shorter than a brand new one. Difference between the total value of individual assets purchased (minus the amount of assumed liabilities) and the value of the consideration for the purchase, which is recognised as goodwill, is amortisable over the period of five years.

g. Transfer Taxes, VAT

There are some types of assets to which specific transfer taxes apply (such as real estate). Consumption tax, which is essentially a value added tax, is levied basically at the rate of 10% on the value of the consideration for the purchase (excluding the value of consideration for certain assets not subject to consumption tax, such as land and financial assets). However, the buyer can basically take input tax credit for the amount of consumption tax paid for the asset acquisition.

h. Asset Purchase Advantages

Liabilities (including tax liabilities) of the seller other than those the buyer has agreed to assume are basically not assumed by the buyer.

Step-up in basis of the acquired assets, or especially amortisation of goodwill over a period of five years is usually attractive for a buyer.

i. Asset Purchase Disadvantages

The buyer cannot take any advantage of net operating losses of the seller.

Consent of the counterparties to contracts is necessary for transferring those contracts in an asset acquisition.

5. ACQUISITION VEHICLES

a. General Comments

GK or KK is usually used as an acquisition vehicle.

b. Domestic Acquisition Vehicle

Both GK and KK are deemed as domestic corporations subject to Japanese corporate income taxes on worldwide income.

c. Foreign Acquisition Vehicle

A foreign acquisition vehicle is usually not used as an acquisition vehicle for the availability of debt pushdown since a cross border merger between a Japanese corporation and non-Japanese corporation is not allowed and there is no practicable method to conduct debt pushdown from a foreign acquisition vehicle.

d. Partnerships and joint ventures

Investment limited partnerships (*toshi jigyo yugen sekinin kumiai*) and limited partnerships (*yugen sekinin jigyo kumiai*) are commonly used as funds. Joint ventures are commonly formed as general partnerships (nin'l kumiai) or corporations (KK or GK).

e. Strategic vs Private Equity Buyers

Tax free reorganisation provisions are more often used by strategic buyers than by private equity buyers as there is more possibility for strategic buyers to satisfy the conditions for tax free reorganisations (e.g. synergy between the buyer's business and the target's business).

6. ACQUISITION FINANCING

a. General Comments

Loans from third-party lenders (e.g. banks) are commonly used for the very low interest rate in yen continuing for a couple of decades. Equity (including intragroup debt) is kept at minimum required under the terms with the lenders in many cases.

b. Foreign Acquirer

Many foreign acquirers use domestic acquisition vehicles for the purpose of debt pushdown. In many cases, intragroup debt is utilised for necessary funds other than funds procured from third party lenders (e.g. banks) to the maximum extent deduction of interest on such debt is allowed under the relevant rules.

c. Debt

Interest expense is deductible in principle subject to the limitations explained below

Interest on bonds and other debt securities and interest on loans from nonresidents are generally subject to withholding tax at rates ranging from 15.315% to 20.42% limited by reduction or exemption under the applicable double taxation treaty ("DTT").

i Limitations on Interest Deductions

Major rules limiting the deductibility of interest are the thin capitalisation rule and the earnings stripping rule. Since the thin capitalisation rule is a rule applicable in relation to a related party, we will explain it in ii below and deal with the earnings stripping rule here.

The Japanese earnings stripping rule disallows deduction of interest paid not subject to Japanese tax on the side of its recipient (net of interest income corresponding to such interest paid not subject to Japanese tax on the side of its recipient) in excess of 20% of income (basically the same as taxable income, but adjusted in some ways). Since interest paid to a Japanese bank is subject to Japanese tax on the side of its recipient, the Japanese earning stripping rule does not affect borrowings from Japanese banks, but debts owed to foreign residents (who are not subject to Japanese tax) can be affected.

ii Related Party Debt

The Japanese thin capitalisation rule limits the deductibility of interest on certain debts related to foreign related parties in excess of basically three times the amount of the share capital paid in by foreign related parties. The three to one debt to equity ratio is respected in many cases of inbound investment in Japan.

Under the transfer pricing rule, the interest rate on debt owed to a related party should be set at arm's length.

iii Debt Pushdown

Although the Japanese Corporation Tax Act allows tax consolidation of all of corporations in a group of Japanese corporations headed by a Japanese corporation holding directly or indirectly all of the shares of the other corporations in the group for the purpose of corporation tax (which is a national tax), no tax consolidation is available for local taxes (other than those calculated based on the amount of corporation tax).

Therefore, in order to take advantage of deduction of interest on acquisition debt in respect of all corporate income taxes, debt pushdown by a merger between the acquisition vehicle and the target is conducted commonly.

d. Hybrid Instruments

Japan does not have any special rules on hybrid instruments and the legal form of the instrument is respected basically, (i.e. an instrument issued as a preferred share paying fixed amount of dividends or having redemption terms) is basically treated as a share notwithstanding its economic similarity to a bond and an instrument issued as a bond (perpetual or subordinated) is basically treated as a bond notwithstanding its economic similarity to a share.

However, in order to avoid mismatch, dividends received from abroad which are deductible in the calculation of taxable income of the paying corporation under the tax law of the resident country of the paying corporation are made outside the scope of exclusion of dividends received from foreign subsidiaries under the Japanese tax law, which is a favourable tax treatment for corporations holding foreign subsidiaries by excluding 95% of the amount of dividends received from foreign subsidiaries (for companies where 25% or more of the shares are held by the recipient of the dividends for six months or more) from the amount of taxable income.

e. Other Instruments

Tokumei kumiai investment ("TK"), which is a form of investment from an investor to an operator of a business using such investment, is similar to a debt in the sense that investment returns allocable to the investor are deductible in the calculation of taxable income of the operator of the business using the TK investment. TK investment is widely used in funding an acquisition vehicle.

f. Earn-outs

Earn outs are sometimes used and are generally structured as an increase in purchase consideration.

7. DIVESTITURES

a. Tax Free

There are some types of transactions for divestiture which can be made tax free by satisfying certain conditions. A demerger, in which a part of the assets of a corporation are transferred to a newly-established corporation or another existing corporation in exchange for shares of such newly-established corporation or another existing corporation or other types of consideration (e.g. cash) to be received by the first mentioned corporation or its shareholders, is an example of a transaction which can be made tax free by satisfying certain conditions.

b. Taxable

Those types of transactions for divestiture which do not satisfy the conditions for tax free transactions are taxable, (i.e. any gains in assets or shares transferred in the transactions are subject to income tax). Even if taxable, demerger is widely used as a method of divestiture of a Japanese corporation.

c. Cross Border

A demerger cannot be conducted cross border, (i.e. both the corporation from which assets are transferred in a demerger and the corporation to which assets are transferred in a demerger) must be Japanese corporations. There are other types of transactions for divestiture which can be conducted cross border, but they would not satisfy the conditions for a tax free transaction, they would be treated as taxable.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Japanese companies are subject to taxation in Japan on their worldwide income. Foreign companies are subject to taxation in Japan only on their Japan-source income (including income attributable to their respective PEs in Japan, if any).

b. CFC Regime

Japan has a controlled foreign corporation taxation regime which is called the anti-tax haven taxation since 1978 though revised substantially several times since its introduction. Such taxation regime targets to tax on otherwise undertaxed income of foreign corporations whose majority shares, voting rights or dividend rights are owned by residents of Japan by adding the amount of such income to the taxable income of their major shareholders which are residents of Japan. Income of such a foreign corporation becomes subject to this taxation regime if (a) the effective rate of non-Japanese tax on such income is less than 20% (30% in certain cases where there is more need to make such foreign corporation subject to tax in Japan) and (b) (i) such foreign corporation does not conduct substantial business in the country of its headquarters or (ii) such income is passive.

c. Foreign Branches and Partnerships

Foreign branches of Japanese companies are subject to taxation in Japan, due to the Japanese company being taxed on its worldwide income (see above in 8.a.). Foreign tax credit is available for taxes paid outside Japan in proportion to the amount of non-Japan-source income.

Partnerships formed under the laws of Japan (*toshi jigyo yugen sekinin kumiai, yugen sekinin jigyo kumiai*, and *nin'I kumiai*) are not regarded as separate tax entities and are subject to taxation on a transparency basis. Partnerships formed under the laws of other jurisdictions are treated in the same way if they are similar to partnerships formed under the laws of Japan, but some partnerships formed under the laws of other jurisdictions have been deemed as corporations subject to tax as separate tax entities, rather than on a transparency basis, for Japanese tax purposes.

d. Cash Repatriation

Dividends from foreign companies and capital gains from disposition of foreign assets (shares) are subject to tax in Japan, in principle. However, 95% of the amount of dividends received from foreign subsidiaries (companies 25% or more shares of which are held by the recipient of the dividends for six months or more) are excluded from the amount of taxable income. Dividends received out of earnings subjected to the controlled foreign corporation taxation regime explained above in 8.b. in the past 10 years are also excluded from the amount of taxable income.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Capital gains derived from selling shares of a corporation which derives 50% or more of its value from real property in Japan are subject to tax in Japan irrespective of the residency or the existence of a permanent establishment if 2% (5% if the shares of such corporation are listed at a stock exchange) or more shares of such corporation have been held by the seller of the shares or its related parties at the preceding fiscal year end.

b. CbC and Other Reporting Regimes

Japan has implemented country by country reporting rules, following recommendations from the OECD. Multinational enterprises with ultimate parent entity in Japan and consolidated revenue of JPY 100 billion or more a year must file a report with information about the activities in all countries they conduct business. The reports may be exchanged with other competent tax administrators across national borders.

Japan has also entered into the CRS agreement concerning automatic exchange of information relating to financial accounts. Japan has also issued a joint statement with the US regarding FATCA for reporting by Japanese financial institutions and exchange of information between Japanese and US competent authorities.

10. TRANSFER PRICING

The taxable income of a corporation shall be calculated as if its transactions with its foreign related parties were made at a price determined at an arm's length and such transfer pricing rule of Japan generally follows the OECD Transfer Pricing Guidelines.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

A GK is a hybrid entity in the sense that it can be treated as a disregarded entity or a partnership for US tax purposes under the check the box regulations although it is a company organised under the Companies Act of Japan and is clearly treated as a corporation for Japanese tax purposes. A GK is widely used not only as an acquisition vehicle, but also for other purposes (e.g. a subsidiary for doing business in Japan).

b. Use of Hybrid Instruments

Perpetual subordinated bonds treated as bonds for tax purposes, but funds raised by which are treated as capital for regulatory and other purposes, are widely used for taking the benefit of deduction of interest for tax purposes while avoiding increase of "liabilities" for regulatory and other purposes

c. Principal/Limited Risk Distribution or Similar Structures

Various forms of distribution structure may be implemented, provided that the economic substance (assets, functions, and risks) are in line with the structure chosen.

d. Intellectual Property

The useful life is set for intellectual property as for other assets, e.g., eight years for patent, seven years for design rights, ten years for trademarks and depreciation is applied to intellectual property as to other assets.

e. Special Tax Regimes

There are many special tax regimes under Japanese law and some examples are as follows:

- Tax regime for small to medium sized enterprises;
- Tax regime for R&D expenses;
- Tax regime for increase of salaries;
- Tax regime for certified companies in Okinawa; and
- Tax regime for designated companies in the national strategic districts.

12. OECD BEPS CONSIDERATIONS

Japan has taken responsive measures in respect of almost all BEPS action Plans. In response to action Action 1, Japan has revised consumption tax on services provided on a cross border basis. In response to action Action 2, dividends received from abroad which are deductible in the calculation of taxable income of the paying corporation under the tax law of the resident country of the paying corporation have been made outside the scope of exclusion of dividends received from foreign subsidiaries. In response to action Action 3, the anti-tax haven taxation has been revised. In response to action Action 4, the earnings stripping rule has been revised. In response to action Actions 6, 14 and 15, Japan has signed the Multinational Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI"), which has come into effect on 1 January 2019 with respect to Japan. In response to action Action 7, the scope of PE has been revised, and in response to action Actions 8 through 10, the transfer pricing rules have been revised. In response to action Action 13, Japan has implemented country by country reporting rules.

13. ACCOUNTING CONSIDERATIONS

Applicable accounting standards are not determinative for the tax considerations in Japan. A publicly-traded company in Japan can choose either J-GAAP, US-GAAP, IFRS or J-IFRS and the accounting considerations vary with the applied accounting standards.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

A distribution can be made only to the extent of distributable surplus, in the calculation of which, the amounts of stated capital, statutory capital reserve and statutory profit reserve are to be deducted.

Distributions from profit surplus and, to the extent deemed as dividends for tax purposes, distributions from capital surplus are subject to withholding tax at rates ranging from 15.315% to 20.42% limited by reduction or exemption under the applicable DTT.

b. Application of Regional Rules

There are no regional tax rules relevant to Japan.

c. Tax Rulings and Clearances

A taxpayer can request a formal binding ruling only if it is with respect to a specific transaction or other thing which it will do and the taxpayer consents to the public disclosure of the ruling including the specific transaction or other thing the taxpayer will do. Therefore, such formal binding ruling is not usually requested. Instead, informal prior consultation is often sought with the applicable tax authority to increase certainty regarding the tax treatment of an intended transaction.

15. MAJOR NON-TAX CONSIDERATIONS

Acquisition of an entity or business in Japan is regulated under the Foreign Exchange and Foreign Trade Act as inbound direct investments. If the business to be acquired (or the business conducted by the entity to be acquired) includes a sensitive business, such as space development, aircraft, weapon, nuclear energy, etc. a prior notice rather than an ex post facto report must be filed by the foreign inventor with the competent ministers through the Bank of Japan not earlier than six months before the intended date of the acquisition. A foreign investor who filed the prior notice must wait 30 days, during which period the competent ministers may first recommend and ultimately direct the foreign investor to discontinue or modify the contemplated acquisition. (This period is shortened to two weeks in most cases.) A foreign investor who made the acquisition in accordance with such prior notice must file a report with the competent ministers through the Bank of Japan within 30 days after the acquisition. Even if the acquired business (or the business conducted by the acquired entity) does not include any sensitive business, the acquisition must be reported by the foreign investor to the competent ministers through the Bank of Japan within 45 days from the acquisition.

16. APPENDIX I - TAX TREATY RATES

Japan applies withholding tax on dividends, interest and royalties at rates ranging from 15.315% to 20.42% unless the rate is reduced by a DTT. Please see the table below for the rates under each DTT.

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Armenia	15	0 / 10	0 / 10	[1], [2]
Australia	0 / 5 / 10 / 15	0 / 10	5	[3], [4]
Austria	0 / 10	0 / 10	0	[5], [6]
Azerbaijan	15	0 / 10	0 / 10	[1], [2]
Bangladesh	10 / 15	0 / 10	10	[1], [7]
Belarus	15	0 / 10	0 / 10	[1], [2]
Belgium	0 / 10	0 / 10	0	[5], [8]
Brazil	12.5	0 / 12.5	12.5 / 15 / domestic rate	[9], [10]
Brunei	5 / 10	0 / 10	10	[1], [11]
Bulgaria	10 / 15	0 / 10	10	[1], [7]
Canada	5 / 15	0 / 10	10	[1], [12]
Chile	0 / 5 / 15	4 / 10	2 / 10	[13], [14], [15]
China	10	0 / 10	10	[1]
Croatia	0 / 5	0 / 5	5	[16], [17]
Czech Republic	10 / 15	0 / 10	0 / 10	[1], [2], [7]
Denmark	0 / 15	0 / 10	0	[18], [19]
Ecuador	5	0 / 10	10	[20]
Egypt	15	Domestic rate	15	
Estonia	0 / 10	0 / 10	5	[1], [21]
Finland	10 / 15	10	10	[7]
France	0 / 5 / 10	0 / 10	0	[22], [23]
Georgia	5	0 / 5	0	[17]
Germany	0 / 5 / 15	0	0	[24]
Hong Kong	5 / 10	0 / 10	5	[1], [11]
Hungary	10	0 / 10	0 / 10	[1], [2]
Iceland	0 / 5 / 15	10	0	[25]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
India	10	0 / 10	10	[1]
Indonesia	10 / 15	0 / 10	10	[1], [26]
Ireland	10 / 15	10	10	[7]
Israel	5 / 15	0 / 10	10	[1], [12]
Italy	10 / 15	10	10	[7]
Jamaica	5 / 10	0 / 10	2 / 10	[1], [15], [27]
Kazakhstan	5 / 15	0 / 10	10	[1], [28]
Korea, Republic of	5 / 15	0 / 10	10	[12], [29]
Kuwait	5 / 10	0 / 10	10	[1], [11]
Latvia	0 / 10	0 / 10	0	[30], [31]
Lithuania	0 / 10	0 / 10	0	[30], [31]
Luxembourg	5 / 15	0 / 10	10	[1], [12]
Malaysia	5 / 15	0 / 10	10	[12], [29]
Mexico	0 / 5 / 15	10 / 15	10	[32], [33]
Morocco	5 / 10	0 / 10	5 / 10	[29], [34], [35]
Netherlands	0 / 5 / 10	0 / 10	0	[36], [37]
New Zealand	0 / 15	0 / 10	5	[38], [39]
Norway	5 / 15	0 / 10	10	[1], [12]
Oman	5 / 10	0 / 10	10	[1], [11]
Qatar	5 / 10	0 / 10	5	[1], [11]
Pakistan	5 / 7.5 / 10	0 / 10	10	[1], [40]
Peru	10	0 / 10	15	[1]
Philippines	10 / 15	0 / 10	10 / 15	[1], [41], [42]
Poland	10	0 / 10	0 / 10	[1], [2]
Portugal	5 / 10	0 / 5 / 10	5	[43], [44]
Romania	10	0 / 10	10 / 15	[1], [45]
Russia	0 / 5 / 10 / 15	0 / 10	0	[19], [46]
Saudi Arabia	5 / 10	0 / 10	5 / 10	[1], [35], [47]
Serbia	5 / 10	0 / 10	5 / 10	[1], [48], [49]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Singapore	5 / 15	0 / 10	10	[1], [12]
Slovakia	10 / 15	0 / 10	0 / 10	[1], [2], [7]
Slovenia	5	0 / 5	5	[50]
South Africa	5 / 15	0 / 10	10	[1], [12]
Spain	0 / 5	0 / 10	0	[19], [51]
Sri Lanka	20 / domestic rate	0 / domestic rate	0 / 10.21 / 20.42	[52], [53], [54]
Sweden	0 / 10	0 / 10	0	[19], [55]
Switzerland	0 / 5 / 10	0 / 10	0	[56], [57]
Taiwan	10	0 / 10	10	[1]
Thailand	15 / 20 / domestic rate	0 / 10 / domestic rate	15	[58], [59]
Turkey	10 / 15	10 / 15	10	[7], [60]
Ukraine	15	0 / 10	0 / 10	[1], [2]
United Arab Emirates	5 / 10	0 / 10	10	[1], [11]
United Kingdom	0 / 10	0 / 10	0	[19], [61]
United States	0 / 5 / 10	0 / 10	0	[19], [62]
Uruguay	5 / 10	0 / 10	10	[63], [64]
Uzbekistan	5 / 10	0 / 5	0 / 5	[17], [48], [65]
Vietnam	10	0 / 10	10	[1]
Zambia	0	0 / 10	10	[29]

Footnotes	
1	Interest – 0% tax rate to governments, certain government-related entities and residents receiving interest with respect to certain government-related debt-claims. Otherwise 10%.
2	Royalties –0% tax rate to royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting and 10% tax rate to royalties for the use of, or the right to use, any patent, trade mark, design or model, Action, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
3	Dividends - 0% tax rate to certain qualified companies directly holding 80% or more of the voting rights for the last 12 months, 5% tax rate to companies directly holding 10% or more of the voting rights and 15% tax rate to dividends paid by a company, more than 50% of the assets of which consist, directly or indirectly, of real property situated in Japan. Otherwise 10%.
4	Interest – 0% tax rate to governments, certain government-related entities and financial institutions unrelated to and dealing wholly independently with the payer. Otherwise 10%.

Footnotes	
5	Dividends - 0% tax rate to companies directly or indirectly holding 10% or more of the voting rights for the last 6 months and pension funds (in the case of pension funds, only if dividends are derived from administering or providing pensions or similar activities). Otherwise 10%.
6	Interest – No reduced tax rate under the DTT to interest determined by reference to receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividend, partnership distributions or similar payment made by the debtor or a related person, or any other interest similar to such interest. Otherwise 0%.
7	Dividends – 10% tax rate to companies holding 25% or more of the voting rights for the last 6 months. Otherwise 15%.
8	Interest – 0% tax rate to governments, certain government-related entities, residents receiving interest with respect to certain government-related debt-claims, enterprises and pension funds (in the case of pension funds, only if dividends are derived from administering or providing pensions or similar activities), other than in case of interest determined by reference to receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividends, partnership distribution or similar payment made by the debtor or a related person. Otherwise 10%.
9	Interest – 0% tax rate to governments and certain government-related entities. Otherwise 12.5%.
10	Royalties – 15% tax rate to royalties for the use of, or the right to use copyright of cinematograph films and films or tapes for radio or television broadcasting and no reduced tax rate under the DTT to royalties for the use of, or the right to use, trade marks. Otherwise 12.5%.
11	Dividends - 5% tax rate to companies directly or indirectly holding 10% or more of the voting rights for the last 6 months. Otherwise 10%.
12	Dividends - 5% tax rate to companies holding 25% or more of the voting rights for the last 6 months. Otherwise 15%.
13	Dividends - 0% tax rate to pension funds (unless dividends are derived from the carrying on of a business directly or indirectly by such pension funds) and 5% tax rate to companies directly holding 25% or more of the voting rights for the last 6 months. Otherwise 15%.
14	Interest – 4% tax rate to financial institutions, other similar enterprises, and enterprises that sold machinery or equipment, where the interest paid is with respect to indebtedness arising as a part of the sale on credit of such machinery or equipment. Otherwise 10%.
15	Royalties – 2% tax rate to royalties for the use of, or the right to use, industrial, commercial or scientific equipment. Otherwise 10%.
16	Dividends – 0% tax rate to certain qualified companies directly or indirectly holding 25% or more of the voting rights for the last 365 days. Otherwise 5%.
17	Interest – 0% tax rate to governments, certain government-related entities and residents receiving interest with respect to certain government-related debt-claims. Otherwise 5%.
18	Dividends - 0% tax rate to companies directly holding 10% or more of the voting rights for the last 6 months and pension funds (in the case of pension funds, only if dividends are derived from administering or providing pensions or similar activities). Otherwise 15%.
19	Interest – 10% tax rate to interest determined by reference to receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividend, partnership distributions or similar payment made by the debtor or a related person, or any other interest similar to such interest. Otherwise 0%.
20	Interest – 0% tax rate to governments, certain government-related entities, banks and residents receiving interest with respect to certain government-related debt-claims. Otherwise 10%.
21	Dividends - 0% tax rate to companies directly or indirectly holding 10% or more of the voting rights for the last 6 months. Otherwise 10%.

Footnotes	
22	Dividends – 0% tax rate to companies directly or indirectly holding 25% or more of the voting rights or holding 15% or more of the voting rights for the last 6 months and 5% tax rate to companies directly or indirectly holding 10% or more of the voting rights for the last 6 months. Otherwise 10%.
23	Interest – 0% tax rate to governments, certain government-related entities, residents receiving interest with respect to certain government-related debt-claims or indebtedness arising as a part of the sale on credit of equipment or merchandise, and financial institutions and other similar enterprises. Otherwise 10%.
24	Dividends - 0% tax rate to companies directly holding 25% or more of the voting rights for the last 18 months and 5% tax rate to companies directly holding 10% or more of the voting rights for the last 6 months. Otherwise 15%.
25	Dividends – 0% tax rate to companies directly or indirectly holding 25% or more of the voting rights for the last 6 months and pension funds and 5% tax rate to companies directly or indirectly holding 10% or more of the voting rights for the last 6 months. Otherwise 15%.
26	Dividends – 10% tax rate to companies holding 25% or more of the voting rights for the last 12 months. Otherwise 15%.
27	Dividends – 5% tax rate to companies directly or indirectly holding 20% or more of the voting rights for the last 365 days. Otherwise 10%.
28	Dividends - 5% tax rate to companies directly or indirectly holding 10% or more of the voting rights for the last 6 months. Otherwise 15%.
29	Interest – 0% tax rate to governments and certain government-related entities. Otherwise 10%.
30	Dividends - 10% tax rate to individuals. Otherwise 0%.
31	Interest – 10% tax rate to individuals. Otherwise 0%.
32	Dividends - 0% tax rate to certain qualified companies holding 25% or more of the voting rights for the last 6 months and 5% tax rate to companies holding 25% or more of the voting rights for the last 6 months. Otherwise 15%.
33	Interest – 10% tax rate to interest received by a bank or insurance company, derived from bonds and securities regularly and substantially traded at a recognized stock exchange, paid by a bank or paid to a seller of equipment or merchandise in respect of the sale on credit of such equipment or merchandise. Otherwise 15%.
34	Dividends - 5% tax rate to companies directly holding 10% or more of the voting rights. Otherwise 10%.
35	Royalties – 5% tax rate to royalties for the use of, or the right to use, industrial, commercial or scientific equipment. Otherwise 10%.
36	Dividends – 0% tax rate to companies holding 50% or more of the voting rights directly or indirectly for the last 6 months and pension funds (unless dividends are derived the carrying on of a business directly or indirectly by such pension funds) and 5% tax rate to companies directly or indirectly holding 10% or more of the voting rights for the last 6 months. Otherwise 10%.
37	Interest – 0% tax rate to governments, certain government-related entities, residents receiving interest with respect to certain government-related debt-claims or indebtedness arising as a part of the sale on credit of equipment or merchandise, financial institutions and other similar enterprises and pension funds (unless interest is derived from the carrying on of a business directly or indirectly by such pension funds). Otherwise 10%.
38	Dividends – 0% tax rate to certain qualified companies holding 10% or more of the voting rights directly or indirectly for the last 6 months. Otherwise 15%.
39	Interest – 0% tax rate to governments, certain government-related entities, residents receiving interest with respect to certain government-related debt-claims and financial institutions unrelated to and dealing wholly independently with the payer. Otherwise 10%.

Footnotes	
40	Dividends - 5% tax rate to companies directly holding 50% or more of the voting rights for the last 6 months and 7.5% tax rate to companies directly holding 25% or more of the voting rights for the last 6 months. Otherwise 10%.
41	Dividends - 10% tax rate to companies directly holding 10% or more of the voting rights for the last 6 months. Otherwise 15%.
42	Royalties – 15% tax rate to royalties for the use of, or the right to use cinematograph films and films or tapes for radio or television broadcasting. Otherwise 10%.
43	Dividends - 5% tax rate to companies directly holding 10% or more of the voting rights for the last 12 months. Otherwise 10%.
44	Interest – 0% tax rate to governments and certain government-related entities and 5% to banks. Otherwise 10%.
45	Royalties –10% tax rate to royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting and 15% tax rate to royalties for the use of, or the right to use, any patent, trade mark, design or model, Action, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
46	Dividends - 0% tax rate to pension funds (only if dividends are derived from administering or providing pensions or similar activities), 5% tax rate to companies directly holding 15% or more of the voting rights for the last 365 days and 15% tax rate to dividends on shares or comparable interests which derive 50% or more of their value directly or indirectly from immovable property in Japan at any time during the last 365 days. Otherwise 10%.
47	Dividends - 5% tax rate to companies directly or indirectly holding 10% or more of the voting rights for the last 183 days. Otherwise 10%.
48	Dividends – 5% tax rate to companies directly holding 25% or more of the voting rights for the last 365 days. Otherwise 10%.
49	Royalties – 5% tax rate to royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and 10% tax rate to royalties for the use of, or the right to use, any patent, trade mark, design or model, Action, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
50	Interest – 0% tax rate to governments, certain government-related entities, institutions acting for promoting export, investment or development and residents receiving interest with respect to certain debt-claims related to such an institution. Otherwise 5%.
51	Dividends - 0% tax rate to companies directly or indirectly holding 10% or more of the voting rights for the last 12 months and recognized pension funds (in the case of recognized pension funds, only if dividends are derived from administering or providing pensions or similar activities and contributions made by an individual to the pension funds are deductible in computing his taxable income). Otherwise 5%.
52	Dividends – 20% tax rate (or 15.315% if the applicable domestic rate is 15.315%) to companies. Otherwise no reduced tax rate under the DTT.
53	Interest – 0% tax rate to banking institutions. Otherwise no reduced tax rate under the DTT.
54	Royalties – 0% tax rate to royalties for the use of, or the right to use, any copyright or cinematograph films and 10.21% tax rate to royalties for the use of, or the right to use, any patents, designs or models, Actions, secret processes or formulae, trade marks and other like property and rights. Otherwise no reduced tax rate under the DTT.
55	Dividends – 0% tax rate to companies directly or indirectly holding 10% or more of the voting rights for the last 6 months. Otherwise 10%.

Footnotes	
56	Dividends – 0% tax rate to companies directly or indirectly holding 50% or more of the voting rights for the last 6 months, pension funds and pension schemes (in the case of pension funds or pension schemes, only if dividends are derived from administering or providing pensions or similar activities) and 5% tax rate to companies directly or indirectly holding 10% or more of the voting rights for the last 6 months. Otherwise 10%.
57	Interest – 0% tax rate to governments, certain government-related entities, residents receiving interest with respect to certain government-related debt-claims or indebtedness arising as a part of the sale on credit of equipment or merchandise, financial institutions and other similar enterprises, pension funds and pension schemes (in the case of pension funds or pension schemes, only if interest is derived from administering or providing pensions or similar activities). Otherwise 10%.
58	Dividends – 15% tax rate to dividends paid by a company engaged in an industrial undertaking to companies holding 25% or more of the voting rights for the last 6 months and 20% tax rate (or 15.315% if the applicable domestic rate is 15.315%) to dividends paid by a company not engaged in an industrial undertaking to companies holding 25% or more of the voting rights for the last 6 months. Otherwise no reduced tax rate under the DTT.
59	Interest – 0% tax rate to governments and certain government-related entities and 10% tax rate to financial institutions (including insurance companies). Otherwise no reduced tax rate under the DTT.
60	Interest – 10% tax rate to financial institutions. Otherwise 15%.
61	Dividends – 0% tax rate to companies directly or indirectly holding 10% or more of the voting rights for the last 6 months, pension funds and pension schemes (unless dividends are derived from the carrying on of a business directly or indirectly by such pension funds or pension schemes). Otherwise 10%.
62	Dividends – 0% tax rate to certain qualified companies holding 50% or more of the voting rights directly or indirectly through one or more residents of Japan or the US for the last 6 months and pension funds (unless dividends are derived the carrying on of a business directly or indirectly by such pension funds) and 5% tax rate to companies directly or indirectly holding 10% or more of the voting rights. Otherwise 10%.
63	Dividends – 5% tax rate to companies directly holding 10% or more of the voting rights for the last 183 days. Otherwise 10%.
64	Interest – 0% tax rate to governments, certain government-related entities, residents receiving interest with respect to certain government-related debt-claims and financial institutions (in the case of financial institutions, only if such interest is paid by a financial institution or paid in respect of debt-claims granted for 3 years or longer for the financing of investment projects). Otherwise 10%.
65	Royalties – 0% tax rate to royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films. Otherwise 5%.

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KOREA

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1. INTRODUCTION

a. Forms of Legal Entity

There are several types of legal entities that could be utilised to conduct a business in Korea. A corporation (*"jushik hoesa"*) and a limited company (*"yuhan hoesa"*) are traditionally utilised entities and are common. A corporation consists of shares owned by shareholders and is governed by the board of directors in accordance with rigid corporate governance procedures prescribed by Korean corporate law (the Commercial Code). A limited company consists of units owned by members and is governed by a more flexible set of rules prescribed by Korean corporate law. Both corporation and limited company afford limited liability to the shareholders and members. They are both taxed as "corporation" and are subject to corporate income tax.

On the other end of the spectrum are a trust (*"shintak"*) and a partnership (*"johap"*). They are not considered to be separate entities and are not taxed at the entity level. Generally, beneficiaries and partners are taxed on their share of trust income and partnership income, respectively.

In the middle of the spectrum are a joint investment company ("hapja hoesa") and a joint name company (*"hapmyung hoesa"*). They are loosely analogous to a limited partnership and a general partnership, respectively. They provide limited liability to limited partners, but not to general partners. For tax purposes, they are prima facie treated as corporation, but can elect to be treated as pass-through. If the pass-through treatment is elected, general partners would be treated as if they are conducting their portion of the company's business for tax purposes and be responsible for reporting taxable income (and if applicable, taxable loss) allocated to them. On the other hand, limited partners would be treated similarly to shareholders receiving a distribution in the amount of their portion of the net income of the company and would not usually recognise any loss allocation.

Please note that Korean tax rules for a pass-through entity are not completely analogous to those found in other countries (e.g. the character of income may not be completely passed through), and a different or special set of rules could apply to different types of entities. Taxpayers should be wary of peculiarities of the entity classification rules and tax treatment.

b. Taxes, Tax Rates

i Corporate Income Tax Rates

Corporate taxpayers are subject to income tax under the Corporate Income Tax Act ("CITA") at gradual marginal rates, which range from 11% to 27.5% (please refer to the table below). Please note that, pursuant to the recent tax law amendments, which are intended to promote job creation and wealth redistribution, corporations that have capital exceeding KRW50 billion or are part of one of the designated large business conglomerates under the Monopoly Regulation and Antitrust Act could be subject to additional corporate income tax, to the extent their corporate earnings are not used (appropriated) to finance salary increases for employees or business investment. An additional corporate income tax applies at 22% of the relevant corporation's "unappropriated earnings." Unappropriated earnings, in turn, are calculated to be the lower of (i) 65% of the corporation's corporate earnings (net taxable income) after subtracting the amount of employee salary increase and business investments, or (ii) 15% of the corporate earnings after subtracting the amount of employee salary increase. However, corporate earnings exceeding KRW300 billion (i.e. falling under the top corporate income tax bracket) are not subject to the unappropriated earnings tax; accordingly, the net result of such tax would be subjecting the corporation to higher marginal tax rates (up to the maximum of 27.5%) even if its taxable income is lower than those specified in the table. The unappropriated earnings tax is applicable until the end of 2022, which may be extended by further amendments.

Tax Bracket	Tax Rates (including local income surtax; but not including the additional tax on unappropriated earnings)
Up to KRW200 million	11%
KRW200 million – KRW20 billion	22%
KRW20 billion – KRW300 billion	24.2%
More than KRW300 billion	27.5%

(KRW: Korean Won)

ii Personal Income Tax Rates

Individual taxpayers are subject to income tax under the Personal Income Tax Act ("PITA"), and the applicable rates vary depending on the types of income. Most types of income are subject to tax at gradual marginal rates, ranging from 6.6% to 49.5% (please refer to the table below).

Tax Bracket	Tax Rates (including local income surtax)
Up to KRW12 million	6.6%
KRW12 million – KRW46 million	16.5%
KRW46 million – KRW88 million	26.4%
KRW88 million – KRW150 million	38.5%
KRW150 million – KRW300 million	41.8%
KRW300 million – KRW500 million	44%
KRW500 million – KRW1 billion	46.2%
More than KRW1 billion	49.5%

(KRW: Korean Won)

c. Common divergences between income shown in tax returns and local financial statements

There are two sets of accounting rules applicable to Korean taxpayers. The traditional Korean GAAP ("K-GAAP") rules have been in place for a long period and continue to be applicable to those that are not required to use (or are electing to use) the IFRS (International Financial Reporting Standards), which was adopted in Korea in 2009. Publicly traded companies and financial services companies are required to use the IFRS for their accounting; those that are not required to use the IFRS may elect to use them or continue to use the K-GAAP.

In general, the tax treatment of an event or item follows its accounting treatment. However, due to the different purpose of tax reporting (distribution of tax burden and achievement of certain level of tax revenues, pursuant to political policy) and accounting reporting (accurate assessment of the financial condition to facilitate decision-making by various interested parties), different treatments may occur. Such divergence could be permanent: for example, entertainment expenses above certain threshold or charitable donation not falling under the prescribed scope are denied deduction for tax purposes for policy reasons, while allowed for accounting purposes. Others could be a timing difference and temporary: for example, valuation gain or loss (generally not recognised for tax purposes) and bad debt loss.

2. RECENT DEVELOPMENTS

In response to the COVID-19 pandemic and its impact on the Korean economy, the Korean government implemented a substantial budget to rescue strategic industries in financial distress and promote spending by the general public. On the other hand, measures undertaken in relation to tax rules were rather limited and mostly confined to select disaster hit areas; these measures included a tax reduction and tax filing and payment extension for businesses located in the areas that are heavily affected by COVID-19 (designated as the 'Special Disaster Areas') and a temporary increase in the deductible amount limit for entertainment expenses; many of these measures are scheduled to expire after 2022.

The corporate tax rates had at one point been substantially reduced to 22% (maximum marginal rate) from the historical rates well above 30%. However, during the past few years, out of concern to maintain fiscal balance and in line with the political propensity of the current government regime, tax rates have gradually been increasing and the current maximum rate is 27.5%.

Korea had long maintained a special regime for foreign direct investment, whereby exemptions/reductions for corporate income tax and customs and transaction taxes were granted during the prescribed period to foreign invested Korean entities in new technology areas or in specific geographical areas. This regime is now being phased out. With respect to corporate income tax benefits, new applications have not been accepted since 2019.

In the international tax area, a substantial number of judicial precedents were produced during the past several years holding that the Korean anti-abuse rule applies in the treaty context and thereby denying treaty benefits (for example the capital gains tax exemption for private equity funds' transfer of Korean shares or the reduced tax rates for dividends from Korean subsidiaries) unless a stringent beneficial (substantive) ownership standards are met. Due to the rigorous application and the operation of archaic domestic rules, many of these precedents resulted in the denial of treaty benefits not only in reference to the intermediate paper companies, but also in reference to the ultimate investors with substance in their respective countries of residence. Instead, the fund vehicles (frequently in the Cayman Islands, the BVI, or Bermuda, with which Korea does not have a double tax treaty) were determined to be corporate entities under the Korean entity classification rules and also to be the substantive owner, in reference to whom the treaty benefits (or the lack thereof) should be determined.

Subsequently, several legislative amendments have been proposed and effected to clarify the foreign entity classification rules and their tax treatment in Korea. In particular, the Presidential Decree of the CITA was amended in 2019 to remove Article 2(1)(3) that would treat "an entity that owns an asset, becomes a party to a lawsuit, or directly holds a right or owes an obligation, independent of its members" as a foreign "corporation" (as opposed to a pass-through entity) for Korean tax purposes. Foreign limited partnerships, which were previously treated as foreign corporations for Korean tax purposes because they could be a party to a lawsuit and/ or directly hold rights or obligations separate from their partners, would no longer be treated as foreign corporations for Korean tax purposes as a result of the removal of Article 2(1)(3). The amendment applies for taxable years commencing on or after 1 January 2020. These amendments are intended to alleviate unexpected tax consequences for private equity funds and other foreign investors and to bring the rules surrounding treaty application in line with the global trend. Nonetheless, the foreign entity classification rules contain other criteria that may treat a foreign hybrid entity as corporation; therefore, care should be taken to consider the detailed qualifications and conditions associated with such rules.

Korea is one of the member countries of the OECD and is considered to be an early adopter for most of the OECD developments, particularly concerning BEPS. It has already implemented or is in the process of implementing most of the OECD BEPS action plans (e.g. domestic legislation to incorporate the transfer pricing reporting requirements, exchange of nformation, the interest deduction limitation and the expanded permanent establishment definition, as well as having ratified the MLI (Multilateral Convention to Implement Tax Treaty Related Measures)). It has fully signed on to the MCAA (Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information) and, with respect to the United States, is a party to the FATCA IGA (Model 1; Foreign Account Tax Compliance Act, Intergovernmental Agreement). Korea also has its own Foreign Financial Account Reporting regime ("FFAR") that requires Korean taxpayers to report their assets outside of Korea, which is analogous to the FBAR regime in the United States.

Korea implemented a simplified value added tax ("VAT") reporting regime in 2015 for foreign providers of digital services ("electronic services") even if they do not have a fixed place of business or PE in Korea in a traditional sense and is increasing the scope step by step. In particular, the scope of electronic services that are subject to VAT in Korea was expanded recently. Effective 1 July 2019, electronic services that are subject to VAT will include a broad spectrum of items: games, audio/video files, software, online advertisement services, cloud computing services and online intermediary (platform) services for a supply of goods/services in Korea.

In addition, the Korean tax authority has increased scrutiny over global IT companies' activities in Korea and recently conducted several intensive tax audits for any PE or improper transfer pricing arrangements. Whilst a direct form of digital tax has not yet been introduced in Korea, the government is closely monitoring countries that are attempting to introduce digital tax and undertaking a comprehensive review on the potential implications of digital tax. In this regard, the Korean government has announced that it will keep pace with the OECD's plans to implement Pillars One and Two, addressing tax challenges of the digital economy, by 2023.

3. SHARE ACQUISITION

a. General Comments

As a general matter, a transfer of shares in a Korean company would trigger a taxable event for the shareholders but would not affect the operations of the company. Legal steps to be taken to affect the share transfer and reporting procedures required with respect to the transaction are relatively simple.

The shareholder that transfers shares in the target company will be subject to income tax (corporate income tax in the case of a corporate shareholder and personal income tax in the case of an individual shareholder) with respect to the gain from such transfer. In the case of a foreign shareholder (without a permanent establishment in Korea), withholding tax at the rate of 11% of the gross sales proceeds or 22% of the net gain (whichever is lower) will be imposed, which may be exempt under an applicable tax treaty between Korea and the shareholder's residence jurisdiction (provided that the shareholder is the beneficial owner of the gain from the transfer, as required by Korean tax authorities). In addition to the treaty exemption, there are a few exemptions for capital gains that are available for publicly traded shares if certain conditions are met.

The acquiror of shares will generally take the tax basis in the shares in the amount of the transfer consideration.

In addition to the income tax, various transaction taxes could apply as discussed below.

b. Tax Attributes

In the case of a share transfer in a company, only shares are considered to change hands. Therefore, there is no material effect on net operating loss ("NOL") carryovers and other tax attributes in the target company, despite any change of control.

c. Tax Grouping

Under the consolidated tax return rules, an eligible corporate group that elects to file a consolidated tax return, is able to consolidate the income and losses of each entity in the group and defer tax on gains arising from the transfer of certain assets within the group until final disposition is made outside the group and until certain triggering events occur. In principle, the parent company and its subsidiaries over which the parent company has "complete control" are includible in the group. "Complete control" in this context means the direct or indirect ownership of all (100%) the shares in the subsidiaries, with certain exceptions for shares owned by qualified employee stock ownership associations. Moreover, only domestic Korean corporations are eligible to be included in the group.

In order for the group to start filing a consolidated tax return, the parent company must submit an application within 10 days after the beginning of the first taxable year of election, with the regional National Tax Service ("NTS") office which has jurisdiction over it. The regional NTS office will then notify the parent company of approval or denial of the application within two months after the beginning of such taxable year. Once the election is made, all of the subsidiaries over which the parent company has complete control must be included in the group. If the consolidated group acquires the complete control of another Korean corporation, the new subsidiary will automatically become part of the consolidated group.

A corporate group filing a consolidated tax return is subject to various restrictions in consolidating their tax attributes. For example, capital losses incurred by a consolidated subsidiary within five years from the election are deductible only from the taxable income of such subsidiary. Also, a NOL generated in a tax year prior to its commencement of consolidated tax return filing cannot be used to offset income of any member of the group other than the corporation that generated such NOL, while a NOL generated after the commencement is not subject to such a limit. In addition, the use of NOL carryovers are subject to the general limit of 60% of the taxable income against which it is intended to be used; this limitation is applicable to all corporations, not only consolidated income tax groups.

If the consolidated group wishes to discontinue the consolidation, it must submit an application to the NTS which has jurisdiction over it within three months prior to the tax year from which it intends to discontinue. Please note that the consolidated group, once it elects to file consolidated tax returns, is required to continue such status for at least five years before it can apply for termination of such status.

d. Tax Free Reorganisations

It is possible to structure a share transfer to obtain tax free treatment under tax law. If a share transfer qualifies for such treatment, the target shareholders will not recognise any capital gains at the time of the transfer and will carryover the tax basis in the target shares as the tax basis in the shares in the acquiring company received in exchange for the transfer. The company acquiring the target shares, on the other hand, will obtain the step up in the tax basis; the acquiring company used to inherit the tax basis in the hands of the target shareholders, but such rule has recently been amended to eliminate the potential double taxation (tax on the same gain both in the hands of the target shareholders (to be triggered when they transfer the shares in the acquiring company received in the transaction) and the acquiring company with respect the target shares received).

In order to obtain the tax free treatment (in order to become a qualified comprehensive share exchange/transfer), the following requirements must be met at the time of the transaction and also certain post-transaction requirements must be complied with during a certain period after the transaction.

i Corporate Procedure

As a first step, the transaction itself should be structured in the form of "comprehensive share exchange" or "comprehensive share transfer" within a meaning of Korean corporate law (the Commercial Code). They are Korean corporate law concepts and were introduced in the Commercial Code in 2001 to facilitate a holding company structure. A comprehensive share exchange is a corporate law procedure which requires a special resolution of the shareholders of each of the target company and the acquiring company. A comprehensive share transfer on the other hand requires a special resolution of the shareholders of the company transferring the shares. For both a comprehensive share exchange and a comprehensive share transfer, dissenting shareholders are provided with an appraisal right, whereby the dissenting shareholders can request the company to redeem their shares. Once the shareholders approve the transaction and take the resolution, all shareholders, except for those exercising the appraisal right, get to participate in the comprehensive share exchange or comprehensive share transfer by operation of law.

A comprehensive share exchange is a procedure available for an already established and existing company (the acquiror) that intends to acquire 100% shares in the target company, in exchange for newly issued shares in the acquiror. As a result of such exchange, the target becomes a wholly owned subsidiary of the acquiror. A comprehensive share transfer is a procedure available for a target company that wishes to create a newly formed holding company (the acquiror). In a comprehensive share transfer, shareholders of the target company transfer all of the shares in the target to the acquiror in exchange for the shares in the newly established holding company (the acquiror).

ii Transaction Requirements

In cases of both a comprehensive share exchange and a comprehensive share transfer, the relevant transaction needs to satisfy additional requirements prescribed by tax law:

- The acquiror and the target involved in the exchange/transfer must be Korean corporations that have been in business for one year or longer as of the date of the exchange/transfer (one year requirement).
- At least 80% of the consideration paid to the target shareholders must consist of shares in the acquiror; the so called continuity of interest ("COI") requirement.
- The amount of shares distributed to each of the target's controlling shareholders (in essence, shareholders, each of whom owns at least 1% of the target shares and collectively with related parties owns the largest percentage of the target shares) for the exchange/transfer consideration should equal or exceed the product of (i) the total value of the acquiror's shares paid as consideration and (ii) the shareholding ratio of each controlling shareholder of the target (the so called distribution requirement).
- Each controlling shareholder of the target must hold at least 50% of the shares distributed pursuant to the distribution requirement through the end of the taxable year in which the exchange/transfer takes place. In addition, the acquiror must hold at least 50% of the shares in the target until the end of the taxable year in which the exchange/transfer takes place (the so called continuing shareholding requirement).
- The target must continue to conduct its business at least until the end of the taxable year in which the exchange/transfer took place, known as the continuity of business enterprise ("COBE") requirement. If 50% or more of the value of the fixed assets owned by the target on the exchange/transfer date is disposed of or not used, the business is deemed to have been terminated and the COBE requirement will not be satisfied.

iii Post-Transaction Requirements

Unless the following post-transaction requirements are complied with for two years from the end of the taxable year in which the comprehensive share exchange/transfer takes place, tax benefits will be recaptured for the shareholders of the target company. As a result, the shareholders that received shares in the acquiring company in exchange for the target shares will be subject to tax with respect to the transfer of the target shares. In addition, any transaction taxes, which had been previously exempted, could also be recaptured and imposed on the acquiror.

- The target should continue its business during the period. The target's business is deemed discontinued if the target disposes of 50% or more of the total value of its fixed assets or does not utilise such assets in its business. However, this rule does not apply if such assets are sold or discontinued due to any subsequent qualified reorganisations or the bankruptcy of the target.
- The controlling shareholders of the target should not dispose of 50% or more of the acquiror stock received as the transaction consideration to transferees that are not controlling shareholders. However, if the disposition takes place due to death or bankruptcy of the shareholder, subsequent qualified reorganisation, or in order to fulfil a legally imposed obligation, the tax benefits will not be recaptured.
- The acquiror should not dispose of 50% or more of the target stock received from the transaction. However, if the disposition takes place due to bankruptcy of the acquiror, subsequent qualified reorganisation, or in order to fulfil a legally imposed obligation, the tax benefits will not be recaptured.

e. Purchase Agreement

i Withholding Agent's Liability

In addition to comprehensive legal and tax indemnity provisions that should be included in the purchase agreement, in order to cover all known or unknown historical liabilities of the target company, special attention should be paid to the provisions for withholding tax. The acquiror of shares in a Korean company could be the withholding agent (especially where the seller of the shares is a foreign party) for income tax and securities transaction tax ("STT"). Under Korean tax law, the withholding agent has the ultimate responsibility for withholding the correct amount of tax and paying it over to the tax authority and is liable vis-à-vis the tax authority for any deficient withholding.

In the case of a foreign seller, the determination of the treaty entitlement to calculate the correct amount of withholding tax and allocation of the risk of subsequent challenge (if any) by the tax authority become a subject of intense negotiation. A contractual tax indemnity provision for the withholding agent is customarily included in the purchase agreement. In some cases, the hold back of a portion of the purchase price or escrow account is implemented until the risk of tax assessment is alleviated.

ii Statute of Limitations for Tax Assessments

Under Korean tax law, the statute of limitations for most tax assessments is five years from the due date of the relevant tax return and seven years for taxes involving cross border transactions. If no tax return was filed with respect to the transaction, the statute is extended to seven years (10 years for taxes involving cross border transactions), and 10 years in the case of tax evasion (15 years for taxes involving cross border transactions). The survival clause of various representations in the share transfer agreement should take into consideration these periods during which potential tax liabilities may arise.

iii Controlling Shareholder's Secondary Tax Liability

Please also note that, under Korean tax law, the controlling shareholder of a company bears a secondary tax liability with respect to national taxes (e.g. income tax and VAT) of the company if the company does not have sufficient assets to pay off its tax obligations. This secondary liability applies to the controlling shareholder of the company as of the time the relevant tax liability becomes final and fixed, which, in the case of corporate income tax, is the last day of the relevant tax year. In certain limited situations, the acquiror of the shares in the target company may come to have such a secondary tax liability for a period (or portion thereof) during which the seller was the controlling shareholder. Careful review of the target company's tax situation is required to ensure that the acquiror does not unintendedly assume such a liability.

f. Transfer Taxes on Share Transfers

i Securities Transaction Tax ("STT")

In the case of a share transfer, the transferor is generally subject to the STT at the rate of 0.23% (0.15% for transfers executed on or after 1 January 2023) for a transfer of shares via stock exchange, or 0.43% (0.35% for transfers executed before 1 January 2023) for other transfers, on the amount of consideration (whether cash or other property such as shares in another company). STT is generally imposed on the transferor, though the transferee or certain intermediaries (such as a broker or depository involved in a transfer of publicly traded shares) may have the obligation to withhold and pay the tax to the tax authority. The transferor (unless withholding applies) must make the STT payment and filing with the tax authority within 2 months after the end of the half year in which the transaction occurs.

Generally, STT is not imposed if a transaction satisfies the requirements for a tax free reorganisation (i.e. a qualified reorganisation).

ii Deemed Acquisition Tax ("DAT")

In the case of shares in a non-listed company or, among listed companies, KOSDAQ/KONEX-listed company, the DAT is imposed on the purchaser that, combined with its related parties, becomes the controlling shareholder in such company (i.e. it comes to own more than 50% of the stock in such company). Shares in a company that is listed on the Korea Exchange are not subject to the DAT.

The rate is usually 2.2% of the underlying book value of the registrable assets (such as real property, vehicle and golf club membership) owned by the company (which would be subject to the acquisition tax if transferred directly), multiplied by the shareholding ratio of the purchaser.

The purchaser must report and pay the DAT within 60 days from the date of acquisition of the shares which cause the purchaser to become the controlling shareholder. The purchaser must also report and pay the DAT on a subsequent acquisition of additional shares in the same company to the extent the purchaser remains the controlling shareholder of that company.

If the transaction satisfies the requirements for the tax free reorganisation, a certain proportion of the DAT could be exempt.

iii Registration License Tax

In general, the registration license tax is imposed on the capitalisation or the increase of capital (i.e. upon incorporation of a company or new share issuance). The tax rate is 0.48% (standard tax rate of 0.4% plus surtax) and is imposed on the aggregate par value of the newly issued shares. The rate could triple to 1.44% if the issuing company is located in a certain congested metropolitan area (the capital city of Korea, Seoul, is one of the designated areas). Generally, transactions are not exempt from this tax even if they satisfy the requirements for a tax free reorganisation.

Companies are required to report and pay the registration license tax before filing a registration for the capitalisation or the increase of capital.

g. "Purchase accounting" applicable to share acquisitions

Under both IFRS and K-GAAP, purchase accounting (i.e. acquisition method of accounting) would generally be used for acquisitions (direct or indirect), unless the acquiring company and target company were and, after the acquisition, remain in the same control group. Pursuant to purchase accounting, the acquiring company would record the assets of the target company at fair market value. To the extent the acquisition price exceeds the fair market value of the assets, such excess would be recorded as goodwill; to the extent the price falls under the fair market value, the shortfall would be recorded as gain from bargain purchase.

If the target remains under the same controlling party before and after the acquisition (the case of common control), purchase accounting would not apply. K-GAAP provides that the book accounting method should be used in such a case. IFRS on the other hand is silent on the point, in which case the parties are to select and use a reasonable method of accounting.

h. Share Purchase Advantages/Disadvantages

i No Step-Up of Tax Basis in Assets

A share purchase, as opposed to an asset purchase, has the advantage of simplicity in the steps involved in effecting the transaction. The parties would have to transfer the shares, and all assets owned by the target would come along with the target. However, as discussed, there is a corresponding disadvantage in that the target comes not only with the assets, but all its historical liabilities as well, including potential and unknown liabilities. Included in such package would be imbedded gain in assets of the target, which could materialise in a tax liability in the future.

Korean tax law does not provide any option to step up the tax basis in the target assets in a share transaction.

ii Tax Clearance Certificates

Entities could obtain tax clearance certificates issued by the responsible tax authority, certifying that tax returns and tax payments that came due have been filed and paid. Tax clearance certificates could be useful in verifying whether the taxpayer (e.g. the target company to be acquired) has been generally compliant with their tax obligations, by filing tax returns and paying taxes specified in the tax returns; however, they do not verify whether tax returns filed were accurate and therefore, cannot be used to finalise the acquiring entity's tax exposures for periods prior to acquisition.

iii Controlling Shareholder's Secondary Tax Liability

As discussed above, under Korean tax law, the controlling shareholder of a company takes a secondary tax liability with respect to national taxes (e.g. income tax and VAT) of the company arising after such shareholder becomes the controlling shareholder, if the company does not have sufficient assets to pay off its tax obligations. Accordingly, the acquiror that comes to own the controlling shares in the target company should be conscious of such risk.

4. ASSET ACQUISITION

a. General Comments

In an asset transfer, the target company would usually transfer its assets to the acquiror and recognise gain from such transfer. The acquiror would take the tax bases in the assets, which are stepped up to the consideration paid for such assets. In comparison with a share transfer, the asset transfer would entail more steps to effect the transfer of various types of assets; on the other hand, it would have the commercial (and also tax) advantages for the acquiror in that it does not get to inherit any historical liabilities imbedded in the target entity.

If all business related contracts and assets and liabilities in the target are comprehensively transferred in an asset transfer, such a transfer could constitute a "business transfer" that could afford the transaction parties a different tax treatment (discussed further below).

b. Purchase Price Allocation

The purchase price is generally allocated based on the market value of each asset. Once the total purchase price is allocated to all identifiable assets including intangible assets, any remaining portion of the purchase price is allocated to goodwill.

c. Tax Attributes

In an asset transfer, historical tax attributes (NOL, tax credits, etc.) of the target company would not be transferrable and thus would not be preserved in the hands of the acquiror. On the other hand, carried forward NOLs may remain in the target company and can continue to be used by the target company.

d. Tax Free Reorganisations

It was possible until 2017 to structure an asset transfer as qualified "comprehensive asset transfer" (with a set of requirements analogous to qualified comprehensive share exchange/transfer) and obtain tax free treatment for the target company and its shareholders. However, such category of tax-free reorganisation was repealed from 2018 and is no longer available.

Depending on the resulting corporate structure desired, the parties could consider other types of tax free reorganisations, such as qualified "in-kind" contribution (i.e. non-cash property contribution) to achieve their objectives.

e. Purchase Agreement

An asset transfer would usually not entail the acquiror inheriting tax liabilities of the seller. However, if the transaction is characterised as a "comprehensive business transfer" under Korean tax law, certain acquirors (such as parties related to the seller or those acquiring the business with intent to enable the seller's avoidance of tax liabilities) bear the secondary liability for the seller's tax liabilities with respect to the historical operations of the transferred business, up to the purchase price of the assets. However, the acquiror does not bear the secondary liability for capital gains tax arising in respect of the transaction itself. Although this liability would appear to apply in limited circumstances, it would be prudent to draft the tax indemnity provision in the purchase agreement broadly enough to cover such a risk. In addition, certain taxes (such as property tax) associated with a specific asset could come with the transferred assets; therefore, care should be taken to identify such a risk.

If the seller of the assets is a foreign party, the acquiror would be the withholding agent that is responsible for making and paying the correct withholding for income tax and transaction taxes (such as Securities Transaction Tax "STT"). Proper tax indemnity and other security mechanisms should be considered, similar to a share transaction.

f. Depreciation and Amortisation

The acquiror of the target assets would generally be able to depreciate and amortise the acquired assets in accordance with the customary rules and will reduce the tax basis allocated to each asset in accordance with the purchase price allocation. The depreciation is usually not allowed for land but allowed for buildings and fixed assets generally over 15-50 years (40 years being most common). As for equipment and other business assets, depreciation is allowed over varying periods depending on the type of business (generally, 3-25 years).

Goodwill and most types of registered intellectual properties are amortisable over five years, and patents over seven years. With respect to goodwill, additional conditions are imposed for amortisation: it has to represent specific economic benefit or excess earning power (e.g. license, permit, favourable geographic location, trade secret, reputation, customer list, or business relationship) and its value is confirmed by a reasonable and proper method prescribed by tax law.

g. Transfer Taxes, VAT

Under the Value Added Tax Act ("VATA"), value added tax ("VAT") at the rate of 10% is applicable with respect to supply of goods or services. Usually, the supplier (the seller) has the obligation to collect VAT (customarily added to or incorporated in the purchase price) and pay it over to the tax authority. The purchaser, in turn, generally gets the input VAT credit, which it can use to offset any VAT it has to collect or obtain a refund. Accordingly, in the context of an asset transfer, the seller of the assets would usually bear the obligation to collect the proper VAT as part of (or in addition to) the purchase price and pay to the tax authority. The acquiror in turn would usually be able to obtain an input VAT credit or refund with respect to such VAT paid.

If the asset transfer is characterised as a "comprehensive business transfer," however, the transaction would be exempt from VAT. In practice, there is a fine line between a comprehensive business transfer and a regular asset transfer, and such a determination frequently becomes a subject of challenge by the tax authority and a tax dispute. Under the recent tax law amendments, this issue can be largely addressed by utilising the proxy VAT return regime; if the purchaser (in lieu of the seller) files a proxy VAT return based on the position that the transaction is not a "comprehensive business transfer," no penalty would apply even if the tax authority later disagrees with such position.

In addition to income tax with respect to gains from transfer of assets, the seller of the assets would be subject to STT at 0.43% or 0.23% (if transferred through a stock exchange) to the extent the assets consist of shares in another company. From the year 2023, these STT rates are scheduled to go down to 0.35% and 0.15%, respectively.

To the extent that assets transferred are registrable assets (e.g. real property, vehicles, golf club membership, etc.), the acquiror will be subject to acquisition tax and registration tax. The rates vary for different categories of assets; for real property, generally 4.6% acquisition and registration taxes apply, and such rates could be subject to multiplied tax rates if located in certain congested areas. In the case of a tax-free organisation, a portion (generally, 70% - 80%, but not all) of these taxes may be exempt.

h. Asset Purchase Advantages/Disadvantages

An asset transfer, as opposed to a stock transfer, has an advantage of not inheriting historical liabilities of the seller (with exceptions, such as property tax and the secondary tax liability for a comprehensive business transfer). The tax basis in the assets would also usually be stepped up, so that the acquiror need not suffer from recognising imbedded tax liabilities in the future (unless in the case of an asset transfer done in an alternative form of a tax free reorganisation, such as a qualified "in-kind" contribution (i.e. a non-cash property contribution)).

5. ACQUISITION VEHICLES

a. General Comments

Foreign investors acquiring assets in Korea usually do so through a domestic acquisition vehicle (which may in turn be owned by a foreign acquisition vehicle). On the other hand, the acquisition of Korean shares is usually done without a domestic acquisition vehicle.

b. Domestic Acquisition Vehicle

A number of entity types are available as domestic acquisition vehicle. Two most customary choices are a corporation (jushik hoesa) and a limited company (yuhan hoesa). Both provide limited liability to shareholders and are treated as corporations for Korean tax purposes. Other types of entities that could elect to be treated as pass-through entity for tax purposes could also be considered. The pass-through taxation provides the advantage of avoiding double taxation (i.e. entity level and shareholder level taxation), but may in some cases expose foreign partners to the burden of Korean tax reporting obligations and Korean tax liability with respect to the entity level operation. For foreign investors, a corporate type entity is a more customary choice for acquisition.

c. Foreign Acquisition Vehicle

A foreign investor (e.g. a global operating company or a private equity fund) could invest in Korea either directly (in the case of an asset acquisition, usually through a domestic acquisition vehicle) or may choose to interpose a foreign acquisition vehicle. When considering a choice of foreign acquisition vehicle, the availability of treaty benefits should be taken into consideration. Korea has an extensive double tax treaty network, and many Korean tax treaties provide an exemption for capital gains and reduced withholding tax rates for dividends, interest, royalties and other types of income. Under the recently established judicial precedents, an intermediate acquisition vehicle is subject to a stringent substance requirement and is often denied treaty benefits if it is found to have been established without a valid business purpose and for a tax avoidance purpose (i.e. treaty abuse), thereby subjecting the structure to much uncertainties. As this is still an evolving area of jurisprudence, a careful analysis of the latest developments is needed to minimise risks associated with structuring.

d. Partnerships and Joint Ventures

A foreign investor entering into a joint business operation with a Korean partner would usually set up a separate joint venture entity in Korea (usually a corporate form of entity), for the same reason as acquiring assets through a domestic acquisition vehicle. Using a corporate type joint venture entity could block liabilities and tax reporting obligations associated with the business operation.

e. Strategic vs Private Equity Buyers

A foreign strategic investor (e.g. a global manufacturing company), may already have an existing holding company in the corporate group, through which other foreign investments are held and managed. The use of an existing holding company with other subsidiaries or assets/operations, and substantial operating history and personnel, to acquire the Korean investment tends to be conducive to satisfying the "substance" requirement posed by the case law for claiming a treaty benefit. A strategic investor should consider utilising existing entities in its group.

A private equity investor would also need to establish the substance of an intermediate holding company, if it plans to rely on the treaty benefits in reference to the residence jurisdiction of such holding company. If it is difficult to find a holding company that meets the stringent substance requirement posed by Korean tax law, the private equity investor should alternatively consider claiming treaty benefits in reference to its ultimate investor's residence jurisdiction. In order to do so, it would be important to ensure that the fund vehicles and intermediate entities are treated as pass-through or disregarded for Korean tax purposes, so that the tax authorities do not try to stop at an intermediate entity level and determine the applicability of a treaty benefit in reference to such entity.

6. ACQUISITION FINANCING

a. General Comments

The acquisition funds could be brought into Korea in the form of equity or debt. Bringing in foreign funds is subject to Korean foreign exchange ("FX") regulations and requires reporting or approval from the designated FX authority. An equity investment corresponding to a minimum of 10% equity stake in a company or accompanied by a management right (foreign direct investment) could be made subject to a fairly simple reporting procedure, which usually clears within a matter of a few days.

Funding in the form of debt, on the other hand, tends to be subject to a stricter reporting procedure and, depending on the government's FX policy at a given time, could be prolonged substantially or denied clearance.

b. Equity

Capital gains from the transfer of Korean shares are subject to withholding tax at the lower of 11% of the sales proceeds or 22% of the net gain. Dividends are subject to withholding tax at 22%. For listed shares, there is a domestic tax law exemption for shares transferred through the exchange if the foreign investor (and related parties) did not own directly or indirectly 25% or more of the shares in the relevant Korean company at any time during the prescribed period for the past five years.

In addition, most Korean tax treaties provide an exemption from the foregoing tax on capital gains from Korean shares and reduced withholding tax rates for dividends. The tax treaty with Mexico provides an exemption from withholding tax on dividends. Accordingly, such jurisdictions could be considered favourable from a tax perspective.

However, in order to claim a treaty, benefit in Korea, stringent substance requirements need to be met. Accordingly, selecting a jurisdiction where the foreign investor can establish the substance often becomes a more difficult and important consideration in practice, rather than finding a most favourable tax treaty.

c. Debt

i Limitations on Use of Debt and Interest Deductions

Funding through debt financing provides the advantage of an interest deduction. Under Korean tax law, several longstanding anti-abuse rules limiting interest deductions are applicable. Most notably, the earnings stripping rules (i.e. the thin capitalisation rule and the deemed capitalisation rule) would deny interest deduction with respect to borrowings from a foreign controlling shareholder (or its related party) or third party borrowings secured by a foreign controlling shareholder, to the extent they exceed certain multiple of the equity investment by such shareholder.

Recently, additional limitation rules were adopted in line with the trend of BEPS. Please refer to Section 12. OECD BEPS Considerations, below for details on the additional limitation on the deductibility of interest payments made to foreign related parties.

Interest payments to a foreign lender would be subject to withholding tax at 22%, which may be reduced by an applicable tax treaty. There also is a tax exemption afforded to interest on foreign currency denominated bond issued outside of Korea under Korean domestic tax law.

ii Debt Pushdown

A debt pushdown is often accomplished in Korea by having the acquisition vehicle establish a nominal merger subsidiary, arranging such subsidiary to take a debt financing and having it merge into the target company, whereby the target company assumes the debt. If the financing for the merger subsidiary is done using the target company's assets, it could trigger the issue of the breach of fiduciary duty for the board of directors of the target company under Korean corporate law. Such a financing should be carefully structured to provide a justifiable commercial basis for the target to enter into the relevant transactions.

d. Hybrid Instruments

Hybrid instruments containing features of partly equity and partly debt may be used for financing (e.g. redeemable preferred stock or participating loans). Under Korean law, no black and white rule is prescribed, but they would be governed by the general principle that their tax treatment should be determined based on the substance, not only the form, of each instrument.

Another type of hybrid instruments could be those that are treated as debt in Korea but equity in the lender's jurisdiction or vice versa. Recently, in accordance with the OECD recommendation (BEPS Action 2), Korea introduced a new rule which limits the deduction of expenses relating to cross border hybrid financial instrument transactions between a Korean corporation (including the Korean branch of a foreign corporation) and its foreign related party. Where a payment made in relation to a hybrid financial instrument is wholly or partly not taxable in the counterparty jurisdiction, the new rule applies to deny the deduction for the non-taxable portion.

e. Earn-Outs

The purchase price for the relevant assets or shares would usually consist of the fixed portion (whether cash, stock or other property), but sometimes could also include contingent payments based on certain conditions (e.g. earn-out payments based on the performance of the acquired target or business).

Though the CITA does not specifically address these issues, as a general practice, the fixed part of the purchase price is reported at the time of the sale, and subsequently amended returns are filed to reflect variable part of the purchase price once determined. Interest or penalties associated with such amended returns are generally waived if it is found to have been difficult to know, at the time of the original tax return, whether conditions for the earn-out payments would be satisfied.

The acquiror would usually be able to obtain an increased tax basis corresponding to such payments.

7. DIVESTITURES

If the acquiror wishes to divest any assets or business lines of the acquired target (or assets), it could consider various forms of spin offs. A horizontal spin off and a vertical spin off are corporate procedures prescribed by Korean corporate law (similar to a merger and comprehensive stock transfer/exchange) and occur by operation of law once the requisite corporate approvals are obtained. In a horizontal spinoff, the target will transfer (spin-off) the relevant assets to a newly formed company (spun-off company), in return for shares in such new entity, and such shares are distributed to the target shareholders. In a vertical spin off, the target will transfer the assets to a newly formed subsidiary, in exchange for shares in such subsidiary (as a result of which the target becomes the parent company).

A vertical spin off resembles the economics of an "in-kind" contribution, which could also be effected in either taxable or tax free manner. Additional forms of divestitures are available under Korean corporate law and tax law, such as a horizontal spin off followed by merger or a vertical spin off followed by merger. The features of a horizontal spin off are discussed below.

a. Tax Free Horizontal Spinoff

A horizontal spinoff could be consummated in a tax free manner, pursuant to a similar set of transaction and post-transaction requirements as those prescribed for a tax free comprehensive share transfer/exchange, but with certain additional requirements. The principal additional requirements are as follows:

- The divided company (target and transferor) is a Korean corporation that has been in business for at least five years ("the five year requirement").
- 100% of the consideration received by the divided company's shareholders in exchange of the spinoff (spin off consideration) is in the form of shares in the spun-off company ("the COI requirement").
- The spun-off business unit is capable of carrying on its business wholly on its own, and the assets and liabilities of such unit were comprehensively transferred in the spin off ("the independent business unit requirement").
- At least 80% of the employees of the divided company that were engaged in the spun-off business as of one month prior to the registration of the spin off, are transferred to the spun-off company and remain employed in the spun-off company until the end of the tax year in which the registration date of the spin off falls ("the continued employment requirement"). (This requirement also applies to the post-transaction requirements, in a slightly less stringent form.)

The independent business unit requirement is a complex requirement and comes with substantial details, many of which are not clear cut. As a result, the qualification for a tax free spin off generally could create uncertainties and requires careful planning.

If a horizontal spin off qualifies as tax free, the transaction taxes applicable with respect to the transfer of certain assets would be partially (but not wholly) exempt, pursuant to the respective rules governing each tax.

b. Taxable Horizontal Spinoff

In a horizontal spin off the divided company (the seller and the target) is deemed to transfer the spun-off assets to a newly established spin off company at the fair market value, in exchange for shares in the spin off company and distribute them to its shareholders. Accordingly, the divided company will recognise taxable gain (or loss) from the transfer of the assets in the amount of their fair market value minus the tax basis in the assets. Its shareholders are deemed to receive a distribution in the form of the spun-off company shares and recognise taxable dividend income to the extent the distribution exceeds their tax basis in the shares in the divided company.

The spun-off company takes a tax basis in the acquired assets equal to their fair market value. If the fair market value of the assets exceeds the purchase price (the share value given as spinoff consideration), such excess would be treated as valuation gain and will be recognised as taxable income over certain period.

In addition to income tax, VAT and other transaction taxes (STT, acquisition tax and DAT) would be applicable depending on the category of assets.

c. Cross Border

The spinoff in the form of a corporate law procedure would be possible only for divided and spun-off companies that are Korean corporations. In the case where a divided company shareholder receiving the distribution of the spin off consideration is a foreign party, dividend withholding tax would be applicable (22% under Korean domestic tax law, which may be reduced under an applicable tax treaty), unless the spinoff qualifies as tax free.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Korean tax is based on a worldwide approach, rather than territorial. Under Korean law, a Korean company (defined as a company having a head office, a main office or a substantive place of management in Korea) is subject to Korean income tax on its worldwide income and is given a foreign tax credit with respect to foreign income tax paid subject to prescribed rules and limitations.

b. CFC Regime

Korean tax law has a controlled foreign company (CFC) regime. Under such regime, a foreign corporation ("F") would be deemed "related to" a Korean company ("K") if 50% or more of F's voting shares are directly or indirectly owned by K (controlled by K), or if F is under common control with K or shares common business interests with K. If F is related to K, then it is considered a CFC. In that case, to the extent F is located in certain low tax jurisdictions (the average effective tax of F for the recent three years is 17.5% or lower), the CFC's distributable earnings are deemed distributed to the Korean shareholder directly or indirectly holding 10% or more of the CFC's total issued shares or total capital. As a result, the Korean shareholder would be subject to income tax in Korea with respect to all or portions of the CFC's earnings, even before they are actually distributed.

There are certain narrowly carved out exceptions to the foregoing rules in the case where the CFC carries on active business operations in the jurisdiction.

c. Foreign Branches and Partnerships

If a Korean company operates business in a foreign jurisdiction in the form of a branch or a partner in a foreign partnership, it would be considered to engage in such business itself and it would generally be taxed on profits of such operation in Korea and given a foreign tax credit (subject to prescribed limitations) with respect to any foreign income tax paid. Care should be taken in the treatment of foreign entities under Korean tax law in this case, as the Korean foreign entity classification rule is based on its own civil law concept and tends to regard many foreign partnership type entities as corporations for Korean tax purposes, as a result of which a foreign partnership may be unexpectedly treated as a CFC for Korean tax purposes.

d. Cash Repatriation

If the Korean company receives a cash distribution from a foreign subsidiary, it would have taxable dividend income and be subject to corporate income tax in Korea at gradual marginal rates. However, such income would not be included in income to the extent such distribution was previously subject to CFC taxation. Any foreign income tax paid in respect of such distribution or of earning at the foreign subsidiary level would be given direct or indirect foreign tax credit subject to prescribed limitation rules.

In the case of a cash repatriation from a foreign branch or partnership, the Korean company would not be subject to taxation, as it would generally be subject to tax at the time the relevant income arose in the foreign branch or partnership, rather than when it is repatriated in cash.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

If a foreign investor makes an investment in Korean real property, it would be subject to Korean income tax with respect to capital gain from such investment in accordance with Korean domestic tax law. The foreign investor would be subject to withholding tax at the rate of the lower of 11% of the sales proceeds or 22% of the net gain, if the transfer is made to a corporate buyer. It would also be required to file a tax return and pay income tax, which can be offset by the withholding tax already paid as credit. Korean tax treaties do not provide an exemption from such capital gain (gain from the transfer of immovable property).

In the case of a foreign investment in shares in a Korean company, the foreign investor is generally subject to withholding tax, which is exempt under many Korean tax treaties. However, if the relevant Korean company constitutes a "real property holding company" (generally defined as a company with 50% or more of its total assets in the form of real property), then the foreign investor would be subject to Korean tax in the same manner as investing in real property discussed above. Most Korean tax treaties (with a few exceptions) do not provide an exemption from capital gains from the transfer of real property holding company shares.

b. CbC and Other Reporting Regimes

Korea is generally in line with the global trend of increasing the level of information reporting and exchange of information with other jurisdictions. It is already part of the automatic exchange of information regime under the MCAA and a party to the IGA under the U.S. FATCA. It instituted its own FFAR (foreign financing account report) regime.

In relation to transfer pricing, Korea has long maintained extensive documentation requirements in line with the OECD guidelines and recently implemented the BEPS driven additional requirements.

i Master File and Local File

Korean companies or foreign companies with permanent establishments in Korea are obligated to prepare and file a Master File and a Local File within 12 months after the fiscal year end if both of the following conditions are satisfied:

- The Korean entity has annual sales revenue greater than KRW100 billion; and
- The Korean entity annually conducts cross-border related party transactions exceeding KRW50 billion.

Both Master File and Local File must be prepared in or translated into the Korean language. The Master File may initially be submitted in English but must be submitted in Korean within one month after the submission of the English Master File.

ii Country by Country Report ("CbCr")

In cases where a Korean taxpayer meets one of following conditions, the taxpayer is obligated to electronically file a CbCr both in Korean and English no later than 12 months after the fiscal year end of the Korean taxpayer:

- The Korean ultimate parent company's consolidated sales revenue exceeds KRW1 trillion in the previous year;
- The foreign ultimate parent company is not obligated to file a CbCr according to the statutory regulation of the country in which the foreign ultimate parent company is located, and the foreign ultimate parent company's consolidated sales revenue exceeds EUR750 million in the previous year; or
- The foreign ultimate parent company is obligated to file a CbCr according to the statutory regulation of the country in which the foreign ultimate parent company is located, but the Korean tax authority (National Tax Service, "NTS") cannot successfully obtain the CbCr from the cross border tax jurisdiction.

Also, in case where a Korean ultimate parent company or the Korean taxpayer of a foreign multinational company is obligated file a CbCr, the Korean ultimate parent company or the Korean taxpayer must file a "Notification of CbCr Reporting Entity" form no later than six months after the fiscal year end of the Korean ultimate parent company or the Korean taxpayer.

If the taxpayer fails to submit one of the above "BEPS reports" or files them with false or incomplete information, the taxpayer would be subject to a non-compliance penalty of KRW30 million per BEPS report.

10. TRANSFER PRICING

a. Overview

The Korean transfer pricing ("TP") rules (stipulated in the Law for Coordination of International Tax Affairs ("LCITA"), which governs international tax matters between "overseas related parties"), are legislated based on the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines).

Accordingly, the Korean TP rules generally purport to be consistent with the underlying principles of the OECD Guidelines. However, as the OECD Guidelines do not have the force of law (unlike the Korean TP rules in the domestic legislation), the Korean tax authority does not always accept a taxpayer's argument if the argument is based only on the OECD Guidelines.

Under the Korean TP rules, if a foreign company directly or indirectly owns at least 50% of the voting shares of a Korean company, or if one transaction party substantially controls the business policy of the other transaction party and at the same time, they have a common interest to adjust income (through an investment in capital, trade in goods or services, grant of a loan, etc. between the two parties), the two parties are considered to be "overseas related parties."

b. Transfer Pricing Methods

Article 5 of the LCITA prescribes five TP methods: (i) comparable uncontrolled price method, (ii) resale price method, (iii) cost plus method, (iv) transactional net margin method, and (v) profit split method. Other reasonable methods can be used in consideration of facts and circumstances of a related party transaction, only if the five methods are not applicable. A taxpayer is allowed to select the most appropriate TP method of the aforementioned methods.

c. Contemporaneous Transfer Pricing Documentation

Whilst companies that are not obligated to submit BEPS reports (i.e. Master File, Local File and CbCr) (please refer to Section 11. for discussions on BEPS reports) are not specifically required to prepare TP documentation by a specific date, in case of a tax audit, taxpayers have an incentive to prepare one by the time of filling the corporate tax return (three months from the fiscal year end date), as underreporting penalty (approximately 10% of the additional tax assessment, or 60% in case of a fraud) resulting from a TP adjustment will be exempt if a taxpayer has prepared and maintains contemporaneous TP documentation by such date. To be eligible for this under-reporting penalty wavier, the TP documentation must be submitted within 30 days upon a request by the tax authorities.

However, even if the contemporaneous TP documentation is prepared and maintained, the underpayment penalty, which is an interest payment in nature, calculated as 0.022% per day of the tax assessment on a TP adjustment would not be exempt.

d. Benchmarking: Searching for Comparables

The National Tax Service ("NTS") is highly likely to request a local benchmark based on the local data of KISLINE if a tested party is a Korean company. Also, the NTS has its own formula to calculate the interquartile range prescribed in rulings under the LCITA.

e. Advance Pricing Agreement ("APA") opportunity

TP documentation cannot be an absolute proof that a taxpayer has conducted intercompany transactions pursuant to the arm's length principle, which means that such documentation cannot prevent tax audits. Accordingly, if a taxpayer would like to have a binding arm's length rate approved by the NTS (i.e. avoid tax audits), only concluded unilateral, bilateral or multilateral APAs allow the taxpayer to avoid future transfer pricing disputes.

f. Transfer Pricing Scrutiny

Recently, when the NTS conducts a tax audit, the likelihood of overseas related party transactions being reviewed during the tax audit has increased. Also, during the audit, the NTS often requests TP documentation. Generally, if cross border transactions are reviewed as part of a tax audit, the tax auditors could challenge the TP method used by the taxpayer and would impose an alternative TP method. Even if the tax auditors acknowledge and accept the TP method selected by the taxpayer, they are highly likely to challenge the comparables selected by the taxpayer.

The NTS closely monitors companies whose profitability suddenly drops, or profits fluctuate over several years. Also, the NTS is likely to scrutinise companies paying high royalties or high management service fees abroad, having financial transactions with overseas related parties or undergoing significant business restructuring.

g. Safe Harbour Rules

A safe harbour rule for interest rates applicable to cross border intercompany borrowing and lending transactions is stipulated in the LCITA.

According to Article 2-2(3) of the Ministerial Decree, such financial transactions are determined to be conducted under the arm's length principles for the Korean transfer pricing purposes if a Korean taxpayer applies following interest rates (i.e. deemed arm's length interest rates):

- Where a Korean taxpayer lends funds to its overseas related party: the bank overdraft interest rate as prescribed by Article 43(2) of the Ministerial Decree of the Corporate Income Tax; or
- Where a Korean taxpayer borrows funds from its overseas related party: 12 month Libor of the loan currency as of the last day of the preceding fiscal year plus 1.5%, if the relevant Libor is not available, the USD based Libor shall apply.

According to the tax law amendment in 2020, the Korean TP rules have adopted a simplified approach for low value adding intragroup services between a domestic taxpayer and its overseas related party in line with BEPS Action 8 - 10.

To qualify as low value adding services, following requirements shall be met under Articles 6-2(2) and (3) of the Presidential Decree.

- Are of a supportive nature and have no direct relation to the core business activities of the group;
- Do not involve any of the following activities: a) research and development, b) raw material purchase, manufacturing, sales, marketing and promotion activities, c) financial transactions, insurance and reinsurance d) extraction, exploration or processing of natural resources;
- Do not require the use or creation of unique and valuable intangibles;
- Do not involve the assumption or control of significant risk by the service provider;
- No services of similar nature are rendered or received from a third party.

If the arm's length price of the low value adding intragroup service is calculated at 5% markup on all direct and indirect costs incurred for rendering the service, it would be deemed that such service fee is determined at the arm's length price for Korean TP purposes.

The arm's length price of the low value-adding intra-group service shall be 5% markup on all direct and indirect costs incurred for rendering or receiving services under the Korean transfer pricing purposes.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

After the acquisition takes place, corporate consolidations and liquidations of redundant entities may be considered. In the case of a Korean corporation and its wholly owned Korean subsidiary, a consolidated tax return or dividend received deduction ("DRD") should be investigated, in order to determine whether the existing entities could be maintained without giving rise to a significant tax leakage. If a corporate consolidation is desired, a merger between the parent and its wholly owned subsidiary could be affected in a tax free manner with minimal requirements. Even if it does not involve a parent and a subsidiary, a tax free merger between two Korean corporations could generally be affected to consolidate related companies pursuant to the prescribed requirements analogous to the comprehensive stock transfer/exchange discussed above.

a. Intellectual Property

Global companies after acquisition may wish to move intellectual property ("IP") or change licensing arrangements within the group for various reasons. A transfer of IP out of Korea would give rise to corporate income tax for the transferring Korean entity. If the consideration for the IP transfer is determined based (contingent) on the productivity, use or disposition of such property, it may in some cases be recharacterised as royalties, as opposed to capital gain, which would be afforded a very different tax treatment.

Transfers or licensing of IPs between related parties tend to be strictly scrutinised by the Korean tax authority from the valuation and transfer pricing perspective and require special attention in planning.

b. Special Tax Regimes

If any acquired company holds a special tax status (e.g. qualified entity for a local tax exemption, or collective investment vehicle under the financial regulations), care should be taken to maintain the qualification requirements to continue the status. There are various types of foreign investment regimes, whereby foreign invested companies meeting certain criteria are given corporate income tax exemption or reduction and customs and local tax benefits during a prescribed period; however, such benefits pertaining to corporate income tax were phased out from 2019.

c. Use of Hybrid Instruments

Use of hybrid instruments may be considered, subject to careful consideration of the anti-abuse rules regarding the characterisation and interest deductibility discussed in Sections 7 and 12.

d. Principal/Limited Risk Distribution or Similar Structures

Various forms of distribution structure may be implemented, provided that the economic substance (assets, functions, and risks) are in line with the structure chosen.

12. OECD BEPS CONSIDERATIONS

Korea has been implementing the OECD recommendations in the BEPS Action Plan into domestic law, and these amendments to domestic tax law (made as a result of the BEPS Project) have a direct impact on various forms of M&A transactions and global businesses of multinational enterprises. Below is a summary of the recent changes specifically relating to the OECD BEPS Project.

a. Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information ("CRS MCAA")

The CRS MCAA, initially designed to combat cross border tax evasion in recognition of the need for an automatic exchange of financial information, is a multilateral framework agreement to implement the OECD Common Reporting Standard ("CRS"). Korea was one of the first countries to sign and activate the CRS MCAA: it signed the CRS MCAA in 2014 and commenced an automatic exchange of financial information with 45 countries in September 2017. The number of countries that are exchanging information with Korea under the CRS MCAA is increasing every year. As of November 2021, a total of 109 countries are exchanging financial information with Korea under the CRS MCAA.

b. Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI")

Korea signed the BEPS MLI on 7 June 2017 and the National Assembly approved ratification of the MLI on 10 December 2019, so that on 1 September 2020, the MLI entered into force in Korea. In addition to making amendments to domestic tax law and policy, Korea, by signing the MLI, ensured its bilateral tax treaties are swiftly modified to implement the treaty related measures resulting from the BEPS Project. Korea chose to opt in to only a minimum set of MLI provisions at the present but is expected to expand the scope gradually in the future.

c. Transfer Pricing Reports

Korea implemented most of the recommendations from Action 13 (transfer pricing documentation) through the tax law amendments in 2015. Please refer to Section 9. for detailed discussion on this topic.

d. Limitation on Deductibility of Interest Payments

Korea introduced a new rule to limit the deductibility of interest payments in order to combat tax avoidance by multinational enterprises through an adjustment of debt in a group entity and related interest payments. From 2019, the new rule operates to deny the deduction for the amount of net interest expense (paid to an overseas related company) which exceeds 30% of the taxable income (before depreciation and interest, "EBITDA") of the Korean company.

Between this rule and the existing thin capitalisation rule, the rule that results in a larger amount of deduction would apply over the other. Also, this rule would take precedence over the new BEPS driven hybrid mismatch rule (discussed below).

e. Neutralising the Effects of Hybrid Mismatch Arrangements

As part of the 2017 tax law amendments, Korea introduced a new rule which limits the deduction of expenses relating to cross border hybrid financial instrument transactions between a Korean corporation (including the Korean branch of a foreign corporation) and its foreign related party. As noted in Section 6, where a payment made in relation to a hybrid financial instrument is wholly or partly not taxable in the counterparty jurisdiction, the new rule applies to deny the deduction for the non-taxable portion.

f. Abolishment of the Tax Exemption for Foreign-Invested Companies

In order to improve the transparency of Korea's tax incentive schemes and to provide a level playing field between domestic and foreign capital by revising harmful preferential tax regimes, Korea repealed the corporate income tax exemption previously available for foreign-invested companies engaging in the new growth sector businesses and in designated foreign investment zones and free economic zones.

g. Expanded Scope of Permanent Establishment

As part of the 2018 tax law amendments, the scope of foreign companies' PE has been broadened and the source country taxation of foreign company income has been strengthened, reflecting the updates made to the 2017 OECD Model Tax Convention incorporating the BEPS Project initiatives. Accordingly, places used solely for the purpose of purchasing/storing/maintaining products are only excluded from the scope of PE if the activity related to the relevant place is preparatory or auxiliary in nature. Further, a foreign company may be deemed to have a PE in Korea even if its agent does not have legal authority to conclude contracts on behalf of the foreign company, to the extent the agent plays an important role leading to the conclusion of contracts by the foreign company.

h. Summary of domestic legislative changes that have been made/proposed in relation to the OECD BEPS Action Plan (as of 2018):

Action Plan		BEPS Issues	Current Status
1	Digital economy	Tax challenges of the digital economy including difficulties posed by the digital economy (e.g. online businesses) for the application of existing international tax rules.	(2014) VAT imposed on applications provided in offshore open market. (2018) Scope of VAT imposition expanded (e.g. cloud computing, advertising, intermediary services). (2020) The Korean government announced that it will keep pace with the OECD's plan to implement Pillars One and Two by 2023.
2	Hybrid mismatch arrangements	Hybrid mismatch arrangements used to achieve double non-taxation by exploiting differences in the tax treatment of an entity or instrument under the laws of two or more tax jurisdictions.	(2017) Rules introduced to neutralise the effects of hybrid mismatch arrangements.
3	CFC rules	Artificial profit shifting and long-term deferral of taxation by taxpayers with a controlling interest in a foreign subsidiary by not distributing the subsidiary income to the controlling entity.	CFC rules already in place (CFC income treated as a deemed dividend). (2016) Scope of CFC expanded (strengthened 15% ETR test).
4	Interest deductions	Base erosion in the source country through the use of interest expenses, including the use of debt to achieve excessive interest deductions.	(2017) New interest deduction limitation rule introduced.

Action Plan		BEPS Issues	Current Status
5	Harmful tax practices	Competitive preferential tax regimes benefiting income from geographically mobile activities (IP).	(2017) Enabled the exchange of APA (Advance Pricing Arrangement) information between countries. (2018) Abolishment of the corporate income tax exemption previously available for foreign-invested companies.
6	Treaty abuse	Claiming treaty benefits in situations where these benefits were not intended to be granted (e.g. through the establishment of a conduit company).	(Continuous) Incorporated when entering into or amending tax treaties > Limitation on access to tax treaty benefits.
7	PE status	Artificial avoidance of PE status.	(2018) Broadened the scope of PE.
8-10	Transfer pricing	Profit shifting to low taxed jurisdictions through intangibles and high risk transactions.	(2018) Amendments regarding substance over form and intangibles ("DEMPE").
11	BEPS data analysis	Tax authority does not have sufficient information on tax avoidance schemes used by multinational enterprises.	<Considering legislative changes>.
12	Disclosure of aggressive tax planning		
13	TP documentation	Tax authority does not have sufficient TP information.	(2015) Master File & Local File. (2016) Country by country report.
14	Dispute resolution	Obstacles preventing countries from solving treaty related disputes.	(2016) Allowed the application for a Mutual Agreement Procedure (MAP) in the source country.
15	MLI	Takes a long time to implement the BEPS recommendations into bilateral tax treaties.	(2017) Signed the MLI. (2019) Approved ratification of the MLI. (2020) MLI entered into force in Korea on 1 September 2020.

13. ACCOUNTING CONSIDERATIONS

In the case of both combinations and divestitures, an important consideration would be whether the relevant transaction would require the recognition of profit/loss. If it is treated as a recognition event, the acquired assets would have to be recorded at fair market value. If not, then their book value would be carried over. As a general matter (subject to exceptions), a combination or divestiture transaction would be treated as recognition event and require the determination of the market value; however, if the target remains under the same controlling party after the transaction, this would not be the case. Please also refer to the discussion of accounting rules in Section 3. above.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Under Korean corporate law, a corporation may make a distribution to shareholders out of (i) paid-in capital (generally speaking, representing the aggregate of the par value of all shares issued and outstanding), (ii) capital surplus (consisting of share premium, and other items), but only to the extent the capital surplus exceeds 1.5 times the paid in capital, and (iii) distributable earnings (retained earnings, less a legally required reserve and certain other items).

Distributions out of (iii) would be treated as dividends and trigger income tax for the shareholders. Distributions out of (i) would be treated as capital reduction and would be treated as dividend (and income tax) for shareholders, only to the extent that the amount distributed exceeds the shareholders' tax basis in the shares. Distributions out of (ii) would be treated as a reduction in the capital surplus and would generally not be treated as dividends for the shareholders.

b. Substance Requirements for Recipients

Korean tax law follows the substance over form principle and endeavours to apply taxation based on "substance" (not mere formality) of the transaction and in reference to the "substantive" (as opposed to nominal) owner of income. Under the relevant case law, the same principle is held to apply in the context of applying tax treaties. In order for a foreign recipient of Korean source income to claim a treaty benefit, it has to meet the rigorous "substance" requirement. That is, it needs to substantiate its status as "substantive owner," by showing its establishment and involvement in the transaction were for a valid business purpose not a tax avoidance purpose and it has a sufficient level of physical and human resources in its residence jurisdiction, has a substantial business operation and is generally subject to income tax in its jurisdiction.

c. Tax Rulings and Clearances

Tax rulings are available in Korea to assist taxpayers with unclear tax issues. There are a (regular) tax ruling and an advance tax ruling. Taxpayers applying for either ruling are required to disclose their identity, but an advance tax ruling requires more details about the parties and transaction. An advance tax ruling needs to be requested before the transaction actually takes place and, once issued, is binding on the relevant parties.

Tax rulings are widely used in the context of M&A transactions to obtain certainty on unclear tax positions. When posed with questions that are fact intensive or controversial (e.g. issues pending in the judicial courts), however, the tax authority may refuse to respond, delay the response or respond in not a meaningful way (responding by just reciting the legal requirements). Accordingly, practitioners would usually have a preliminary discussion with the responsible tax authority before proceeding with the formal application.

Taxpayers could obtain tax clearance certificates issued by the responsible tax authority, certifying that tax returns and tax payment that came due have been filed and paid. Tax clearance certificates could be useful for verifying the taxpayer (e.g. the target company to be acquired) has been generally compliant with their tax obligations, by filing tax returns and paying taxes specified in the tax returns; however, they do not verify whether tax returns filed were accurate, and therefore, do not assess the possibility of any contingent tax liability.

15. MAJOR NON-TAX CONSIDERATIONS

When considering the acquisition of a Korean target, the form of acquisition should be carefully considered. Careful examination of the level of compliance and internal control over the business operation should be made in the process of determination. If the target has a substantial operating history, with the possibility of contingent liabilities, the acquiror would usually prefer setting up a new Korean entity to acquire the target's business in the form of an asset transfer, to minimise the risk.

The Korean legal system provides for regulations governing various industries, some of which could be quite complex; the regulatory environment and anticipated change (in addition to the business environment) concerning the target's business should be taken into consideration. It should also be noted that Korea has a rigid labour law regime with many pro-labour provisions designed to protect workers' rights.

There are a number of regulatory rules that could restrict the contemplated transaction or give rise to government reporting or public disclosure requirements, such as antitrust, foreign ownership restrictions (e.g. telecom, aviation, media, and defence industries), foreign exchange regulations and trading regulations concerning shares in listed companies, to name a few. These issues should be carefully reviewed in the transaction structuring stage.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Arab Emirates	5/10	10	10	
Argentina	20	14 / 20	20	[1] [27] [28]
Australia	15	15	15	
Austria	5 / 15	10	2 /10	[2] [3]
Belgium	15	10	10	
Brazil	10	10 / 15	10 / 25	[4] [5]
Cambodia	10	10	10	
Canada	5 / 15	10	10	[2]
Chile	5 / 10	10 / 15	5 / 15	[2] [6] [7]
China	5 / 10	10	10	[2]
Colombia	5 / 10	10	10	[8]
Croatia	5 / 10	5	0	[2]
Cyprus	20	14 / 20	20	[1] [27] [28]
Czech Republic	5	5	0 / 10	[9]
Denmark	15	15	10 / 15	[10]
Finland	10 / 15	10	10	[2]
France	10 / 15	10	10	[11]
Germany	5 / 15	10	2 / 10	[2] [3]
Greece	5 / 15	8	10	[2]
Hungary	5 / 10	0	0	[2]
India	15	10	10	
Indonesia	10 / 15	10	15	[2]
Ireland	10 / 15	0	0	[11]
Italy	10 / 15	10	10	[2]
Japan	5 / 15	10	10	[2]
Luxembourg	10 / 15	10	10 / 15	[2] [12]
Malaysia	10 / 15	15	10 / 15	[2] [13]
Malta	5 / 15	10	0	[2]

KOREA

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Mauritius [1]	20	14 / 20	20	[27] [28]
Mexico	0 / 15	5 / 15	10	[14] [15]
Netherlands	10 / 15	10 / 15	10 / 15	[2] [16] [17]
Norway	15	15	10 / 15	[17]
Philippines	10 / 25	10 / 15	10 / 15	[1] [18] [19] [20]
Poland	5 / 10	10	5	[11]
Portugal	10 / 15	15	10	[2]
Puerto Rico	20	14 / 20	20	[1] [27] [28]
Romania	7 / 10	10	7 / 10	[2] [17]
Russia	5 / 10	0	5	[21]
Serbia	5 / 10	10	5 / 10	[2] [22]
Singapore	10 / 15	10	5	[2]
Slovakia	5 / 10	10	0 / 10	[2] [9]
Slovenia	5 / 15	5	5	[2]
South Africa	5 / 15	10	10	[1] [2]
Spain	10 / 15	10	10	[2]
Sweden	10 / 15	10 / 15	10 / 15	[2] [23] [17]
Switzerland	5 / 15	5 / 10	5	[11] [15]
Turkey	15 / 20	10 / 15	10	[2] [24]
Turkmenistan	10	10	10	
United Kingdom	5 / 15	10	2 / 10	[2] [3]
United States	10 / 15	12	10 / 15	[1] [25] [26]
Venezuela	5 / 10	5 / 10	5 / 10	[11] [15] [7]
Vietnam	10	10	5/15	

Footnotes	
1	A 10% local income surtax applies in addition to the rates indicated above.
2	Dividends - Lower rate applies in case of equity ownership of 25% or more.
3	Royalties - 2% rate applies to royalties paid for use of or the right to use industrial, commercial, or scientific equipment.
4	Interest - 10% rate applies if the loan period extends to 7 years or more, the recipient is a financial institution and the loan is used for certain designated purposes.
5	Royalties - 25% rate applies to royalties associated with the use of trademarks or trademark rights.
6	Interest - 10% rate applies when a recipient of interest income is a bank or an insurance company.
7	Royalties - 5% rate applies to royalties paid for the use of or the right associated with industrial, commercial, or scientific equipment.
8	Dividends - Lower rate applies in case of equity ownership of 20% or more.
9	Royalties - 0% rate applies to royalties paid for the use of academic rights.
10	Royalties - 10% rate applies to royalties paid for the use of or the right associated with industrial activities.
11	Dividends - Lower rate applies in case of equity ownership of 10% or more.
12	Royalties - 10% rate applies if it is for the use of or the right to use industrial, commercial, and scientific equipment or information.
13	Royalties - 15% rate applies if royalties are for use of or the right to use cinematography films or tapes for radio or television broadcasting or any copyright of literary or artistic work.
14	Dividends - 0% rate applies in case of equity ownership of 10% or more.
15	Interest - 5% rate applies if a recipient is a bank.
16	Interest - 10% rate applies if the term of the loans exceeds 7 years.
17	Royalties - Lower rate applies if it is for the use of or the right to use a patent, trademark, design, or secret formula, or industrial, commercial, and scientific equipment or information.
18	Dividends - 10% rate applies in cases of equity ownership of 25% or more, or dividend paid by a resident company engaged in a preferred pioneer area and registered with the Board of Investment.
19	Interest -10% rate applies in cases where the interest is paid in respect of public offering of bonds, debentures, or similar obligations or interest paid by a company that is a resident of the Philippines, registered with the Board of Investment, and engaged in preferred pioneer areas of investment under the investment incentive laws.
20	Royalties - 10% rate applies in case of royalties paid by a company that is a resident of the Philippines, registered with the Board of Investment, and engaged in preferred pioneer areas of investment under the investment incentives laws.
21	Dividends - 5% rate applies if a recipient holds 30% or more of equity interest in the amount of at least USD100,000.
22	Royalties - 5% rate applies to royalties for use of copyrighted literature and music.
23	Interest -10% rate applies when a recipient of interest income is a bank and income is connected with a loan with a term in excess of seven years.
24	Interest - 10% rate applies if the term of the loan exceeds two years.

Footnotes	
25	Dividends - 10% rate applies if equity ownership is 10% or more and not more than 25% of the gross income of a paying corporation for a preceding tax year consists of interest or dividends.
26	Royalties - 10% rate applies to royalties for use of copyrighted literature, music, films, and television or radio broadcasts. Otherwise, 15% rate applies.
27	Interest - 14% rate applies if interest arises from bonds issued by a Korean company or government bodies.
28	Royalties - Fees arising from rental of industrial, commercial, scientific equipment, etc. are classified as rental income subject to 2% withholding tax.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

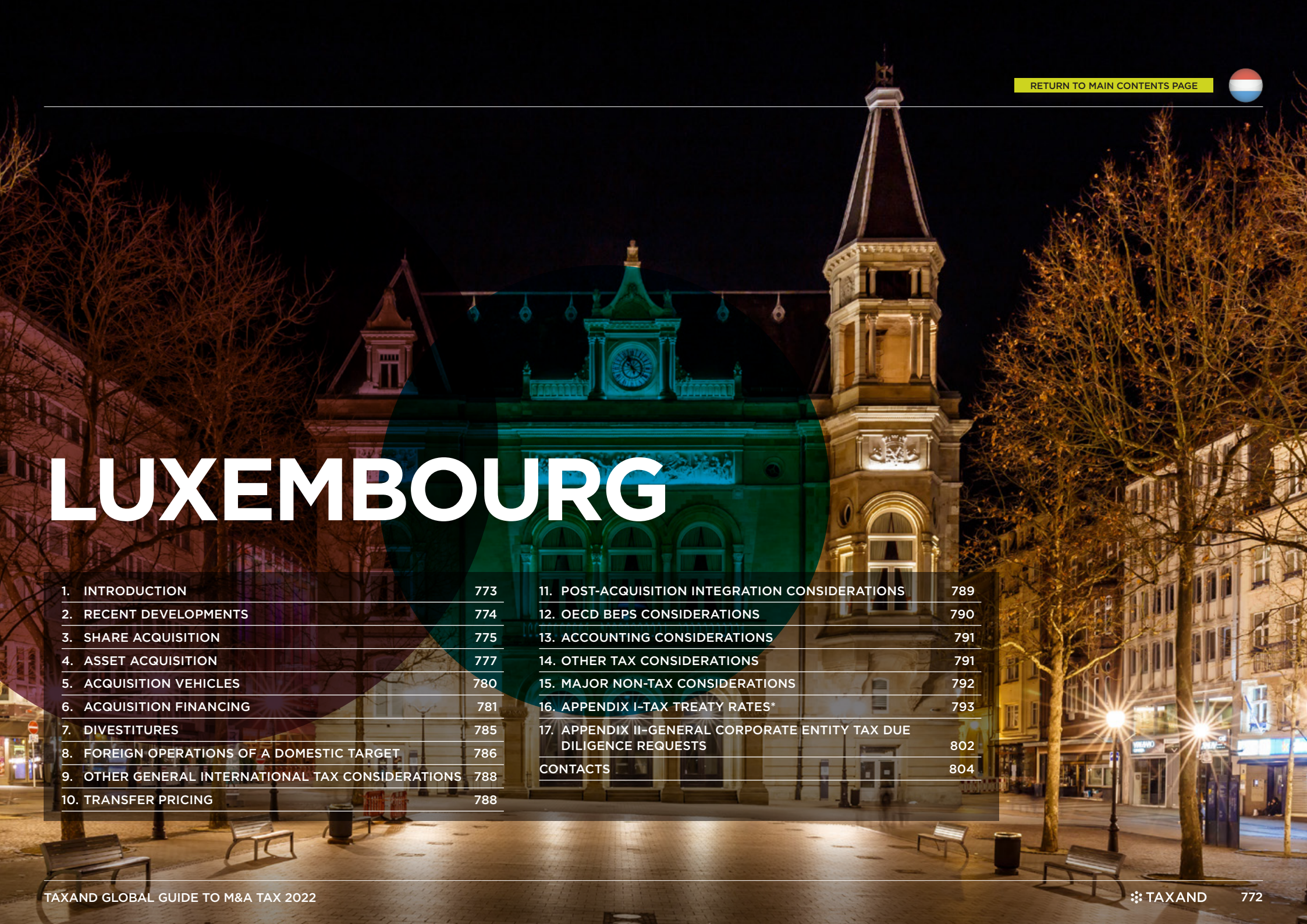
Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Tax registration certificates - All business places under the VAT Law.
2	Tax Due Diligence	General	Organisation chart(including employees information).
3	Tax Due Diligence	General	Articles of incorporation.
4	Tax Due Diligence	General	Minutes of shareholders' meetings for the last 7 years.
5	Tax Due Diligence	General	Minutes of BOD meetings for the last 7 years.
6	Tax Due Diligence	General	Policy of payroll and bonus, retirement benefit to directors.
7	Tax Due Diligence	General	Documents for company policy on employees benefits.
8	Tax Due Diligence	General	Opinion letters or memorandums for tax advice rendered by outside tax advisors, correspondence with the tax authorities (e.g. tax rulings, TP reports).
9	Tax Due Diligence	General	National tax audit files, if any.
10	Tax Due Diligence	General	Documents regarding national tax appeal , if any.
11	Tax Due Diligence	General	National tax clearance certificate (the most recent date).
14	Tax Due Diligence	Financials	Financial statements for last 7 years.
15	Tax Due Diligence	Financials	Annual reports for last 7 years.
16	Tax Due Diligence	Financials	General ledgers for last 7 years and the current year to date.
17	Tax Due Diligence	Corporate Income Tax	Hardcopy or softcopy of corporate income tax returns (including amended returns).
18	Tax Due Diligence	Corporate Income Tax	Description of major transactions between the Company and related parties for the last 7 years. [More detailed information on notes to financial statements in audit reports].
19	Tax Due Diligence	Corporate Income Tax	Service agreement for shopping mall business development and the documents proving the agreed services have been actually provided as disclosed on notes to financial statements in audit reports.
20	Tax Due Diligence	Corporate Income Tax	Agreement on borrowings from related parties as disclosed on the notes to financial statements in audit reports.
21	Tax Due Diligence	Corporate Income Tax	Financial lease agreements with related parties as disclosed on the notes to financial statements in audit reports.
22	Tax Due Diligence	Value Added Tax	VAT returns with supplementary documents for the last 7 years.
23	Tax Due Diligence	Value Added Tax	Amended VAT returns, if any.

Nº.	Category	Sub-Category	Description of Request
24	Tax Due Diligence	Value Added Tax	Contracts for purchase of real property and related VAT transaction summary for the last 7 years.
25	Tax Due Diligence	Withholding Tax(ITA, CITA)	Monthly withholding tax report for the last 7 years.
26	Tax Due Diligence	Withholding Tax(ITA, CITA)	A full set of the form of application for reduced treaty WHT rate and supportive documents which were collected from foreign recipients, if any.
33	Tax Due Diligence	Local Taxes (Deemed acquisition tax, Property tax, etc.)	Description and list of local taxes reported and paid during the period of the last 7 years (related to Gross real estate tax, Property tax, Deemed Acquisition tax, etc.).
34	Tax Due Diligence	Local Taxes (Deemed acquisition tax, Property tax, etc.)	Details on acquisition of fixed assets and real property and related deemed acquisition tax calculation, filing and payment for the last 7 years.
35	Tax Due Diligence	Local Taxes (Deemed acquisition tax, Property tax, etc.)	Local tax clearance certificate (the most recent date).
36	Tax Due Diligence	Local Taxes (Deemed acquisition tax, Property tax, etc.)	Certificate of local taxes imposition for the last 7 years.
37	Tax Due Diligence	Local Taxes (Deemed acquisition tax, Property tax, etc.)	Documents regarding local tax appeal, if any.
38	Tax Due Diligence	Local Taxes (Deemed acquisition tax, Property tax, etc.)	Local tax audit files, if any.
39	Tax Due Diligence	Local Taxes (Deemed acquisition tax, Property tax, etc.)	Details of local tax exemption for the last 7 years.

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LUXEMBOURG

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LUXEMBOURG

1. INTRODUCTION

a. Forms of Legal Entity

Corporate Income Tax ("CIT") applies to corporate entities, including: the public limited liability company (*société anonyme*), the Simplified Stock company (*société par actions simplifiée*), the partnership limited by shares (*société en commandite par actions*), the private limited liability company (*société à responsabilité limitée*), the simplified private limited liability company (*société à responsabilité limitée simplifiée*), the European Company (*société européenne*). CIT does not apply to tax transparent entities, such as general partnerships, limited partnerships or European economic interest groupings. The latter are not subject to CIT. Instead, the partners are taxed according to their share in the partnership's income.

As far as Municipal Business Tax ("MBT") is concerned, it also applies to partnerships, as it is levied on any income generated on a Luxembourg commercial activity. Partnerships may be subject to MBT if either they perform a commercial activity or, under certain conditions, if their activity is deemed commercial because of the commercial nature of their partners. For example, the common limited partnership (*Société en Commandite Simple, SCS*) and the special limited partnership (*Société en Commandite Spéciale, SCSp*) are considered as performing an economic activity if at least one of their general partners is a capital company holding an interest of at least 5%. When SCSs and SCSps qualify as alternative investment funds within the meaning of the alternative investment fund management directive ("AIFMD"), their activity is never considered as commercial, meaning that they will only be subject to MBT if their activity is commercially tainted because of the commercial nature of their partners.

b. Taxes, Tax Rates

The CIT rate is 17% for taxable income exceeding EUR200,000. In addition, the reduced CIT rate of 15% applies to taxable corporate income not exceeding EUR175,000. Finally, income exceeding EUR175,000 without exceeding EUR200,000 is taxed at an intermediary rate between 15% and 17%.

Luxembourg corporate entities are also subject to a surcharge (contribution to the employment fund) corresponding to 7% of the CIT. Finally, they are subject to MBT on their income (at a rate of 6.75% for Luxembourg City). This brings the global corporate tax rate to 24.94% (17% + 1.19% + 6.75%) and 22.80% (15% + 1.05% + 6.75%) for companies subject to the reduced CIT rate of 15%.

Corporate entities are subject to net wealth tax ("NWT"), which is a state tax levied on the net wealth of companies, charged on their so-called "unitary value" (generally equal to the net asset value of the company – subject to certain exemptions and adjustments). The NWT rate is 0.5% on the part of the net wealth which is lower or equal to EUR500 million and 0.05% on the part of the net wealth exceeding EUR500 million. A minimum NWT of EUR4,815 applies to companies with financial assets, transferable securities bank deposits and receivables against related parties exceeding both EUR350,000 and 90% of their total balance sheet. In the case where the company does not meet these requirements, the minimum NWT varies between EUR535 and EUR32,100, depending on the level of the total balance sheet.

c. Common divergences between income shown on tax returns and local financial statements

In Luxembourg, the values reflected in the tax balance sheet of a company generally correspond to the values of the local financial statements, unless a different valuation is required for tax purposes.

The tax profit corresponds to the difference between the net assets invested at the end of the financial year and the net assets invested at the beginning of the financial year, increased by the withdrawals made and decreased by capital contributed during the period.

2. RECENT DEVELOPMENTS

a. BEPS related developments

- The Luxembourg law of 7 March 2019 ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS ("MLI").
- The law of 21 December 2018 implemented the EU Anti-Tax Avoidance Directive ("ATAD"). The aim of ATAD is to implement at EU level the Base Erosion and Profit Shifting ("BEPS") recommendations made by the OECD and the G20 in October 2015. The new law introduces the following ATAD measures: a limitation to the tax deductibility of interest payments, an amendment to the existing general anti-abuse rule ("GAAR"), the introduction of non-genuine arrangement CFC rules, a framework to tackle hybrid mismatches and new exit taxation rules.
- The law of 21 December 2018 also introduced the following non-ATAD (but still BEPS-related) tax changes: as from 2019, the tax neutrality provision applicable to a specific category of exchange operations involving the conversion of a loan or other debt instruments into shares of the borrower has been abolished. In addition, the permanent establishment definition has been amended.
- The law of 20 December 2019 implemented the amended anti-hybrid rules of the EU Anti-Tax Avoidance Directive 2 ("ATAD 2") which are in force in Luxembourg since 1 January 2020.
- The law of 25 March 2020 implemented the EU Directive of 25 May 2018 as regards mandatory exchange of information in the field of taxation in relation to reportable cross-border arrangements ("DAC 6").

b. COVID-19 crisis related tax developments

The law of 24 July 2020 implemented the optional deadline extensions of EU Directive of 24 June 2020 to address the urgent need to defer certain time limits for the filing and exchange of information in the field of taxation because of the COVID-19 pandemic. The law introduced mainly a six month deadline extension for reporting under the mandatory disclosure regime applicable to tax intermediaries ("DAC6") and a three month deadline extension for reporting under both the Common Reporting Standards ("CRS") and the Foreign Account Tax Compliance Act ("FATCA").

The Luxembourg Government has also concluded some agreements with its three bordering countries, Belgium, France and Germany, in order to anticipate the income tax implications for cross border workers having to work from home due to the COVID-19 crisis. The protocols to the double tax treaties concluded by Luxembourg with Belgium, France and Germany provide rules allowing cross border workers to perform their activity outside of their employment State for a maximum amount of days (19 days in Germany, 24 days in Belgium and 29 days in France) while remaining taxable in their employment State (Luxembourg in most cases). Given that the maximum amount of days could easily be exceeded during the COVID-19 crisis due to travel restrictions and the requirement of "social distancing", the Luxembourg Government reached an agreement with these three countries according to which the days spent outside of Luxembourg due to the COVID-19 crisis would not be taken into account.



3. SHARE ACQUISITION

a. General Comments

To take control over a business it can be envisaged to either buy the shares of the company operating the targeted business (share acquisition) or buy the business directly (asset acquisition). The main tax advantage of a share purchase is the tax cost since asset sales are generally fully taxable for the seller while share sales are generally tax exempt. Furthermore, share deals enable the target company to continue to carry forward its losses.

b. Tax Attributes

In Luxembourg, a share deal enables the target company to continue to carry forward its losses. While losses incurred as from 2017 can only be carried forward over 17 years, losses incurred before 2017 may be carried forward indefinitely. In practice, the Tax Authorities may deny the carry forward of losses in case of both a change of control (the shares of the company are transferred to new shareholder(s)) and a change of activity (the loss making activity is no longer performed after the change of control and a new profitable activity is started) if it can be evidenced that the sole purpose of the transaction was to use the losses of the target in order to offset income derived from a new profitable activity.

c. Tax Grouping

Tax consolidation (vertical or horizontal) is allowed upon request for Corporate Income Tax ("CIT") and Municipal Business Tax ("MBT") purposes, but not for Net Wealth Tax ("NWT") purposes. Tax consolidation is available only upon filing a written request with the Luxembourg Tax Authorities. The fiscal consolidation becomes effective retrospectively as of the beginning of the fiscal year during which the consolidation was requested. The consolidation has to be maintained during at least five tax years.

Each consolidated company files its own tax returns. In addition, the integrating entity files a single tax return combining the individual results of the consolidated entities with corrections applied in order to eliminate from the taxable result of the group any double deduction or double taxation resulting from the application of the tax consolidation regime. Intercompany operations do not need to be eliminated. Losses incurred before the tax consolidation is put in place can be used during the consolidation by the integrating entity but only up to the profit realised by the company that incurred them. Losses incurred during the tax consolidation can only be used by the integrating entity during as well as after the tax consolidation. Where the tax consolidation is "broken" before the five year period has elapsed, the entities forming part of the consolidation will be retroactively taxed on a standalone basis.

d. Tax Free Reorganisations

Luxembourg corporate income tax law provides for a special tax neutral regime applicable to certain qualifying corporate restructurings (such as mergers, demergers, etc.), based on the tax regime of the EU Merger Directive 2009/133 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States.

In Luxembourg, tax neutral mergers are possible for purely domestic reorganisations or if a Luxembourg company transfers its assets to another EU company in the course of a merger or demerger involving a company from another EU member state. A cash payment of a maximum of 10% of the nominal value of the shares allocated to the shareholders of the absorbed company is allowed. The merger is tax neutral only to the extent Luxembourg retains the right to tax the deferred gain in the future, which generally means that a permanent establishment has to be maintained in Luxembourg.



If the absorbing company has a participation in the absorbed company which is cancelled at the time of the merger, this participation is deemed to be sold at fair market value, even if the merger is realised in a tax neutral manner. A tax exemption is available based on the participation exemption regime under certain conditions when the absorbing company holds a qualifying participation of 10%, or has an acquisition value of at least EUR1.2 million in the absorbed company for at least 12 months. In addition, the gain realised upon the cancellation of the participation in the absorbed company is tax exempt if the absorbing company held a participation of at least 10% in the subsidiary, without any holding period requirement.

A tax neutral demerger is possible for purely domestic reorganisations under the condition that all or part of the assets of a company are transferred to several Luxembourg resident capital companies in the course of the demerger. Under similar conditions, a tax neutral demerger is available in an EU context. The partners or shareholders of the demerged company have to receive shares in the beneficiary companies on a basis which is proportional to their participation in the demerged company. A cash payment not exceeding 10% of the nominal value of the shares allocated to the shareholders of the absorbed company is allowed. The assets transferred have to constitute an enterprise or a branch of activity.

e. Purchase Agreement

The use of tax grouping and debt pushdown can be considered. Please refer to section 3.c. above and section 6.c. iv. below in this respect.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

There are no transfer taxes levied on a share sale unless the securities that are sold are those in a Luxembourg tax transparent entity (*e.g. société civile*) holding at least one Luxembourg real estate asset. In such a case, registration duty applies in the same way as it would in the case of a direct sale of the real estate asset, (i.e. registration duty of 6% on the value of the real estate), increased by a transcription tax of 1% (or 4% for certain real estate assets located in Luxembourg City). The deadline for registering and paying the registration duty is three months following the date of the deed. The authority qualified to receive the payment is the indirect tax authority (*Administration de l'enregistrement, des domains et de la TVA*).

g. "Purchase accounting" applicable to share acquisitions

The acquisition method (formerly called "the purchase method" in the 2004 version of IFRS 3) can be applied to a direct acquisition of shares in which the acquiror obtains control of another business in consolidated accounts under Luxembourg Generally Accepted Accounting Principles ("GAAP") or, if IFRS is chosen, as an accounting standard under normal IFRS principles. However, the practical application in both cases differs in several ways (especially in measurement principle for shares held in the capital of an undertaking which is part of the consolidation scope).



h. Share Purchase Advantages

As mentioned above, except in cases of abuse, a share deal enables the target company to continue to carry forward its losses. However, losses incurred as from 2017 can only be carried forward over 17 years. Capital gains realised upon the sale of shares can benefit from the participation exemption regime under certain conditions.

There are no tax clearance certificates as such. However, it may be possible to accelerate the issue of final assessments on an ad hoc basis.

i. Share Purchase Disadvantages

In a share deal, the assets in the company sold will not be revalued at fair market value, (i.e. there is no step-up in the basis of the assets).

4. ASSET ACQUISITION

a. General Comments

The second way to take control over a business is to buy the targeted business directly (asset acquisition). The main disadvantage of an asset acquisition is the tax cost since asset sales are generally fully taxable for the seller. In addition, an asset acquisition does not enable a purchaser to use the losses carried forward. However, in an asset acquisition, the purchaser will have a higher basis for depreciation in the future.

b. Purchase Price Allocation

Since there are no specific rules regarding the allocation of the total acquisition price of a business to the individual assets, the tax treatment will generally follow the Luxembourg accounting treatment.

c. Tax Attributes

i Upon acquisition

The acquisition cost of the assets acquired is in principle reported in the balance sheet, as part of the acquisition price of the asset. Therefore, acquisition costs can be depreciated. If the acquisition cost is not recorded as a "fixed asset" but as an expense, in principle, there is no limitation to its deductibility. Since the exit tax rules of ATAD entered into force (i.e. on 1 January 2020), in case of a transfer of assets or business carried on by a permanent establishment to Luxembourg, Luxembourg has to follow the value considered by the other jurisdiction as the starting value of the assets for tax purposes, unless this does not reflect the market value.

ii Upon divestiture

In principle, gains arising on the disposal of business assets are fully subject to tax in Luxembourg. However, based on article 54 of the Luxembourg income tax law ("LITL"), the taxation of capital gains realised upon the disposal of fixed assets consisting of real estate or on the sale of non-depreciable assets may be deferred until the disposal of a replacement asset under (mainly) the following conditions: the sale proceeds have to be reinvested into a newly acquired or newly created fixed asset which has to be allocated to a permanent establishment of the Luxembourg entity located in any EEA Member State. In addition, the Luxembourg company has to remain tax resident in an EEA Member State.



The taxation of capital gains can be deferred, upon request, until the effective realisation in the case of transfers of assets within the meaning of article 2 of EU Directive 2009/133, (i.e. where a company transfers without being dissolved all or one or more branches of its activity to another company in exchange for the transfer of securities representing the capital of the company receiving the transfer).

Since the exit tax rules of ATAD entered into force (i.e. on 1 January 2020), Luxembourg taxpayers are subject to tax at an amount equal to the market value of the transferred assets at the time of the exit less their value for tax purposes. This applies where there is:

(i) a transfer of assets from the Luxembourg head office to a permanent establishment located in another country, but only to the extent that Luxembourg loses the right to tax the transferred assets;

(ii) a transfer of assets from a Luxembourg permanent establishment to the head office or to another permanent establishment located in another country, but only to the extent that Luxembourg loses the right to tax the transferred assets;

(iii) a transfer of tax residence to another country except for those assets which remain connected with a Luxembourg permanent establishment; and finally

(iv) a transfer of the business carried on through a Luxembourg permanent establishment to another country but only to the extent that Luxembourg loses the right to tax the transferred assets.

Where there are transfers within the European Economic Area ("EEA"), the Luxembourg taxpayer may request to defer the payment of exit tax by paying in equal instalments over five years.

Finally, with effect as from 1 January 2021, an annual 20% real estate levy (*prélèvement immobilier*) has been introduced. It applies to income and gains arising from real estate assets situated in Luxembourg and realised either directly or indirectly (through tax transparent entities) by certain categories of exempt investment vehicles (i.e. undertakings for collective investment, specialised investment funds and reserved alternative investment funds) which are "opaque" from a Luxembourg tax perspective.

d. Tax Free Reorganisations

Luxembourg corporate income tax law provides for a special tax neutral regime applicable to certain qualifying corporate restructurings (such as mergers, demergers, etc.), based on the tax regime of the EU Merger Directive 2009/133 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States. Tax neutral mergers are possible for purely domestic reorganisations or if a Luxembourg company transfers its assets to another EU company in the course of a merger or demerger involving a company from another EU member state. A cash payment of a maximum of 10% of the nominal value of the shares allocated to the shareholders of the absorbed company is allowed. The merger is tax neutral only to the extent that Luxembourg retains the right to tax the deferred gain in the future, which generally means that a permanent establishment has to be maintained in Luxembourg.

The transfer of permanent establishments located outside Luxembourg is also covered: if the permanent establishment is located in an EU treaty country, Luxembourg exempts the transfer of this permanent establishment by a Luxembourg company. In the absence of a tax treaty between said country and Luxembourg, Luxembourg retains the right to tax the gain on the transfer of this permanent establishment.



If the absorbing company has a participation in the absorbed company which is cancelled at the time of the merger, this participation is deemed to be sold at fair market value, even if the merger is realised in a tax neutral manner. A tax exemption is available based on the participation exemption regime when the absorbing company holds a qualifying participation of 10%, or has an acquisition value of at least EUR1.2 million in the absorbed company for at least 12 months. In addition, the gain realised upon the cancellation of the participation in the absorbed company is tax exempt if the absorbing company has had a participation of at least 10% in its subsidiary, without any holding period requirement. A tax neutral demerger is possible for purely domestic reorganisations under the condition that all or part of the assets of a company are transferred to several Luxembourg resident capital companies in the course of the demerger. Under similar conditions, a tax neutral demerger is available in an EU context. The partners or shareholders of the demerged company have to receive shares in the beneficiary companies on a basis which is proportional to their participation in the demerged company. A cash payment not exceeding 10% of the nominal value of the shares allocated to the shareholders of the absorbed company is allowed. The assets transferred have to constitute an enterprise or a branch of activity.

e. Purchase Agreement

In an asset deal, standard sale and purchase agreement provisions could be expected.

f. Depreciation and Amortisation

For tax purposes, only straight line depreciation is available for intangible assets. The goodwill may be depreciated over a 10 year period.

g. Transfer Taxes, VAT

Contributions of real estate assets situated in Luxembourg in exchange for consideration other than shares are subject to registration duty at a rate of 6% and to transcription tax of 1% (or 4% for certain real estate assets located in Luxembourg City). Contributions of real estate assets situated in Luxembourg in exchange for shares are subject to registration tax at the reduced rate of 0.6% and to transcription tax of 0.5% (or 0.8% for certain real estate located in Luxembourg City).

Contributions of assets other than real estate in exchange for shares do not trigger any registration duty. Contributions predominantly remunerated by the issuance of shares and by consideration other than shares are also not subject to proportional registration duty to the extent that the movable property is transferred in the context of the contribution of all assets and liabilities or of one or several lines of business. In all other cases, transfers other than real estate transfers as well as transfers of liabilities are subject to registration duty at the rates provided by the law on registration duties. The deadline for registering and paying the registration duty depends on the type of asset transferred. For real estate assets, the registration deadline is three months following the date of the deed. The authority qualified to receive the payment is the indirect tax authority (*Administration de l'enregistrement, des domains et de la TVA*).

As far as VAT is concerned, in principle, a transfer of assets falls within the scope of VAT, either as a supply of goods or as a supply of services. However, the transfer of a business as a going concern is not subject to VAT (17%) provided that certain conditions are met. Following a transfer, the new owner should be in possession of a business that can be operated as such.

Input VAT incurred in relation to VAT exempt asset deals or to share deals is in principle not deductible. Nevertheless and under certain conditions, input VAT could potentially be deductible. It is therefore important at early stage of the M&A transaction to design the cost structure in such a way that an optimal recovery of input VAT could be achieved.

h. Asset Purchase Advantages

In an asset deal, the purchaser will have a higher basis for depreciation in the future.



i. Asset Purchase Disadvantages

In an asset deal, the relatively high Luxembourg registration duty applicable on the disposal of certain assets (essentially real estate) has to be taken into account. The registration duties in an asset deal are higher than in a share deal. Finally, in an asset deal, the target's losses may not be carried forward by the purchaser.

Historical tax liabilities will not generally pass on an asset purchase.

The property taxation is not reset on an asset purchase.

5. ACQUISITION VEHICLES

a. General Comments

The structuring of investments may be achieved by using either an unregulated Luxembourg vehicle, a regulated Luxembourg vehicle or both a regulated and an unregulated vehicle. It can also be considered using both a Luxembourg master holding and several local investment companies.

b. Domestic Acquisition Vehicle

Investors contemplating to invest via an unregulated vehicle may consider using a so called "Soparfi" generally set up either as a public limited liability company (*société anonyme*) or as a private limited liability company (*société à responsabilité limitée*). The Soparfi is a fully taxable corporation that may, under certain conditions, benefit from the participation exemption regime.

Investors contemplating to invest via a regulated Luxembourg vehicle may consider, among others, depending on the type of investor (as certain vehicles are only available to a certain type of investor) and the type of investment (as there are restrictions in some cases), consider using the following investment vehicles which are exempt from any taxation on their income, but are subject to a so called "subscription tax" of either 0.01% or 0.05% on the value of their net assets: an alternative investment fund ("AIF") or a specialised investment fund ("SIF"), which is a multi-purpose investment fund dedicated to so called 'sophisticated investors'. Alternatively, sophisticated investors might consider using a SICAR (investment company in risk capital), if they intend to invest in risk capital only, which is either (when set up in corporate form) fully subject to Corporate Income Tax ("CIT") and Municipal Business Tax ("MBT") on its income as any other fully taxable Luxembourg corporate entity but benefits from an exemption from CIT and MBT on income and capital gains derived from transferable securities or (when set up in partnership form) is a fully tax transparent entity not to subject to any tax on its income. Finally, well informed investors might also consider using a reserved alternative investment fund ("RAIF") for structuring their investments, which combines the characteristics and structuring flexibilities of both the Luxembourg regulated SIF and the SICAR qualifying as an AIF managed by an authorised AIF manager ("AIFM"), except that RAIFs are not subject to prior authorisation from the Luxembourg financial regulator as they must be managed by a fully authorised AIFM. For tax purposes, depending on the activity they perform and the legal form chosen (corporate form or partnership), RAIFs are subject to either the same tax exemption regime as a SIF (and subscription tax) or the same tax regime as a SICAR.

c. Foreign Acquisition Vehicle

The use of a foreign acquisition vehicle is possible. However, it offers no real advantage and so would be unusual.



d. Partnerships and joint ventures

Investments may be structured via a Luxembourg partnership, for example as a common limited partnership (*Société en Commandite Simple,* "SCS") or as a special limited partnership (*Société en Commandite Spéciale,* "SCSp"). The main difference between the two limited partnership forms is that the SCSp has no legal personality and constitutes as such a Luxembourg solution which is as flexible as an Anglo-Saxon Limited Partnership. Both types of Luxembourg limited partnerships may be set up as either a non-regulated vehicles (be it an AIF or not) or as a regulated fund subject to the SIF, the SICAR or the RAIF regime.

e. Strategic vs Private Equity Buyers

A private equity acquiror will often use a local Bidco. A strategic acquiror will generally tailor the structure according to their existing presence in Luxembourg, if any.

6. ACQUISITION FINANCING

a. General Comments

Beside anti-money laundering and know your client considerations and/or requirements, there are no specific challenges for bringing funds to Luxembourg.

b. Equity

In Luxembourg, there are no specific tax incentives regarding the equity funding of assets (such as a notional interest deduction, for example). Still, Luxembourg is a prime holding location and is frequently used for structuring investments in and throughout Europe. Luxembourg companies are often operating as European investment platforms, holding participations and providing financing to the operating businesses. Luxembourg has an attractive participation exemption regime which applies under certain conditions to dividends and capital gains realised upon the sale of participations as well as to liquidation proceeds. Luxembourg has also a large network of double tax treaties (83 in force as of today).

From a Luxembourg tax perspective, a company is considered tax resident in Luxembourg if its statutory seat or its central administration (i.e. place of effective management) is located in Luxembourg. Luxembourg tax law does not include any additional specific substance requirements and in practice, the needs in terms of substance requirements are in most cases driven by the expectations of the foreign jurisdictions involved in the structure, meaning that the appropriate level of substance has to be determined on a case by case basis. However, this may change in the near future if the Proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes is adopted at EU level and implemented into Luxembourg law. When Luxembourg is used as a holding platform, a sufficient level of substance is required in order to make sure that the general anti-abuse rule ("GAAR") of the EU Parent Subsidiary Directive or the GAAR of the ATAD, as implemented into Luxembourg law, will not apply, according to which tax benefits (e.g. dividend exemption or capital gain exemption) may be denied in case of arrangement or series of arrangements that, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage which defeats the object or purpose of the tax law, are not genuine having regard to all relevant facts and circumstances. In addition, specific substance requirements apply when a Luxembourg company performs an intra-group financing activity. Finally, should the Proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes be adopted, minimum substance criteria will be required in order to ensure tax benefits under the EU Parent Subsidiary Directive, the EU Interest and Royalty Directive as well as under double tax treaties.



c. Debt

i Limitations on use of debt

Luxembourg tax law does not provide for any specific debt-to-equity ratio. However, in practice, for holding companies, a debt-to-equity ratio of 85:15 is required in respect of the funding of shareholdings. The ratio does not apply to third-party debt to the extent that shareholders do not provide any guarantees. Should the debt portion be exceeded, the related portion of interest may be considered as a hidden profit distribution, and thus, not deductible and potentially subject to the Luxembourg 15% dividend withholding tax (to the extent it is not reduced or exempt under the EU Parent Subsidiary Directive or a double tax treaty).

ii Limitations on interest deductions

Luxembourg has five types of limitations to the deductibility of interest on borrowings currently in force: (i) limitation related to the purpose of the expense, (ii) limitation based on transfer pricing rules, (iii) limitation based on the recharacterisation of the interest expense into a dividend, (iv) the limitation to interest deduction provided by the ATAD and (v) denial, under certain conditions, of the deduction of interest (and royalties) due to entities located in non-cooperative jurisdictions.

- Limitation related to the purpose of the expense: only expenses incurred exclusively for business purposes are tax deductible. The purpose of this rule is to draw a line between operational and personal expenses (a comment relevant mostly for individual commercial enterprises).
- Limitation based on transfer pricing rules: Luxembourg transfer pricing principles are defined in articles 56, 56bis and 164(3) of the LITL. Article 56 LITL provides a legal basis for transfer pricing adjustments where associated enterprises deviate from the arm's length standard. Article 56bis LITL complements Article 56 of the LITL, formalises the authoritative nature of the OECD TP Guidelines and provides for some definitions and guiding principles in relation to the application of the arm's length principle.
- Limitation based on the recharacterisation of the interest expense into a dividend: based on the "substance over form" approach, an instrument is qualified as debt or equity based on its economic nature – that is, not necessarily based on its legal qualification. If an instrument is requalified from debt into equity, the proceeds are no longer considered as interest but are instead considered as dividends for tax purposes and the payment will not be tax deductible. Article 164(2) LITL furthermore includes specific situations where interest might be recharacterised into dividends. Distributions of any kind made to holders of shares, founder's shares, parts bénéficiaires, parts de jouissance or any other titles, including variable interest bonds entitling the holder to a participation in the annual profits or the liquidation proceeds, are to be treated as dividend distributions and thus non-deductible.
- Limitation on interest deduction of the ATAD: under the Luxembourg interest limitation rules, the deductibility of "exceeding borrowing costs" is limited to a maximum of either 30% of the corporate taxpayers' earnings before interest, taxes, depreciation and amortisation ("EBITDA") or EUR3 million. "Exceeding borrowing costs" correspond to the amount by which the deductible "borrowing costs" of a taxpayer exceed the amount of taxable "interest revenues and other economically equivalent taxable revenues". Corporate taxpayers who can demonstrate that the ratio of their equity over their total assets is equal to or higher than the equivalent ratio of the group can fully deduct their exceeding borrowing costs (the so-called escape clause that should protect multinational groups that are highly leveraged). Moreover, the optional provision under ATAD according to which EBITDA and exceeding borrowing costs can be determined at the level of the consolidated group (in case several companies form a tax consolidation) has been introduced by the 2019 budget law with retroactive effect as from 1 January 2019. The interest limitation rule explicitly excludes financial undertakings and standalone entities



from its scope. Loans concluded before 17 June 2016 are also excluded from the restrictions on interest deductibility. However, this grandfathering rule does not apply to any subsequent modification of such loans. Moreover, loans used to fund long-term public infrastructure projects are excluded from the scope of the interest deduction limitation rule. The interest deduction limitation rule also provides for a carry forward mechanism in regard to both non-deductible exceeding borrowing costs and unused interest capacity. In case of corporate reorganisations such as mergers, exceeding borrowing costs and unused interest capacity carried forward can be continued at the level of the remaining entity.

- No deduction of interest due to entities located in non-cooperative jurisdictions: With effect as from 1 March 2021, interest and royalties due by Luxembourg corporate taxpayers are not tax deductible in Luxembourg if the beneficial owner of the interest or royalty is a collective undertaking (within the meaning of article 159 of the Luxembourg corporate income tax law) established in a non-cooperative jurisdiction for tax purposes (based on the EU list of non-cooperative tax jurisdictions).

iii Related Party Debt

Article 56 of the LITL is a legal basis for upward and downward adjustments where the terms and conditions agreed between associated enterprises deviate from what third parties would have agreed upon. Article 56-bis of the LITL complements Article 56, formalises the authoritative nature of the OECD Transfer Pricing Guidelines, and provides some definitions and guiding principles in relation to the application of the arm's length principle.

On 27 December 2016, the Luxembourg Tax Authorities released a circular on the tax treatment of intragroup financing activities which provides guidance on the practical application of the arm's length principle to intragroup financing activities, ensuring consistency with all international transfer pricing standards. The term "intragroup financing transaction" is to be interpreted very broadly and includes any activity involving the granting of loans (or advancing of funds) to associated enterprises irrespective of whether these loans are financed by internal or external debt (intragroup financing, bank loans, public issuances, etc.). Under the transfer pricing regime, Luxembourg finance companies have to assume the risks in relation to their financing activities and actively manage these risks over the lifetime of the investment. This requires that a Luxembourg finance company has control over the risk and the financial capacity to assume the risk. Therefore, the amount of equity financing should be sufficient to cover the risk in relation to the financing activity (i.e. the equity at risk). The amount of equity at risk should further be remunerated with an arm's length return on equity. The amount of equity at risk and the arm's length character of the remuneration need to be substantiated in a transfer pricing study.

iv Debt Pushdown

Tax consolidation between the profit making entity and the debtor entity may be one way to push down debt on acquisitions. Another strategy is to form a domestic holding company which, in turn, forms a temporary merger subsidiary used to perform the acquisition. Upon the consummation of the transaction, the merger subsidiary is merged into the target, and the proceeds are disbursed to the selling shareholders in exchange for their stock. Financing is arranged for the merger subsidiary, which is subsequently assumed by the target as the successor to the merger. Financing may come directly from third parties or internally through back-to- back loans. If the acquisition is initially done without using debt at the local level, it can subsequently be introduced in Luxembourg through a variety of means. Direct financing of the target and a distribution of the proceeds may be one way. Causing the target to be sold to a newly formed domestic subsidiary of the foreign parent for a note may be another. Caution should be exercised, however, as such transactions may create a dividend, giving rise to withholding tax.



d. Hybrid Instruments

On 1 January 2019, the generic anti-hybrid mismatch provisions included in ATAD were introduced in order to eliminate, in an EU context only, the double non-taxation created through the use of certain hybrid instruments or entities. These rules were replaced with effect as from 1 January 2020 by the amended anti-hybrid rules of ATAD 2 which also aim at neutralising the effects of hybrid mismatches but which have a broader scope of application as they apply to hybrid mismatches with both EU and third countries. They generally apply in case of mismatch outcomes which include deductions without inclusions and double deductions. However, mismatch outcomes shall not be treated as hybrid mismatches unless they arise: between associated enterprises, between a taxpayer and an associated enterprise, between the head office and PE, between two or more PEs of the same entity, or under a structured arrangement (in this case, even unrelated parties may come within the scope of the anti-hybrid mismatch rules).

With regard to deduction without inclusion and double deduction outcomes, the hybrid mismatch rules provide for linking rules that align the tax treatment of an instrument or an entity with the tax treatment in the counterparty jurisdiction, setting out a primary rule and a secondary (or defensive) rule for the neutralisation of mismatch outcomes:

- According to the primary rule, the deduction of a payment is denied to the extent that it is not included in the taxable income of the recipient or is also deductible in the counterparty jurisdiction.
- When the primary rule is not applied, the counterparty jurisdiction may apply a defensive rule, requiring the deductible payment to be included in the income or denying the duplicate deduction depending on the nature of the mismatch.

When a hybrid mismatch involves a third country, the responsibility to neutralise the effects of hybrid mismatches is placed on the EU Member State.

With regard to financial instruments, a hybrid mismatch means a situation where a payment gives rise to a deduction without inclusion outcome and the mismatch outcome is attributable to differences in the characterisation of the instrument or the payment made under it and such payment is not included within a reasonable of time.

e. Other instruments

There are no other instruments in Luxembourg.

f. Earn-outs

Earn-outs are common and are generally structured as an increase in purchase consideration.



7. DIVESTITURES

a. Tax Free

Capital gains deriving from the sale of shares held by a Luxembourg corporate taxpayer in a subsidiary may benefit from a full Corporate Income Tax ("CIT") and Municipal Business Tax ("MBT") exemption in Luxembourg (Luxembourg participation exemption regime), provided the following conditions are met:

- The beneficiary is a Luxembourg fully taxable company, which holds a shareholding in (i) an undertaking resident of the EU covered by article 2 of the Council Directive 2011/96/EU; or (ii) a Luxembourg resident capital company fully liable to Luxembourg tax; or (iii) a non-resident company liable to a tax corresponding to Luxembourg corporate income tax. For that purpose, a taxation of at least 8.5% (i.e. half of the CIT rate) on a basis comparable to the Luxembourg basis is usually required by the Luxembourg Tax Authorities.
- At the date the capital gain is realised, the holder has held or commits itself to hold for an uninterrupted period of at least 12 months a direct and continuous shareholding of at least 10% in the capital of the subsidiary or of a minimum acquisition price of EUR6 million.

Capital gains remain subject to tax up to the sum of all related expenses that were deducted for tax purposes in the year of disposal or in previous financial years. However, the amount is usually offset by the tax losses carried forward previously incurred by the shareholder.

As far as Luxembourg individual investors are concerned, capital gains realised on the sale of shareholdings are exempt if the individual investor holds less than 10% in the company and the sale is performed more than six months following the acquisition of the shares. In case of a sale after more than six months of a shareholding of 10% or more, the Luxembourg investor benefits from a EUR50,000 deduction and a taxation of the gain at a reduced rate (half of the applicable income tax rate).

Based on article 54 of the LITL, the taxation of capital gains realised upon the disposal of fixed assets consisting of real estate or on the sale of non-depreciable assets may be deferred until the disposal of a replacement asset under (mainly) the following conditions: the sale proceeds have to be reinvested into a newly acquired or newly created fixed asset which has to be allocated to a permanent establishment of the Luxembourg entity located in any EEA Member State. In addition, the Luxembourg company has to remain tax resident in an EEA Member State.

The taxation of capital gains can also be deferred, upon request, until the effective realisation in the case of transfers of assets within the meaning of article 2 of EU Directive 2009/133, (i.e. where a company transfers without being dissolved all or one or more branches of its activity to another company in exchange for the transfer of securities representing the capital of the company receiving the transfer).

b. Taxable

Capital gains realised by Luxembourg corporate taxpayers are generally taxed as ordinary income, i.e., at the CIT rate of 17% if the taxable corporate income exceeds EUR200,000, at the reduced CIT rate of 15% if the taxable corporate income does not exceed EUR175,000 and at an intermediary rate between 15 and 17% if the corporate income exceeds EUR175,000 without exceeding EUR200,000. However, capital gains realised on the sale of qualifying shareholdings may benefit from a full exemption under the Luxembourg participation exemption regime under certain conditions (see 7. a. above).

In principle, gains arising on the disposal of business assets are fully subject to tax in Luxembourg. However, the taxation of capital gains realised upon the disposal of fixed assets consisting of real estate or on the sale of non-depreciable assets may be deferred until the disposal of a replacement asset under certain conditions (see 7. A. above).



Since the exit tax rules of ATAD entered into force (i.e. on 1 January 2020), Luxembourg taxpayers are subject to tax at an amount equal to the market value of the transferred assets at the time of the exit less their value for tax purposes. This applies where there is:

(i) a transfer of assets from the Luxembourg head office to a permanent establishment located in another country, but only to the extent that Luxembourg loses the right to tax the transferred assets;

(ii) a transfer of assets from a Luxembourg permanent establishment to the head office or to another permanent establishment located in another country, but only to the extent that Luxembourg loses the right to tax the transferred assets;

(iii) a transfer of tax residence to another country except for those assets which remain connected with a Luxembourg permanent establishment; and finally

(iv) a transfer of the business carried on through a Luxembourg permanent establishment to another country but only to the extent that Luxembourg loses the right to tax the transferred assets.

Where there are transfers within the European Economic Area ("EEA"), the Luxembourg taxpayer may request to defer the payment of exit tax by paying in equal instalments over five years.

Finally, with effect as from 1 January 2021, an annual 20% real estate levy (prélèvement immobilier) has been introduced. It applies to income and gains arising from real estate assets situated in Luxembourg and realised either directly or indirectly (through tax transparent entities) by certain categories of exempt investment vehicles (i.e. undertakings for collective investment, specialised investment funds and reserved alternative investment funds) which are "opaque" from a Luxembourg tax perspective.

c. Cross Border

Provided no double tax treaty which grants the exclusive taxation right to the country of the non-resident (corporate) investor applies, capital gains derived by non-resident taxpayers from the sale of a substantial participation (i.e. more than 10% of the shares) in a Luxembourg company are subject to (corporate) income tax in Luxembourg only if the period between the acquisition and the disposal is less or equal to six months. However, no taxation applies if the gains are realised on the sale of a participation in an Undertaking for Collective Investment, a SICAR or a private wealth management company (*société de gestion de patrimoine familial* or "SPF").

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

The Luxembourg tax system is a worldwide tax system. Luxembourg companies are taxed on their worldwide income.

b. CFC Regime

Luxembourg has implemented the CFC rules of the ATAD. With regard to the fundamental scope of the CFC rules, Luxembourg has opted for the non-genuine arrangement concept. Accordingly, a Luxembourg corporate taxpayer will be taxed on the non-distributed income of an entity or permanent establishment which qualifies as a CFC provided that the non-distributed income arises from non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage. A CFC is an entity or a permanent establishment of which the profits are either not subject to tax or exempt



from tax in Luxembourg provided that the following two cumulative conditions are met: in the case of an entity, the Luxembourg corporate taxpayer by itself, or together with its associated enterprises holds a direct or indirect participation of more than 50% of the voting rights; or owns directly or indirectly more than 50% of capital; or is entitled to receive more than 50% of the profits of the entity (the "control criterion") and the actual corporate tax paid by the entity or permanent establishment is less than 50% of the tax that would have been due in Luxembourg. Given the currently applicable corporate income tax rate of 17%, the CFC rule will only apply if the taxation of the profits at the level of the CFC entity or permanent establishment is lower than 8.5% on a comparable taxable basis.

The Luxembourg legislator adopted the options provided under ATAD according to which the following entities or permanent establishments are excluded from the scope of the CFC rules: an entity or permanent establishment with accounting profits of no more than EUR750,000 or an entity or permanent establishment of which the accounting profits amount to no more than 10% of its operating costs for the tax period. The CFC income to be included in the tax base shall further be computed in proportion to the taxpayer's participation in the CFC and is included in the tax period of the Luxembourg corporate taxpayer in which the tax year of the CFC ends.

CFC income is subject to corporate income tax at a rate of 17%. A specific deduction has been included in the MBT law to exclude CFC income from the MBT base.

c. Foreign branches and partnerships

These are fully taxed, subject to double tax treaty relief. Luxembourg double tax treaties generally exempt foreign branch profits.

d. Cash Repatriation

Dividends distributed by a Luxembourg resident company to a foreign company are in principle subject to a 15% withholding tax in Luxembourg, unless the foreign company is eligible to the Luxembourg withholding tax exemption regime (which requires mainly a qualifying participation of either 10% or with an acquisition value of at least EUR1.2 million which has to be held for at least 12 months), or unless it benefits from an exemption or reduced withholding tax rate based on a double tax treaty.

The payment of liquidation proceeds by a Luxembourg company is not subject to Luxembourg withholding tax.

Arm's length interest payments paid to non-residents are not subject to Luxembourg withholding tax, except in the case of interest on profit participating bonds and similar securities.



9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Luxembourg tax legislation does not provide for any rules on "real-property-rich" companies.

b. CbC and Other Reporting Regimes

The Luxembourg law implementing the EU Directive on Country-by-Country Reporting extends administrative cooperation in tax matters to country-by-country ("CbC") reporting. Multinational ("MNE") groups with a consolidated revenue exceeding EUR750 million are required to prepare a CbC report and file it with the Luxembourg Tax Authorities within 12 months of the last day of their reporting fiscal year. In addition, each Luxembourg constituent entity of an MNE group falling within the scope of the directive must notify the Tax Authorities of its role in the group (i.e. whether it is the reporting entity of the group and if not, which entity of the group is the reporting entity), and must provide all the information required to identify the reporting entity and verify the submission of the CbC report no later than on the last day of the reporting fiscal year for the MNE group.

Additional reporting regimes include among others mandatory reporting under the common reporting standard ("CRS"), mandatory automatic exchange of information on tax rulings and advance pricing agreements, reporting under the US Foreign Account Tax Compliance Act, etc. Luxembourg taxpayers may also be subject to other reporting obligations which are based on tax treaty provisions dealing with exchange of information upon request or the anti-money laundering rules. Non-compliant taxpayers may incur a fine of up to EUR250,000. Finally additional reporting obligations apply following the implementation of the sixth Directive on administrative cooperation ("DAC6"), which introduces a mandatory and automatic exchange of information in the field of taxation in relation to reportable cross border arrangements.

10. TRANSFER PRICING

Luxembourg has no integrated transfer pricing legislation. Instead, transfer pricing adjustments aimed at restating arm's length conditions can be made based on different tax provisions and concepts applicable under Luxembourg domestic tax law. The arm's length principle is explicitly stated in Article 56 of the LITL, which serves as a legal basis for upward adjustments as well as for downward adjustments when a Luxembourg company receives an advantage from an associate enterprise. Article 56-bis of the LITL complements Article 56, formalises the authoritative nature of the OECD Transfer Pricing Guidelines, and provides some definitions and guiding principles in relation to the application of the arm's length principle.

In addition to Articles 56 and 56-bis of the LITL, the concepts of hidden dividend distributions (Article 164(3) of the LITL) and hidden capital contributions (Article 18(1) of the LITL) play an important role in ensuring that associated enterprises adhere to the arm's length standard. Finally, the Circular of 27 December 2016 provides guidance on the practical application of the arm's length principle to intragroup financing activities.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

Hybrid entities are not commonly used in Luxembourg. In addition, following the implementation of the anti-hybrid rules of ATAD in Luxembourg (effective since 1 January 2019), the subsequent implementation of the anti-hybrid rules of ATAD 2 and the implementation of the reverse hybrid rules of ATAD 2 (effective as from tax year 2022), using hybrid entities will often not be an option. A reverse hybrid is an entity that is treated as transparent under the laws of the jurisdiction where it is established, but as a separate entity (i.e. opaque) under the laws of the jurisdiction(s) of the investor(s). The reverse hybrid mismatch rule aims to eliminate double non-taxation outcomes through the treatment of reverse hybrids as resident taxpayers. However, the amount of income to be included in the corporate tax base of the reverse hybrid entity should be limited to amounts that would otherwise result in double non-taxation rather than taxing all of the income of the reverse hybrid entity. The reverse hybrid rule does not apply to collective investment vehicles, which are investment funds or vehicles that are widely held and that hold a diversified portfolio of securities.

b. Use of Hybrid Instruments

Until the implementation of ATAD, hybrid instruments were commonly used in Luxembourg, among others for cash repatriation purposes. However, since the implementation of the anti-hybrid measures of ATAD and ATAD 2, these instruments are used less often.

c. Principal/Limited Risk Distribution or Similar Structures

The full range of risk allocation models is possible from principal though to limited risk distributors and commissionaires.

d. Intellectual property (licensing, transfers, etc.)

On 1 January 2018 a new IP regime came into force in Luxembourg, which is compliant with the so called 'modified nexus' approach agreed at OECD and EU level in the course of the BEPS project. In accordance with this new regime, a CIT exemption of 80% applies to income (including capital gains) derived from certain rights on patents and copyrighted software, to the extent that they are not marketing-related IP assets and were created, developed or enhanced after 31 December 2007 as a result of research and development activities. Marketing assets such as trademarks and domain names are expressly excluded from the scope of qualifying assets. The regime applies to all types of Luxembourg taxpayers.

The modified nexus approach aims to ensure that IP regimes only provide benefits to taxpayers that engage in R&D. The reason is that IP tax regimes aim at encouraging R&D activities. As a consequence, according to the nexus approach, a taxpayer is able to benefit from the IP regime to the extent that it can be demonstrated that the taxpayer incurred expenditures, such as R&D which gave rise to the IP income.

The nexus approach which determines what income may receive tax benefits is as follows:

$$\frac{\text{Qualifying expenditures incurred to develop IP asset}}{\text{Overall expenditures incurred to develop IP asset}} \times \text{Adjusted net qualifying income from IP asset} = \text{Income receiving tax benefits}$$

Qualifying IP rights are also exempt from Luxembourg NWT.



e. Special tax regimes

The two following investment tax credits are available for investments in qualifying assets under certain conditions:

- Additional investment tax credit: under certain conditions, companies may credit on the CIT due an amount equal to 13% of the increase in investments carried out during the tax year in qualifying assets–that is, tangible depreciable assets, other than buildings, livestock and mineral and fossil deposits. The amount of "additional investments" corresponds to the difference between the net book value of the qualifying assets at the end of the financial year increased by the depreciation on those qualifying assets acquired and a reference value corresponding to the average value of qualifying assets at the end of the five preceding financial years.
- Global investment tax credit (which may be applied in addition to the first type of credit): under certain conditions, companies may credit on the CIT due an amount equal to 8% of the total acquisition price of investments in qualifying assets acquired during the tax year. The global investment tax credit amounts to 8% for the first tranche of EUR150,000 and 2% for the tranche exceeding EUR150,000. Since 2018, the tax credit also applies to acquisitions of software and amounts to 8% for the first tranche of EUR150,000 and 2% for the tranche exceeding EUR150,000. However, the tax credit may not exceed 10% of the tax due for the tax year during which the operating year is ending during which the acquisition was made.

12. OECD BEPS CONSIDERATIONS

Luxembourg has implemented into its internal law Directive 2014/86/EU of 8 July 2014 which amends the EU Parent Subsidiary regime so as to stop situations of double non-taxation created by the use of certain hybrid instruments and Directive 2015/121 of 27 January 2015 which introduces a de minimis GAAR.

Luxembourg has always been supportive of the implementation of BEPS recommendations and has implemented the following BEPS related EU Directives: Directive EU 2015/2376 on automatic exchange of information on tax rulings, EU Directive 2016/881 of 25 May 2016 which extends administrative cooperation in tax matters to Country-by-Country ("CbC") reporting, Directive EU 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market ("ATAD"), Directive EU 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries ("ATAD 2") and Directive EU 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. Finally, Luxembourg has signed and ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS ("MLI").

Finally, Luxembourg is actively involved and supportive of the implementation of the two-pillar solution to address the tax challenges arising from the digitalisation of the economy.



13. ACCOUNTING CONSIDERATIONS

Luxembourg companies can choose to apply Luxembourg GAAP or IFRS (mandatory for companies whose securities are admitted to official trading on an EU regulated market). We have not commented on IFRS at this point. Luxembourg GAAP can be summarised as historical cost accounting with some exceptions such as equity accounting for subsidiaries. Most actual accounting principles are based on the EU Directive 2013/34/EU of 26 June 2013 (which aims to merge principles from the Directive 78/660/EEC of 25 July 1978 and from the Directive 83/349/EEC of 13 June 1983) on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings. We have not addressed these EU principles here as they are common to all EU Member States. It is worth noting that mandatory consolidation for groups only applies if all entities being part of the consolidation scope meet together 2 of the 3 following requirements: (i) total balance sheet exceeding EUR20 million; (ii) total net turnover of more than EUR40 million; (iii) 250 as average number of full time employees. Exemptions are also available if consolidated accounts are being prepared at another parent level.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

In accordance with Article 97(3) LITL, when a Luxembourg company is considered as having "serious economic reasons" to proceed with a share capital decrease, the amount of capital reimbursed is not subject to Luxembourg withholding tax. However, should the Luxembourg company have retained earnings at the time of the capital reduction, the payment will be treated as a dividend and thus will potentially be subject to Luxembourg withholding tax (if no exemption is available) up to the amount of distributable retained earnings.

b. Substance Requirements for Recipients

There are no specific substance requirements in Luxembourg applicable to foreign recipients of payments made by a Luxembourg taxpayer. However, when Luxembourg is used for holding participations, a sufficient level of substance is required at Luxembourg level in order to make sure that the GAAR of either the EU Parent Subsidiary Directive or the ATAD (as implemented in Luxembourg) will not apply, according to which the tax benefits (e.g. dividend exemption, capital gain exemption or exemption of dividend withholding tax) may be denied in case of arrangement or series of arrangements that, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage which defeats the object or purpose of the tax law, are not genuine having regard to all relevant facts and circumstances. In addition, specific substance requirements apply to Luxembourg companies performing intra-group financing activities. Finally, should the Proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes be adopted, minimum substance criteria will be required in order to ensure tax benefits under the EU Parent Subsidiary Directive, the EU Interest and Royalty Directive as well as under double tax treaties.

c. Application of Regional Rules

As a member of the European Union, Luxembourg is subject and has implemented into its internal law all EU Directives in tax matters (e.g. EU Parent Subsidiary Directive, EU Merger Directive, ATAD, ATAD 2, the EU Directives on administrative cooperation in tax matters, so called DAC 1 to 6, etc.).



d. Tax Rulings and Clearances

Luxembourg taxpayers may request an Advance Tax Clearance ("ATC") or an Advance Pricing Agreement ("APA") from the Luxembourg Tax Authorities. Specific information has to be included in the request, including a detailed description of the taxpayer requesting the ATC/APA, details of the other parties involved, a detailed description of the contemplated operation(s), for APAs, a transfer pricing study including a functional analysis and an economic analysis with a benchmarking of the transaction under review and a confirmation that the information provided to analyse the request is complete and accurate. A fee ranging between EUR3,000 and EUR10,000 is levied by the Luxembourg Tax Authority. The amount of the fee depends on the complexity of the request and the amount of work required. In the case of APAs, the fee should in general be at the upper end of the range. The fee is payable within a one-month period. The ATC/APA may be valid for a period of maximum five tax years to the extent that the facts and circumstances described in the request are accurate and remain in line with reality. Where Luxembourg, EU or international tax law changes, the confirmation provided in the ATC/APA may quite naturally no longer be valid.

In practice, APAs have lost much of their relevance over the last few years. This is because when the arm's length nature of a transfer price is properly documented, an APA does not add much reassurance. This is also true for ATCs, where taxpayers now, in most cases, will prefer to rely on the tax opinions prepared by their tax adviser instead of filing an ATC request.

15. MAJOR NON-TAX CONSIDERATIONS

There are no specific Luxembourg considerations that merit noting here.

16. APPENDIX I–TAX TREATY RATES*

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Andorra	0 / 5 / 15	0	0	[A], [B]
Armenia	5 / 15	0	0	[C], [B]
Austria	5 / 15	0	0	[D], [B]
Azerbaijan	5 / 10	0	0	[E], [B]
Bahrain	0 / 10	0	0	[F], [B]
Barbados	0 / 15	0	0	[G], [B]
Belgium	10 / 15	0	0	[H], [B]
Botswana	5 / 10	7.5	7.5	[M]
Brazil	15 / 25	0	0	[I], [B]
Brunei	0 / 10	0	0	[B], [J]
Bulgaria	5 / 15	0	0	[B], [K]
Canada	0 / 5 / 10 / 15	0	0	[B], [L]
China	5 / 10	0	0	[B], [M]
Croatia	5 / 15	0	0	[B], [N]
Cyprus	0 / 5	0	0	[B], [O]
Czech Republic	0 / 10	0	0	[B], [P]
Denmark	5 / 15	0	0	[B], [Q]
Estonia	0 / 10	0	0	[B], [R]
Finland	5 / 15	0	0	[B], [S]
France	5 / 15	0	0	[B], [T]
Georgia	0 / 5 / 10	0	0	[B], [U]
Germany	5 / 15	0	0	[A1], [B1]
Greece	7.5	0	0	[C1], [B1]
Guernsey	5 / 15	0	0	[D1], [B1]
Hong-Kong	0 / 10	0	0	[E1], [B1]
Hungary	0 / 10	0	0	[F1], [B1]
Iceland	5 / 15	0	0	[G1], [B1]
India	10	0	0	[H1], [B1]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Indonesia	10 / 15	0	0	[I1], [B1]
Ireland	5 / 15	0	0	[J1], [B1]
Isle of Man	5 / 15	0	0	[K1], [B1]
Israel	5 / 15	0	0	[L1], [B1]
Italy	15	0	0	[M1], [B1]
Japan	5 / 15	0	0	[N1], [B1]
Jersey	5 / 15	0	0	[O1], [B1]
Kazakhstan	5 / 15	0	0	[P1], [B1]
Korea	10 / 15	0	0	[Q1], [B1]
Kosovo	0 / 10	0	0	[E1], [B1]
Laos	0 / 5 / 15	0	0	[R1], [B1]
Latvia	5 / 10	0	0	[S1], [B1]
Liechtenstein	0 / 5 / 15	0	0	[T1], [B1]
Lithuania	5 / 15	0	0	[U1], [B1]
Macedonia	5 / 15	0	0	[V1], [B1]
Malaysia	0 / 5 / 10	0	0	[A2], [B2]
Malta	5 / 15	0	0	[C2], [B2]
Mauritius	5 / 10	0	0	[D2], [B2]
Mexico	5 / 15	0	0	[E2], [B2]
Moldova	5 / 10	0	0	[F2], [B2]
Monaco	5 / 15	0	0	[G2], [B2]
Morocco	10 / 15	0	0	[H2], [B2]
Netherlands	2.5 / 15	0	0	[I2], [B2]
Norway	5 / 15	0	0	[J2], [B2]
Panama	5 / 15	0	0	[K2], [B2]
Poland	0 / 15	0	0	[L2], [B2]
Portugal	15	0	0	[M2], [B2]
Qatar	0 / 5 / 10	0	0	[N2], [B2]
Romania	5 / 15	0	0	[O2], [B2]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Russia	5 / 15	0	0	[P2], [B2]
San Marino	0 / 15	0	0	[Q2], [B2]
Saudi Arabia	5	0	0	[R2], [B2]
Senegal	5 / 15	0	0	[S2], [B2]
Serbia	5 / 10	0	0	[T2], [B2]
Seychelles	0 / 10	0	0	[U2], [B2]
Singapore	0	0	0	[V2], [B2]
Slovak Republic	5 / 15	0	0	[W2], [B2]
Slovenia	5 / 15	0	0	[A3], [B3]
South Africa	5 / 15	0	0	[C3], [B3]
Spain	5 / 15	0	0	[D3], [B3]
Sri Lanka	7.5 / 10	0	0	[E3], [B3]
Sweden	0 / 15	0	0	[F3], [B3]
Switzerland	0 / 5 / 15	0	0	[G3], [B3]
Taiwan	10 / 15	0	0	[H3], [B3]
Tajikistan	0 / 15	0	0	[I3],[B3]
Thailand	5 / 15	0	0	[J3],[B3]
Trinidad & Tobago	5 / 10	0	0	[K3], [B3]
Tunisia	10	0	0	[L3], [B3]
Turkey	5 / 20	0	0	[M3], [B3]
Ukraine	5 / 15	0	0	[N3], [B3]
United Arab Emirates	0 / 5 / 10	0	0	[O3], [B3]
United Kingdom	5 / 15	0	0	[P3], [B3]
United States	0 / 5 / 15	0	0	[Q3], [B3]
Uruguay	5 / 15	0	0	[R3], [B3]
Uzbekistan	5 / 15	0	0	[S3], [B3]
Vietnam	5 / 10 / 15	0	0	[T2], [B3]

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Footnotes:	
[A]	Dividends: 0% if the beneficial owner holds directly and uninterruptedly, for at least 12 months, at least 10% of the capital of the company paying the dividends or a participation with an acquisition cost of at least EUR1.2 million; 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[B]	Interest and Royalties – Under Luxembourg domestic law, there is no withholding tax on interest other than interest on profit-sharing bonds, nor (in principle) on royalties.
[C]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[D]	Dividends: 5% if the recipient is a company (excluding a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[E]	Dividends: 5% if the beneficial owner is a company which holds directly or indirectly at least 30% of the capital of the company paying the dividends and has invested at least an amount equal to USD300,000 in the capital of that company at the date on which the dividends are paid; 10% in all other cases.
[F]	Dividends: 0% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 10% in all other cases.
[G]	Dividends: 0% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends; 15% in all other cases.
[H]	Dividends: 10% if the recipient is a company (with the exception of private companies, partnerships, limited partnerships and cooperative societies) whose direct holding, since the beginning of its financial year, in the capital of the company (with the exception of private companies, partnerships, limited partnerships and cooperative societies) paying the dividends is at least 25% or has a purchase price of at least LUF/ BEF250 million (EUR6,197,338); 15% in all other cases.
[I]	Dividends: 15% if the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends; 25% in all other cases.
[J]	Dividends: 0% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 10% in all other cases.
[K]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[L]	Dividends: 0% if the Canadian company has owned directly at least 25% of the voting stock in the Luxembourg company for at least two years and the dividends are paid out of profits derived from the active conduct of a trade or business in Luxembourg; 5% if the Canadian company owns at least 10% of the Luxembourg company's voting power; 10% if the dividends are paid by a non-resident-owned investment corporation that is a resident of Canada to a beneficial owner that is a company (other than a partnership) that is a resident of Luxembourg and that owns at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[M]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 10% in all other cases.
[N]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.

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Footnotes:	
[O]	Dividends: 0% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 5% in all other cases.
[P]	Dividends: 0% if the beneficial owner is a company (other than a partnership) which holds for an uninterrupted period of at least one year directly at least 10% of the capital of the company paying the dividends; 10% in all other cases.
[Q]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[R]	Dividends: 0% if the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends; 10% in all other cases.
[S]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly or indirectly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[T]	Dividends: 5% if the recipient is a corporation which has direct control of at least 25% of the capital of the corporation paying the dividends; 15% in all other cases.
[U]	Dividends: 0% if the beneficial owner is a company which holds directly or indirectly at least 50% of the capital of the company paying the dividends and has invested more than EUR2 million or its equivalent in the currency of Georgia, in the capital of the company paying the dividends; 5% if the beneficial owner is a company which holds directly or indirectly at least 10% of the capital of the company paying the dividends and has invested more than EUR100,000 or its equivalent in the currency of Georgia, in the capital of the company paying the dividends; 10% in all other cases.
[A1]	Dividends: 5% if the receiving company, not being a partnership, owns directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[B1]	Interest and Royalties – Under Luxembourg domestic law, there is no withholding tax on interest other than interest on profit-sharing bonds, nor (in principle) on royalties.
[C1]	Dividends: 7.5% of the gross amount of the dividends if the company making the distribution is a resident of Luxembourg.
[D1]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[E1]	Dividends: 0% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends or a participation with an acquisition cost of at least EUR1.2 million in the company paying the dividends; 10% in all other cases.
[F1]	Dividends: 0% if the beneficial owner is a company (other than a partnership that is not liable to tax), which holds directly at least 10% of the paying of the company paying the dividends; 10% in all other cases.
[G1]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[H1]	Dividends: 10% if the beneficial owner is a resident of the other Contracting State.
[I1]	Dividends: 10% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.



Footnotes:	
[J1]	Dividends: 5% if the recipient is a company (excluding a partnership) which controls directly at least 25% of the voting power in the company paying the dividends; 15% in all other cases.
[K1]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[L1]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[M1]	Dividends: 15% if the recipient is the beneficial owner of the dividends.
[N1]	Dividends: 5% if the beneficial owner is a company which owns at least 25% of the voting shares of the company paying the dividends during the period of six months immediately before the end of the accounting period for which the distribution of profits takes place; 15% in all other cases.
[O1]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[P1]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 15% of the capital of the company paying the dividends; 15% in all other cases.
[Q1]	Dividends: 10% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% of the gross amount of the dividends in all other cases.
[R1]	Dividends: 0% if the dividend is paid to public bodies; 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[S1]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 10% in all other cases.
[T1]	Dividends: 0% if the beneficial owner is a company (other than a partnership) which at the time of the payment of dividends has held for an uninterrupted period of 12 months directly at least 10% of the capital of the company paying the dividends or a capital participation with an acquisition cost of at least EUR1.2 million in the company paying the dividends; 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[U1]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[V1]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[A2]	Dividends: 0% if the Malaysian company has owned directly at least 25% of the capital in the Luxembourg company for at least 12 months and the Luxembourg company is engaged in the active conduct of a trade or business in Luxembourg; 5% if the Malaysian company owns directly at least 10% of the capital in the Luxembourg company; 10% in all other cases.
[B2]	Interest and Royalties: Under Luxembourg domestic law, there is no withholding tax on interest other than interest on profit-sharing bonds, nor (in principle) on royalties.
[C2]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.



Footnotes:	
[D2]	Dividends: 5% if the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends; 10% in all other cases.
[E2]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[F2]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the company paying the dividends; 10% in all other cases.
[G2]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[H2]	Dividends: 10% if the beneficial owner of the dividends is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[I2]	Dividends: 2.5% if the recipient is a company the capital of which is, wholly or partly, divided into shares or corporate rights assimilated to shares by the taxation law of the other State, which company controls directly at least 25% of the capital of the company paying the dividends; 15% of the gross amount of the dividends in all other cases.
[J2]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[K2]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[L2]	Dividends: 0% if the beneficial owner is a company (other than a partnership) which has held directly at least 10% of the capital of the company paying the dividends for an uninterrupted period of at least 24 months prior to the date of payment of the dividends; 15% in all other cases.
[M2]	Dividends: 15% if the recipient is the beneficial owner of the dividends.
[N2]	Dividends: 5% if the beneficial owner is an individual who holds directly at least 10% of the capital of the company paying the dividends and who has been a resident of that other Contracting State for a period of 48 months immediately preceding the year within which the dividends are paid; 10% in all other cases.
[O2]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[P2]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends and has invested at least EUR80,000 or its equivalent in rouble; 15% in all other cases.
[Q2]	Dividends: 0% if the beneficial owner is a company which has held directly at least 10% of the capital of the company paying the dividends for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends; 15% in all other cases.
[R2]	Dividends: 5% if the beneficial owner of the dividends is a resident of the other Contracting State.
[S2]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the company paying the dividends; 15% in all other cases.
[T2]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 10% in all other cases.



Footnotes:	
[U2]	Dividends: 0% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 10% in all other cases.
[V2]	Dividends: 0% if the recipient is the beneficial owner of the dividends.
[W2]	Dividends: 5% if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[A3]	Dividends: 5% if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[B3]	Interest and Royalties–Under Luxembourg domestic law, there is no withholding tax on interest other than interest on profit-sharing bonds, nor (in principle) on royalties.
[C3]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[D3]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends, if the beneficial owner is a company which has held the capital for a period of at least one year prior to the distribution of the dividends; 15% in all other cases.
[E3]	Dividends: 7.5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 10% in all other cases.
[F3]	Dividends: 0% if the beneficial owner is a company (other than a partnership) which holds, during an uninterrupted period of 12 months preceding the date of payment of the dividends, directly at least 10% of the capital of the company paying the dividends. The exemption only applies to dividends attributable to those shares which have been held without interruption by the recipient company during the aforesaid
[G3]	Dividends: 0% if the beneficial owner of the dividends is (i) a company which is a resident of the other Contracting State and which holds, during at least two years, at least 10% of the capital of the company paying the dividends or (ii) any pension fund or pension scheme; 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[H3]	Dividends: 15% if the beneficial owner of the dividends is a collective investment vehicle established in the other territory and treated as a body corporate for tax purposes in that other territory; 10% in all other cases.
[I3]	Dividends: 0% if the beneficial owner of the dividends is a company which is a resident of the other Contracting State and which holds, for an uninterrupted period of at least 12 months, shares representing directly at least 10% of the capital of the company paying the dividends; 15% if the beneficial owner of the dividends is a resident of the other Contracting State.
[J3]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[K3]	Dividends: 5% if the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends; 10% in all other cases.
[L3]	Dividends: 10% if the recipient is the beneficial owner of the dividends.
[M3]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; 20% in all other cases.



Footnotes:	
[N3]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the company paying the dividends; 15% in all other cases.
[O3]	Dividends: 0% if the beneficial owner of the dividends is that other State itself, a local Government, a local authority or its financial institution thereof, which is a resident of that other State; 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 10% in all other cases.
[P3]	Dividends: 5% if the beneficial owner is a company the capital of which is wholly or partly divided into shares and it controls directly or indirectly at least 25% of the voting power in the company paying the dividends; 15% in all other cases.
[Q3]	Dividends: 0% if the beneficial owner of the dividends is a company that is a resident of the US and that has had, during an uninterrupted period of two years preceding the date of payment of the dividends, a direct shareholding of at least 25% of the voting stock of the company paying the dividends. This provision only applies to dividends attributable to that part of the shareholding that has been owned without interruption by the beneficial owner during such two-year period. Furthermore, the provisions of this subparagraph shall only apply if the distributed dividend is derived from the active conduct of a trade or business in Luxembourg (other than the business of making or managing investments, unless such business is carried on by a banking or insurance company); 5% if the beneficial owner is a company that owns directly at least 10% of the voting stock of the company paying the dividends; 15% in all other cases.
[R3]	Dividends: 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends; 15% in all other cases.
[S3]	Dividends: 5% if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends; 15% in all other cases.
[T3]	Dividends: 5% if the beneficial owner is a company which holds directly or indirectly at least 50% of the capital of the company paying the dividends or has invested more than USD10 million, or the equivalent in Luxembourg or Vietnamese currency, in the capital of the company paying the dividends; 10% if the beneficial owner is a company which holds directly or indirectly at least 25% but less than 50% of the capital of the company paying the dividends and has invested not more than USD10 million, or the equivalent in Luxembourg or Vietnamese currency, in the capital of the company paying the dividends; 15% in all other cases.

*On payments out of Luxembourg, in accordance with tax treaties in force as of 1 January 2021.

17. APPENDIX II–GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Current organisation chart of the group including all entities by full legal name and permanent establishments with information on the jurisdiction, date and place of formation and ownership percentages.
2	Tax Due Diligence	General	Details of any activities performed outside of Luxembourg and any related documentation on its tax implications (tax returns and tax assessments in relation to the foreign activities for the tax years under review).
3	Tax Due Diligence	General	Approved annual accounts for the years under review and interim accounts for the current year.
4	Tax Due Diligence	General	General ledger for the years under review.
5	Tax Due Diligence	General	Supporting documentation on any previous reorganisations/change of ownership and on the related tax implications (tax opinion, advance tax clearance from the Luxembourg tax authorities).
6	Tax Due Diligence	Direct taxes	Corporate tax returns for CIT, MBT, NWT for the tax years under review and related appendices.
7	Tax Due Diligence	Direct taxes	Any other tax return filed for all tax years under review (e.g. dividend withholding tax return, tax return on withholding tax for director's fees, subscription tax, etc.).
8	Tax Due Diligence	Direct taxes	CIT, MBT and NWT assessments for the last assessed tax year and all other tax years under review.
9	Tax Due Diligence	Direct taxes	Tax statements on advanced payments or any other tax statement received (invoice/refund) from the tax authorities.
10	Tax Due Diligence	Direct taxes	Copy of any appeal against tax assessments.
11	Tax Due Diligence	VAT	Annual VAT returns for the years under review not yet assessed as well the last assessed VAT return.
12	Tax Due Diligence	VAT	Tax assessments for VAT for the last assessed tax year.
13	Tax Due Diligence	VAT	Tax statements on advanced payments or any other tax statement received (invoice/refund) from the tax authorities.
14	Tax Due Diligence	VAT	Copy of any appeal against tax assessments.
15	Tax Due Diligence	Payroll taxes	Description of the various remuneration systems (salary, lump-sum expenses, fringe benefits, employee option and share schemes, etc.) for the different categories of employees.
16	Tax Due Diligence	Payroll taxes	Information on any recent or on-going audits or investigations in relation to employee taxes.
17	Tax Due Diligence	Other communication with the Luxembourg tax authorities	Copy of any advance tax clearances requests filed with the Luxembourg tax authorities and the related advance tax clearance granted by the Luxembourg tax authorities.
18	Tax Due Diligence	Other communication with the Luxembourg tax authorities	Any communication with the Luxembourg tax authorities.



Nº	Category	Sub-Category	Description of Request
19	Tax Due Diligence	Transfer Pricing	Names of all related parties that have entered into business transactions with the company.
20	Tax Due Diligence	Transfer Pricing	Copy of any agreements with related parties (e.g. licence agreements, service agreements, working contracts (with shareholders and level of remuneration), loan agreements, R&D contracts.
21	Tax Due Diligence	Transfer Pricing	Any transfer pricing study prepared.

In addition to the general request of information, the following documents should be reviewed in the frame of a tax due diligence of a Luxembourg company: tax assessments issued by the Luxembourg Tax Authorities in order to see whether the tax losses carried forward of the company can be considered as final or whether they are only based on the automatic assessment made by the Tax Authorities upon receipt of the tax return, tax statements issued by the Luxembourg Tax Authorities, any advance tax agreement and/or advance pricing agreement granted by the Luxembourg Tax Authorities, any transfer pricing studies prepared (e.g. for intragroup activities).

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MALAYSIA

1. INTRODUCTION

a. Forms of Legal Entity

In Malaysia, the five most common types of legal entities are:

- Sole proprietorship
- Partnership
- Limited Liability Partnership ("LLP")
- Private Limited Company (commonly known as Sdn Bhd)
- Public limited company (commonly known as Berhad).

These entities differ in terms of the level of ownership/control and liability with respect to third parties. LLPs, private limited companies and public limited companies are generally subject to the same tax treatment.

b. Taxes, Tax Rates

Income tax

The current corporate tax rate is 24%. Small and Medium Enterprises are taxed at 17% on the first chargeable income of MYR600,000, with the balance taxed at 24%.

Resident individuals are taxed at progressive rates ranging from 0% to 30% (for chargeable income exceeding MYR2 million). Non-resident individuals are taxed at a flat rate of 30%.

Petroleum income tax

Upstream oil and gas activities are subject to petroleum income tax at 38%.



Withholding tax ("WHT")

Withholding tax ("WHT") is levied on the following income derived from Malaysia by a non-resident with no permanent establishment in Malaysia:

Nature of payment	Rate
Royalty	10%
Interest	15%
Payment for advice, assistance or services rendered in Malaysia in connection with the management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme	10%
Payment for services rendered in connection with the use of property or rights belonging to, or the installation or operation of, any plant, machinery or other apparatus purchased from the non-resident	10%
Rental of moveable property	10%

The WHT rate can be reduced in line with the applicable double taxation agreement ("DTA").

Real property gains tax ("RPGT")

There is no capital gains tax regime in Malaysia except for real property gains tax ("RPGT"). This is levied on gains arising from a disposal of real property situated in Malaysia , or shares in a real property company. The RPGT rates where the seller is a company incorporated in Malaysia are as follows:

Disposal within 3 years of date of acquisition	30%
Disposal in the 4th year after date of acquisition	20%
Disposal in the 5th year after date of acquisition	15%
Disposal in the 6th year after date of acquisition and thereafter	10%

If the seller is a company incorporated outside Malaysia, the RPGT rates are as follows:

Disposal within 5 years of the date of acquisition	30%
Disposal in the 6th year after date of the acquisition and thereafter	10%

In the case where the disposal consideration consists wholly or partly of cash, the acquirer is required to retain all of that money, or a sum not exceeding 3% of the total value of the consideration (whichever is less) and remit that amount to the Malaysian Inland Revenue Board ("IRB"). However, if the seller is a company incorporated in Malaysia or a trustee of a trust or a body of persons registered under any written law in Malaysia and where the disposal takes place within three years after the date of acquisition, the retention sum to be withheld by the acquirer will be the whole amount of the cash consideration or a sum not exceeding 5% of the total value of the consideration, whichever is lower.

An exemption from RPGT is available for the transfer of chargeable assets between companies in the same group in any scheme of reorganisation, reconstruction or amalgamation, subject to meeting the qualifying conditions.



Stamp duty

Stamp duty is levied on certain instruments of transfer of property. The rate of duty varies according to the nature of the instrument and transacted values.

The ad-valorem stamp duty rates for the conveyance, assignment or transfer of property (except stock, shares or marketable securities) are as follows:

Value of property	Rate
On the first MYR100,000	1%
On the next MYR400,000	2%
On the next MYR500,000	3%
In excess of MYR1 million	4%

The transfer of unlisted shares in a Malaysian company is subject to stamp duty at 0.3% of the transfer consideration or value, whichever is higher.

Relief from stamp duty is available in the case of reconstructions and amalgamations of companies and for transfer of property between group companies, subject to meeting the prerequisite conditions.

Sales and Services Tax

Malaysia implements a sales and services tax, a single stage tax that is levied on taxable goods and services.

Sales tax is imposed on all taxable goods manufactured by a registered manufacturer for local consumption, and on the importation of taxable goods by any person. Generally, the sales tax rate is 5% or 10%.

Service tax is charged on any taxable service provided in Malaysia by a registered person in carrying on their business or on any imported taxable service. The current service tax rate is 6%.

c. Common divergences between income shown on tax returns and local financial statements

For tax purposes, the following are deductible against gross business income in arriving at chargeable business income:

- Allowable expenses and outgoings.
- Special deductions/double deductions for specific expenditure.
- Capital allowances.
- Certain tax incentives e.g. reinvestment allowance.
- Business losses brought forward from prior years.
- Group relief.
- Approved donations.



2. RECENT DEVELOPMENTS

Multilateral Convention to Implement Tax Treaty Related Measures ("MLI") to Prevent Base Erosion and Profit Shifting ("BEPS")

Malaysia deposited the instrument of ratification on the MLI on 18 February 2021 with the Organisation for Economic Co-operation and Development ("OECD") Depository. The MLI in respect of Malaysia entered into force on 1 June 2021.

Malaysia has provided its positions on the minimum standard and accepted the following optional provisions:

- Artificial avoidance of permanent establishment ("PE") status through commissionaire arrangements and similar strategies: If an agent or intermediary plays the principal role in concluding substantively finalised business contracts in a country on behalf of a foreign enterprise, that arrangement will constitute a PE of the foreign enterprise in that country.
- Artificial avoidance of PE status through specific activity exemptions: Only genuine preparatory or auxiliary activities will be excluded from the definition of PE. In addition, related entities will be prevented from fragmenting their activities in order to qualify for this exclusion.

Malaysia has signed Double Tax Agreements ("DTAs") with more than 70 jurisdictions, out of which about 50 DTAs will be modified by the MLI. These countries include Australia, China, Hong Kong, Singapore and UK.

COVID-19 related tax measures

Ever since the breakout of the COVID-19 pandemic, the Malaysian Government has introduced various economic stimulus packages to boost the recovery of economy. The tax measures which are in effect in 2022 include:

- Special tax rate of 0% for 10 or 15 years for new investment in manufacturing sectors with capital investment of at least MYR300 million. This is applicable to companies relocating eligible manufacturing facilities from overseas to Malaysia, or companies establishing new operations in Malaysia.
- 100% Investment Tax Allowance for five years for existing companies in Malaysia relocating overseas facilities into Malaysia with capital investment above MYR300 million.
- Special tax rate of 0% to 10% for up to 10 years for new / existing services companies relocating operations to Malaysia and adopting Industrial Revolution 4.0 and digitalisation technology.
- Preferential individual tax rate of 15% for five consecutive years for non-citizen individuals holding key (C-suite) positions.
- Special deduction of up to MYR300,000 on the cost of renovation and refurbishment of business premises incurred from 1 March 2020 to 31 December 2022.
- Double deduction for employers for implementing flexible work arrangements ("FWA") or enhancing existing FWAs.

The COVID-19 related tax measures are subject to eligibility criteria.



3. SHARE ACQUISITION

a. General Comments

The acquisition of shares in a target company involves the purchaser acquiring the legal ownership of a legal entity and assuming its underlying assets and liabilities.

b. Tax Attributes

From a buyer's perspective:

When the acquiring company buys the shares in the target company, the target company continues to benefit from claiming any tax incentives granted to it, subject to conditions imposed on the change in shareholders, where applicable. Any unabsorbed tax losses or unabsorbed capital allowances (tax depreciation) incurred by the target company can be carried forward to future years, subject to the "substantial change in shareholders" provision as explained below. Unabsorbed capital allowance can be carried forward indefinitely, whereas unabsorbed tax losses can be carried forward only for a period of 10 years of assessment.

Where there is a substantial change (more than 50%) in the shareholders of a company, any unabsorbed tax losses or unabsorbed capital allowances cannot be carried forward to future years. However, this provision does not apply to active companies, following a concession granted by the Minister of Finance.

From a seller's perspective:

The gain from sale of shares is generally not subject to income tax if the seller is not engaged in the trading of shares. There is no capital gains tax imposed on a sale of shares, except for a sale of shares in real property companies as discussed below.

c. Tax Grouping

Malaysia has group relief provisions for companies within a group where a surrendering company may transfer its current year tax losses to other entities within the group, subject to meeting certain conditions. The transfer of losses is, however, only applicable for the first three years of assessment after the surrendering company commences its operations.

d. Tax Free Reorganisations

Generally, relief from stamp duty is available for reconstructions or amalgamations of companies, or for the transfer of property (including shares) between associated companies, subject to fulfilling certain conditions. However, the relief is not applicable where the transferee company (i.e. the buyer) is not a company incorporated in Malaysia.

e. Purchase Agreement

The purchase agreement will typically contain tax warranties and tax indemnity clauses. Prior to acquisition, it is usual practice for a purchaser to perform a tax due diligence exercise on the target company, the result of which would be reflected in the tax warranties and indemnities clauses.



f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

From a buyer's perspective:

The sale of unlisted shares in a Malaysian incorporated company will be subject to stamp duty at the rate of 0.3% on the sale consideration or value, whichever is the greater. The stamp duty is required to be paid within 14 days of the date of the notice of assessment and is to be borne by the buyer, unless agreed otherwise between the parties.

From a seller's perspective:

The gain arising from the sale of shares in a real property company will be subject to RPGT at rates ranging from 5% to 30%, depending on the period of ownership.

A "real property company" is defined as a controlled company that owns real property or shares in real property companies, or both, whereby the market value of the real property or shares or both is not less than 75% of the value of the company's total tangible assets. A "controlled company" is a company having not more than 50 members and controlled by not more than five persons.

g. Share Purchase Advantages

- Gains from a sale of shares are generally capital in nature and hence not subject to income tax. Only gains from a disposal of shares in real property companies are subject to RPGT.
- A target company will continue to carry forward unabsorbed business losses, capital allowances and tax incentives, subject to the requisite rules. Any tax incentives granted to the target company will remain in the company, unless there is an approval condition attached to changes in shareholders.
- A lower stamp duty rate of 0.3% applies compared to an asset purchase deal.

h. Share Purchase Disadvantages

- In a share acquisition, the buyer will assume the liabilities of the target company.
- The target company will continue to claim capital allowances to the extent of the qualifying assets' tax residual value. The tax legislation does not provide for any avenue to achieve a step up in value of the assets in this instance.



4. ASSET ACQUISITION

a. General Comments

In an asset acquisition, the purchaser acquires specific assets from the seller and the ownership of such assets will be transferred to the purchaser. The tax attributes, (e.g. unabsorbed losses of the seller company), will not be transferred to the buyer.

b. Purchase Price Allocation

There are no specific rules governing the allocation of purchase price. In a non-related party transaction, the allocation of the purchase price can be agreed upon between the parties pursuant to the asset purchase agreement. However, market valuation is required for certain transactions such as for the sale of immovable property.

c. Tax Attributes

From a buyer's perspective:

In a sale transaction between unrelated parties, the buyer will be able to claim capital allowances on the price paid for the qualifying assets acquired, provided that the assets are used in the business of the buyer. Industrial buildings allowances can be claimed on the price paid for industrial buildings used for business purposes.

Capital allowances are given by way of an initial allowance and an annual allowance. The rate of initial allowance is 20%, whereas the annual allowance rate depends on the category of qualifying assets and the general rates are 10%, 14% or 20%. Certain qualifying assets qualify for accelerated capital allowance at 40%. Industrial buildings generally qualify for industrial building allowance at 10% (initial) and 3% (annual). Annual allowance is granted on a straight-line basis based on the qualifying cost.

From a seller's perspective:

The seller will be subject to tax adjustment by way of a balancing allowance, or a balancing charge where capital allowances have been claimed on the disposed asset. A balancing charge (taxable item) arises when the sales proceeds for the asset exceed its tax residual value. Conversely, a balance allowance (deductible item) arises where the sale proceeds are lower than the tax residual value.

However, this provision does not apply in a "controlled transfer" where the seller has control over the acquirer or vice versa, or where the seller and the acquirer are controlled by another person. In a controlled transfer, no balancing charge nor balancing allowance will arise to the seller. The acquirer can continue to claim capital allowances on the transferred asset, subject to the tax residual value of the asset.

d. Tax Free Reorganisations

Generally, relief from stamp duty is available for reconstructions or amalgamations of companies, or for transfer of property between associated companies, subject to fulfilling certain conditions. The relief is, however, not applicable where the transferee company (i.e. the buyer) is not a company incorporated in Malaysia.

In the case of a transfer of real property (e.g. land or building) situated in Malaysia, exemption from RPGT may apply, subject to meeting the qualifying conditions.



e. Purchase Agreement

As the purchase of assets does not come with the inherent risk of historical tax liabilities, there is usually minimal tax content in the purchase agreement.

f. Depreciation and Amortisation

There are no provisions in the Malaysian Income Tax Act that provide for a step up in value of the underlying assets in an asset deal. The accounting impact of depreciation and amortisation of assets or goodwill is disregarded for tax purposes.

As outlined above, capital allowances can be claimed on the cost of qualifying assets at prescribed rates. Goodwill is not tax deductible and does not qualify for capital allowances (tax depreciation).

g. Transfer Taxes, VAT

Malaysia currently does not have a VAT regime but implements a sales and service tax regime. The sale of assets in an M&A transaction does not attract any sales or service tax.

From a buyer's perspective:

The transfer or sale of certain assets such as land and receivables will attract stamp duty at rates ranging from 1% to 4% on the market value or sale consideration of the assets, whichever is the higher.

From a seller's perspective:

The gain arising from the sale of real property and shares in real property companies will be subject to RPGT at rates ranging from 5% to 30%, depending on the period of ownership.

h. Asset Purchase Advantages

- The buyer is able to claim capital allowances / industrial buildings allowances on the purchase price paid for the qualifying assets in a non-controlled transfer situation.
- Relief from stamp duty and RPGT for transfer of assets within a group of companies is available, subject to meeting the requisite conditions.

i. Asset Purchase Disadvantages

- The seller will be subject to a balancing charge (taxable item) on the sale of qualifying assets in a non-controlled transaction, where the sale consideration exceeds the tax written down value of the asset.
- The seller will be subject to RPGT on gains arising from the sale of real property or shares in real property companies.
- Stamp duty at rates of between 1% to 4% for transfer of assets is higher than the rate of 0.3% in a share acquisition deal.



5. ACQUISITION VEHICLES

a. General Comments

There are several vehicles that can be used for the acquisition of shares or assets in Malaysia by foreign investors. The choice of acquisition vehicle depends on the tax implications and regulatory framework governing the acquisition vehicle. The most commonly used acquisition vehicle is a locally incorporated limited liability company. Generally, there is no foreign equity restriction, except for certain activities such as the oil and gas sector.

b. Domestic Acquisition Vehicle

The most common domestic acquisition vehicle used by foreign investors to acquire shares or assets is a wholly-owned locally incorporated company. Profits repatriated to the foreign investor via dividend are not subject to any Malaysian withholding tax ("WHT"). Furthermore, any gain arising from a divestment of shares or asset is generally not taxable except for divestment of real property or shares in real property companies.

c. Foreign Acquisition Vehicle

Shares in a Malaysian company can be acquired via a foreign parent company or a foreign intermediate holding company, depending on the availability of treaty benefits.

For certain assets such as land, there may be regulatory restrictions on the use of a foreign vehicle for such an acquisition. If the asset is intended to be used in a business or activity in Malaysia, the preferred acquisition vehicle is a locally incorporated company.

d. Partnerships and joint ventures

A partnership is not a separate entity from a tax perspective. Accordingly, each individual partner is assessed on its share of the partnership income. An LLP is a hybrid between a corporation and a partnership. However, for tax purposes, an LLP is taxed as a corporation.

A joint venture ("JV") can be either incorporated or unincorporated. An incorporated JV involves the incorporation of a local limited liability company to undertake a specific project. An unincorporated JV, on the other hand, is a collaboration of two or more parties to undertake a specific project without the incorporation of a separate legal entity. From a tax perspective, each party to an unincorporated JV is assessed on its share of the JV's income.

In Malaysia, it is not common to use partnerships or unincorporated JVs for M&A activity.



e. Strategic vs Private Equity Buyers

A number of tax incentives are offered by Malaysia for investment by a Venture Capital Company ("VCC") or individuals. A VCC is a company incorporated in Malaysia investing in a Venture Company ("VC") in the form of seed capital financing, start-up financing or early-stage financing and registered with the Securities Commission. To use this incentive, the foreign investor needs to incorporate a local company to undertake the investment in a VC.

Tax exemption for a VCC investing in a VC

A VCC is exempted from income tax:

- On income from all sources excluding interest income arising from savings or fixed deposits and profits from syariah-based deposits; and
- For a period of 10 years of assessment or the life of the fund established for the purpose of investing in a VC, whichever is less.

Tax Deduction for an Individual or a Company Investing in a VC

An individual or a company (including a VCC) is entitled to claim a deduction of an amount equivalent to the value of the investment in shares (cost of investment) in a VC provided the individual or company (including a VCC):

- Is resident in Malaysia;
- Has a business source; and
- Has invested in a VC at start-up, seed capital and early-stage financing for qualifying products and activities.

Besides the above, there are other qualifying conditions that need to be met.



6. ACQUISITION FINANCING

a. General Comments

An acquisition can be financed by equity, debt or a hybrid of both. Malaysia has liberal exchange controls and there is no restriction on repatriation of profits outside Malaysia. Funding by equity is commonly used in Malaysia because funding via debt will attract WHT on interest payments to non-residents, as well as a restriction of interest deduction pursuant to the Earning Stripping Rules ("ESR").

b. Foreign Acquirer

There is no restriction on equity ownership by a foreign acquirer except in certain industries such as oil and gas and the acquisition of land in certain cases.

c. Debt

When using debt as a financing instrument, incidental costs such as legal and guarantee fees are not deductible. However, there are some exceptions for certain Islamic financing instruments. In addition, interest payments to non-residents will attract WHT at 15% (unless reduced under the relevant DTA) and the deduction of interest is subject to interest restriction and ESR as explained below.

i Limitations on Interest Deductions

Interest is deductible against gross business income if it relates to borrowings used for working capital, or laid out on assets used, or held for the production of gross income from the business. The deductibility of interest is subject to restriction if the loan on which the interest relates was used directly or indirectly for non-trade purposes (e.g. investment in movable or immovable property or loans to others). The amount of interest restricted can be claimed against income from the investment, if any (e.g. rental or interest income).

Under the single tier system, dividends received by the shareholders are exempt from tax. In line with this, any expenses - including interest on borrowings to finance the share acquisition - will be "lost" because such expenses are to be disregarded for tax purposes.

ESRs apply where financial assistance (including loans) is provided by a related party. Under the ESRs, the allowable amount of interest deduction in a year of assessment is limited to 20% of tax-EBITDA. Any excess amount can be carried forward to be deducted in the following years of assessment (subject to the allowable amount) until the whole amount is fully utilised. ESRs do not apply when the total interest for all financial assistance from all business sources for the basis period for a year of assessment is MYR500,000 or less.

Payment of interest to a non-resident lender is subject to WHT at 15%, unless a reduced rate applies under the relevant double tax agreement ("DTA").



ii Related Party Debt

The provision of financial assistance (including loans) by a related party will need to be carried out on an arm's length basis.

iii Debt Pushdown

Where the foreign acquirer pushes down a debt that has been used to finance the acquisition of shares in a local company, the local company will not be allowed a deduction for interest on the borrowings.

It would be more tax efficient if the undertaking, rather than the shares, of the local company is acquired by a local acquiring company. In this instance, the acquiring company would be entitled to claim a deduction for the interest on borrowings obtained to fund the acquisition of the undertaking.

d. Hybrid Instruments

Redeemable preference share ("RPS") is commonly used as a hybrid instrument. For tax purposes, RPS is usually treated as a form of equity and hence, RPS distribution is generally not treated as interest.

e. Other Instruments

This section is left intentionally blank.

f. Earn-outs

An earn-out is a contractual agreement whereby the seller is able to obtain additional compensation in the future if the business achieves certain financial goals.

There is no specific tax treatment for earn-outs in Malaysia. The earn-outs received by the seller will need to be assessed separately to determine the tax implications.



7. DIVESTITURES

a. Tax Free

Malaysia does not have a participation exemption regime. Generally, sales of shares or assets are capital in nature and not subject to income tax, except for RPGT – which is applicable to disposals of real property situated in Malaysia or shares in real property companies.

b. Taxable

There is no capital gains tax regime except for RPGT, which is applicable to gains on the disposal of real property situated in Malaysia or shares in real property companies.

Where the prior approval from the tax authorities is obtained, exemption from RPGT is available in the case of a transfer of a chargeable asset between companies in the same group to bring about greater efficiency in operation for a consideration consisting of shares in the company or substantially of shares in the company and the balance in cash, and where the transferee company is resident in Malaysia.

The sale of unlisted shares in a Malaysian company is subject to stamp duty at the rate of 0.3% while the stamp duty on the sale of other assets (e.g. land and receivables) is levied at rates ranging from 1% to 4%. The stamp duty is to be borne by the buyer, unless agreed otherwise between the contracting parties.

Relief from stamp duty is available in the case of reconstruction or amalgamation of group companies, or in relation to the transfer of property between related parties, subject to meeting the prescribed conditions.

c. Cross Border

There is no differential in the tax treatment for non-residents in respect of sale of shares or assets, except for differential in RPGT rates for the seller who is not a company incorporated in Malaysia as shown below:

Disposal within 5 years of the date of acquisition	30%
Disposal in the 6th year after the date of acquisition and thereafter	10%



8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Malaysia adopts a territorial tax system under which income tax is levied on income accrued in or derived from Malaysia. However, resident companies carrying on the business of banking, insurance or sea or air transport are taxed on a worldwide scope.

Foreign-sourced income received in Malaysia by a non-resident is exempt from tax. A concession is given to foreign-sourced dividend income remitted to Malaysia by resident companies and LLPs, subject to meeting the eligibility criteria. Such dividend income will be tax exempt from 1 January 2022 to 31 December 2026.

b. CFC Regime

There is no CFC regime in Malaysia.

c. Foreign Branches and Partnerships

Foreign branches operating in Malaysia are subject to the same taxation rules as those applicable to a company. However, payments made by a resident to a foreign branch are subject to WHT at 13% i.e. 10% (on account of corporate tax payable by the branch) plus 3% (on account of personal tax payable by employees). The 10% WHT is creditable against the corporate tax liability of the foreign branch, while the 10% tax withheld will be refunded if the tax authorities are satisfied that the employees' taxes have been duly settled.

An unincorporated partnership is not a separate entity for tax purposes. Each partner will account for his share of the divisible income of the partnership and report this in their tax return.

d. Cash Repatriation

Cash repatriation by way of dividend is not subject to tax in the hands of the shareholder. Dividends remitted to non-resident shareholders are not subject to WHT. From a Companies Act perspective, the ability of a company to declare dividends is subject to availability of distributable reserves and meeting solvency requirements.



9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Malaysia has an RPGT regime. Under this regime, any chargeable gain accruing on the disposal of a chargeable asset shall be subject to RPGT. A chargeable asset constitutes any real property situated in Malaysia and shares in a Real Property Company ("RPC"). The term "real property" means any land situated in Malaysia and any interest, option or other right in or over such land. An RPC refers to a company which:

- Is a controlled company;
- Acquires real property and/or shares in an RPC; and
- At the date of acquisition, the market value of those real property and/or shares is not less than 75% of its total tangible assets.

A company can cease to become an RPC when it disposes of its real property and/or shares in an RPC and at the date of disposal, the market value of real property and/or shares in a RPC owned is less than 75% of its total tangible assets.

The current RPGT rates range from 0% to 30%, depending on the holding period of the chargeable asset and the category of taxpayers.

b. CbC and Other Reporting Regimes

CbC Reporting Regime

The CbC Reporting Regime came into operation on 1 January 2017 in Malaysia. It applies to an MNE group that has total consolidated group revenue of at least MYR3 billion in the financial year preceding the reporting financial year. The ultimate holding company of the MNE group that is resident in Malaysia is responsible for preparing and filing the CbC report to the Malaysian Inland Revenue Board ("IRB") within one year of the end of the reporting financial year. A Malaysian taxpayer who is part of an MNE group which is required to prepare and file a CbC report in another country is required to notify the MIRB of their reporting entity and the reporting entity's residency before the end of the reporting financial year.

Foreign Account Tax Compliance Act ("FATCA")

On 21 July 2021, Malaysia signed an Intergovernmental Agreement ("IGA") with the US to implement FATCA. Under the terms of the IGA, Malaysia-based financial institutions ("MYFIs") will provide the IRB with the required account information of US persons. The IRB will then exchange that information with the US IRS. It is understood that the date for submitting the reportable information in respect of years 2014 to 2022 under FATCA to the IRB has been tentatively deferred to 2023.

Common Reporting Standard ("CRS")

Under the CRS, MYFIs are required to collect and report to the IRB financial account information on non-residents. The IRB will exchange this information with the participating foreign tax authorities of those non-residents. More than 100 jurisdictions have committed to exchange the CRS information. Malaysia has committed to exchange the CRS information from 2018 and will also receive financial account information on Malaysian residents from other countries' tax authorities.

10. TRANSFER PRICING

Malaysian transfer pricing legislation was introduced with effect from 1 January 2009 to deal specifically with transactions between associated persons. When a person enters into a transaction with an associated person for the acquisition or supply of property or services, that person shall determine and apply the arm's length price for the transaction. In addition to the principal legislation, Malaysia also has a set of transfer pricing rules and guidelines to provide further guidance on the application of the arm's length principle. The rules and guidelines are largely in line with the OECD Transfer Pricing Guidelines.

In terms of transfer pricing documentation, Malaysia adopts the three-tiered documentation approach which is in line with BEPS Action 13: country by country reporting, comprising the following:

- CbC report: The concept of CbC report has been explained in an earlier section of this chapter.
- Master File: Taxpayers who are obliged to prepare the CbC Report are required to prepare the Master File and submit it together with the Local File when requested by the Malaysian IRB. The Master File contains information of the MNE group such as a description of the businesses, intangibles, intercompany financial activities, financial and tax positions, etc.
- Local File: Taxpayers who carry out transactions with associated persons are required to maintain contemporaneous transfer pricing documentation, also referred to as the Local File. Less strict rules apply to transactions that are smaller in value. Transfer pricing documentation is not required to be submitted with the annual corporate tax return, but should be made available within 14 days upon request by the Malaysian IRB. Failure to do so will attract a penalty of MYR20,000 to MYR100,000. Where transfer pricing adjustments are made by the Malaysian IRB during a transfer pricing audit, a surcharge of not more than 5% will be imposed on the amount of increase in income or reduction in tax deduction (arising from the transfer pricing adjustments).

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

This section is left intentionally blank.

b. Use of Hybrid Instruments

Hybrid instruments are instruments that have a combination of equity and debt features (e.g. redeemable preference shares and perpetual bonds). From an accounting perspective, a hybrid instrument can be classified as either debt or equity.

The tax treatment depends on whether the instrument is treated as an equity or debt instrument, based on the characteristics of the instrument. If it is an equity instrument, the "distribution" arising from it is treated as a dividend, whereas in a debt instrument, the "distribution" is treated as an interest payment.

There is no WHT levied on dividends paid to non-residents. However, interest paid to non-residents is subject to WHT at 15%, unless the rate is reduced under the relevant DTA.



c. Principal/Limited Risk Distribution or Similar Structures

Malaysia does not have specific legislation governing principal/limited risk distribution or similar structures. Such structures are generally acceptable in Malaysia, provided the arm's length nature of transfer prices in such structures can be demonstrated using acceptable transfer pricing methodologies. These should take into consideration the functions performed, assets employed and risks assumed by the parties concerned.

The prevailing Malaysian transfer pricing rules and guidelines are largely based on the OECD Transfer Pricing Guidelines. Accordingly, transfer pricing methodologies which can be used in Malaysia to determine arm's length prices for such structures are those in line with the OECD approach, i.e. comparable uncontrolled price method, resale price method, cost plus method, profit split method or transactional net margin method.

d. Intellectual Property

Generally, costs incurred to develop intellectual property such as patents, trademarks and copyrights are not tax deductible in Malaysia because these are considered capital in nature.

There are, however, a few incentives available for intellectual property as follows:

- Capital allowances on the cost of developing customised software.
- Double deductions on payments (not being capital expenditure) for approved research and development activities.

e. Special Tax Regimes

Post acquisition, companies may invest additional capital or transfer global operations to Malaysia.

The key tax benefits applicable in Malaysia are, among others:

- Reinvestment allowance on capital expenditure incurred in undertaking a qualifying project in the manufacturing or agricultural sector.
- Principal Hub Incentive for entities functioning as a regional hub to manage, control and support key functions of the group. The tax incentive takes the form of tax exemption or preferential corporate tax rate, according to classification in "Tier 1" or "Tier 2".
- Double deductions for certain expenses incurred for the promotion of exports.
- Accelerated capital allowances on prescribed ICT equipment.
- Double deductions for approved R&D activities.



12. OECD BEPS CONSIDERATIONS

Malaysia is a member of the Inclusive Framework on BEPS and is committed to the implementation of four minimum standards:

- Countering harmful tax practices (BEPS Action 5)
- Prevention of treaty abuse (BEPS Action 6)
- Implementation of CbC reporting (BEPS Action 13)
- Enhancing dispute resolution mechanisms (BEPS Action 14).

To date, the Malaysian Government has issued legislation relating to the implementation of CbC reporting (in 2016), as well as those governing tax incentives that comply with the Forum of Harmful Tax Practices ("FHTP") criteria (in 2018). On 24 January 2018, Malaysia signed the MLI to implement tax treaty related measures to prevent BEPS. Malaysia subsequently deposited its instrument of ratification for the MLI with the OECD on 18 February 2021 and the MLI came into force on 1 June 2021. Key modifications to Malaysian bilateral tax treaties relate to the prevention of tax treaty abuse, widening of the scope of permanent establishment and improvement of dispute resolution procedures. The effective date of the MLI provisions for Malaysian bilateral tax treaties will also depend on when Malaysia's treaty partners ratify the MLI.

On 1 July 2021, 130 countries, including Malaysia, agreed a Statement on a Two-Pillar Solution to address the tax challenges arising from the digitalisation of the economy. Work on the implementation of the Two-Pillar Solution is under way, with a targeted implementation date in 2023.

13. ACCOUNTING CONSIDERATIONS

This section is left intentionally blank.



14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

For a company to be able to declare dividends, it must have sufficient distributable reserves and meet the solvency test as provided under Section 132 of the Companies Act 2016.

b. Application of Regional Rules

This section is left intentionally blank.

c. Tax Rulings and Clearances

Tax rulings, or tax clearances, are not applicable for share or asset transactions in Malaysia. However, the sale of certain assets (e.g. land) may require the prior approval of the relevant governing authority.

15. MAJOR NON-TAX CONSIDERATIONS

It is recommended that appropriate legal, financial and tax due diligence be conducted in a merger and acquisition exercise. This is to identify any potential issues and risks in connection with the acquisition and divestment in future.



16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Albania	NIL	10	10	
Argentina	NIL	15	10	[A]
Armenia	NIL	15	10	[B]
Australia	NIL	15	10	
Austria	NIL	15	10	
Azerbaijan	NIL	15	10	[B]
Bangladesh	NIL	15	10	
Barbados	NIL	15	10	[B]
Belarus	NIL	15	10	[B]
Belgium	NIL	10	10	[C],[D]
Bolivia	NIL	15	10	[B]
Bosnia and Herzegovina	NIL	10	8	
Botswana	NIL	15	10	[B]
Brazil	NIL	15	10	[B]
Bulgaria	NIL	15	10	[B]
Canada	NIL	15	10	
Chile	NIL	15	10	
China	NIL	10	10	
Croatia	NIL	10	10	
Cyprus	NIL	15	10	[B]
Czech Republic	NIL	12	10	
Denmark	NIL	15	10	
Egypt	NIL	15	10	
Estonia	NIL	15	10	[B]
Faroe Islands	NIL	15	10	[B]
Finland	NIL	15	10	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
France	NIL	15	10	
Gambia	NIL	15	10	[B]
Georgia	NIL	15	10	[B]
Germany	NIL	10	7	
Greece	NIL	15	10	[B]
Hungary	NIL	15	10	
Iceland	NIL	15	10	[B]
India	NIL	10	10	
Indonesia	NIL	10	10	[D]
Ireland	NIL	10	8	
Israel	NIL	15	10	[B]
Italy	NIL	15	10	
Jamaica	NIL	15	10	[B]
Japan	NIL	10	10	
Kazakhstan	NIL	10	10	
Kenya	NIL	15	10	[B]
Korea, Republic of	NIL	15	10	
Latvia	NIL	15	10	[B]
Lithuania	NIL	15	10	[B]
Luxembourg	NIL	10	8	
Macedonia	NIL	15	10	[B]
Malaysia	N/A	N/A	N/A	
Malta	NIL	15	10	
Mauritius	NIL	15	10	
Mexico	NIL	15	10	[B]
Montenegro	NIL	15	10	[B]
Namibia	NIL	10	5	
Netherlands	NIL	15	8	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
New Zealand	NIL	15	10	
Nigeria	NIL	15	10	[B]
Norway	NIL	15	10	
Pakistan	NIL	15	10	
Philippines	NIL	15	10	
Poland	NIL	15	10	
Portugal	NIL	15	10	[B]
Romania	NIL	15	10	
Russia	NIL	15	10	
Saudi Arabia	NIL	5	8	
Serbia	NIL	15	10	[B]
Singapore	NIL	10	8	
Slovakia	NIL	5	10	
Slovenia	NIL	15	10	[B]
South Africa	NIL	10	5	
Spain	NIL	10	7	
Sri Lanka	NIL	10	10	
Switzerland	NIL	10	10	
Taiwan	NIL	10	10	
Tanzania	NIL	15	10	[B]
Thailand	NIL	15	10	
Trinidad and Tobago	NIL	15	10	[B]
Tunisia	NIL	15	10	[B]
Turkey	NIL	15	10	[D]
Ukraine	NIL	10	8	
United Kingdom	NIL	10	8	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
United States	NIL	15	10	[A]
Venezuela	NIL	15	10	
Vietnam	NIL	10	10	
Zambia	NIL	15	10	[B]
Zimbabwe	NIL	10	10	

Footnotes	
[A]	Limited DTA with Malaysia.
[B]	No DTA with Malaysia.
[C]	WHT rate of 10% is applicable only for interest paid or incurred by an enterprise in an industrial undertaking.
[D]	Protocol that amends limited articles of the treaty has been gazetted but is not yet in force.



17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Tax contact person available to discuss Malaysian tax matters.
2	Tax Due Diligence	Financials	Audited Financial Statements and Trial Balances for the last three financial years.
3	Tax Due Diligence	Corporate Tax	Tax return (Form e-C) for the last three years of assessment.
4	Tax Due Diligence	Corporate Tax	Tax computation for the last three years of assessment.
5	Tax Due Diligence	Corporate Tax	Correspondence with the Malaysian IRB on tax audits, notice of demand for tax penalties and notices of additional assessments for the last three years of assessment (if any).
6	Tax Due Diligence	Corporate Tax	Submission of tax estimates (Form CP204/Form CP204A) for the last three years of assessment.
7	Tax Due Diligence	Corporate Tax	Tax payment receipts for the last three years of assessment.
8	Tax Due Diligence	Corporate Tax	Payments made to non-residents and supporting documents in relation to WHT payments for the last three years of assessment (if any).
9	Tax Due Diligence	Corporate Tax	Details of any tax incentive granted by the relevant approving authorities (e.g. approval letter).
10	Tax Due Diligence	Transfer Pricing	Transfer pricing documentation (if relevant) for the last five years of assessment.
11	Tax Due Diligence	Sales / Service Tax	SST-02 returns submitted for each taxable period and transaction listings.
12	Tax Due Diligence	Sales / Service Tax	Correspondence / letter with the Royal Malaysian Customs Department on sales / service tax matters, if any.

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1. INTRODUCTION

a. Forms of Legal Entity

The Company's Act provides for various types of entities such as a private limited liability company ("Ltd"), a public limited liability company ("plc"), an investment company with variable share capital ("SICAV"), an investment company with fixed share capital ("INVCO"), limited partnerships, general partnerships, and foundations. The most commonly used entity is the limited liability company which may be either private or public. A private company must include "Limited" or "Ltd" as the last word in its name. It may be exempt or non-exempt and it is also possible to have just one shareholder (referred to as a single member company). A private company must have less than 50 shareholders and the company must prohibit invitations to the public to subscribe for any shares or debentures. A public company ("plc") is defined as a company that is not a private company and therefore it may offer its' shares or debentures for subscription to the general public.

A partnership is a "look-through", transparent entity for income tax purposes whilst other entities have a distinct legal personality and are treated as a separate taxpayer.

b. Taxes, Tax Rates

Both private and public companies are subject to tax at a standard rate of 35%. Certain investment income may be subject to a final tax rate of 15% whereas dividend income and capital gains may benefit from the participation exemption and therefore not subject to tax. The income tax rates for individuals are progressive and vary depending on the taxpayer's status as follows:

From	To	Rate	Subtract (€)
Single Rates			
0	9,100	0%	0
9,101	14,500	15%	1,365
14,501	19,500	25%	2,815
19,501	60,000	25%	2,725
60,001	and over	35%	8,725
Married Rates			
0	12,700	0%	0
12,701	21,200	15%	1,905
21,201	28,700	25%	4,025
28,701	60,000	25%	3,905
60,001	and over	35%	9,905



From	To	Rate	Subtract (€)
Parent Rates			
0	10,500	0%	0
10,501	15,800	15%	1,575
15,801	21,200	25%	3,155
21,201	60,000	25%	3,050
60,001	and over	35%	9,050

Both companies and individuals may be subject to a final tax of 15% and this is normally applicable to investment income and certain rental income. Individuals may also be subject to a final tax of 10% on part-time employment income (up to EUR10,000 per annum in the case of part-time employment and up to EUR12,000 per annum in the case of part-time self-employment).

Transfer of immovable property is also subject to a final tax which varies between 2% and 10% of the consideration.

c. Common divergences between income shown on tax returns and local financial statements

The income tax computation included in the tax return / declaration is prepared on the basis of the company's audited financial statements which are prepared in accordance with IFRS as adopted by the EU or General Accounting Principles for Small and Medium Enterprises ("GAPSME"). Therefore, the starting point is the accounting profit before tax. However, various adjustments must be made to arrive at the chargeable income. The most common adjustments include depreciation, unrealised differences on exchange, fair value movements, provisions, donations, fines and penalties and income subject to the final taxation. Deprecation is substituted with capital allowances since the tax legislation allows for the wear and tear on certain assets at prescribed rates.

The tax legislation provides for a negative test and a positive test in order to determine whether an expense is allowable / deductible or not. The principle is that an expense must be incurred in the production of the income. Expenses which have not yet been incurred or expenses of a private or voluntary nature are not allowable.

2. RECENT DEVELOPMENTS

As a Member State of the EU, Malta adopted the EU Directives on Anti-Tax Avoidance, more commonly referred to as ATAD1 as well as ATAD2. Therefore, Maltese legislation has seen the introduction of interest deduction limitations, CFC and exit taxes. ATAD1 also includes general anti-abuse provisions but legislation already had similar provisions.

Apart from the EU Directives which Malta had to implement, Malta also signed and ratified the Multilateral Instrument ("MLI") and therefore tax treaties must be interpreted in the light of the MLI.

Due to the COVID-19 pandemic, the Maltese government introduced some financial aid to stimulate the Maltese economy and help businesses severely affected by the pandemic. The incentives include short-term wage supplements, grants to cover rental costs and electricity consumptions costs as well as guarantees to access financing. Stamp duty upon the purchase of immovable property has been reduced and the final tax due upon the sale of immovable property has also been reduced. The tax payment deferral scheme has also been made available to eligible businesses. Some incentives are being extended into 2022.



Malta also transposed Council Directive (EU) 2018/8222 ("DAC6") into national legislation and as a result, M&A transactions which are categorised as cross border arrangements may become reportable to the tax authorities. Reporting is not necessarily done in Malta but in any EU Member State affected by the reportable cross border arrangement. It must be classified under one or more of the hallmarks and other details as listed in the EU Directive reported to the tax authorities.

Malta is trying to delay the introduction of the minimum tax of 15% applicable to groups with a combined financial revenue of more than EUR750 million, but there are no indications that this will be successful.

3. SHARE ACQUISITION

a. General Comments

The transfer of shares in a company must be notified to the Malta Business Registry within 14 days from the share transfer date and possibly to the National Foreign Direct Investment Screening Office. Failure to do so will result in the imposition of penalties for the late notification.

The definition of the word "transfer" is not limited to the transfer of shares from one person to another, but also includes: assignment, sale, emphyteusis, partition, donation, settlement of property on trust, distribution and reversion of property settled on trust, sale by instalments, any alienation under any title including any redemption, liquidation or cancellation of securities and any other transaction which results in "value shifting". Therefore, if a company issues and allots new shares but not in equal proportions to the existing interest, value shifting rules may apply.

The sale of shares may be subject to capital gains and added to the taxpayer's chargeable income, but an exemption applies if the transfer is made by a non-resident person and the Maltese company in which the share transfer is made does not have any immovable property in Malta. If the share transfer is subject to tax, a provisional tax is paid upon the filing of the necessary documentation with the Commissioner for Revenue. The capital gain is then computed and declared in the income tax return of the taxpayer together with any other income which is brought to charge. The provisional tax is given as a credit against the tax and any balance must be settled by the taxpayer together with any other tax liability.

Duty on documents is payable upon the filing of the share transfer documentation with the Commissioner for Revenue unless an exemption applies. A share transfer may be produced as evidence if the share transfer documentation has been filed and the relevant stamp duty paid.

b. Tax Grouping and Tax Attributes

The tax legislation contains provisions for an exemption from the transfer of assets within a group. The transfer of securities may therefore qualify for this "group exemption".

It is possible for a group company to transfer trading losses to another group company if the two companies are considered to belong to the same group for income tax purposes. The group companies must be owned more than 50% by the same parent or one company is owned more than 50% by another company to be considered a group and enable the transfer of trading losses. The companies must also be tax resident in Malta and not tax resident elsewhere. The surrendering of trading losses must be made within the same tax year. Therefore, any losses brought forward or carried forward cannot be surrendered. Tax losses carried forward by the company may be utilised by the acquiring company only if the two companies are merged, unless the Commissioner for Revenue considers such merger as being a scheme in which case the anti-abuse provisions apply. Anti-abuse provisions apply when the transfer of losses to a group company arise from profits relating to immovable property situated in Malta.



In certain cross border transactions such as a redomiciliation of a foreign company to Malta (transfer of legal seat), a cross border merger and the change in a company's tax residence by moving the effective management and control, it is possible to have a step up in the value of assets held by the company. The step up is not subject to any tax in Malta, and the stepped-up amount may qualify for depreciation or amortisation.

It is also possible to have a group for VAT purposes (referred to as VAT Grouping). This is possible if at least one of the companies is exempt without credit and licensed by the relevant authorities.

The carry forward of tax losses may be challenged by the tax authorities following a share transfer even if there is no change in the company's activities. Past losses may never be surrendered and utilised by other group companies.

c. Tax Free Reorganisations

Tax free reorganisations and exemptions are available under the "group exemption" referred to above in section b. The reorganisation or share transfers should not result in "value shifting" otherwise they may become taxable.

Other exemptions from capital gains apply if the transferor or seller is a non-resident person and the company does not own immovable property in Malta.

d. Purchase Agreement

The buyer and seller (or transferee and transferor) must sign a share transfer agreement or a share purchase agreement and the company secretary or director of the company must submit the relevant statutory form or notification to the Malta Business Registry. Apart from the obligations to inform the Malta Business Registry, the buyer must submit the necessary documentation to the Commissioner for Revenue to pay the relevant duty on documents (or stamp duty) and the seller must submit the necessary documentation (also to the Commissioner for Revenue) to pay the relevant capital gains tax or obtain the exemption, if applicable.

e. Transfer Taxes on Share Transfers (including mechanisms for disclosure and collection)

- Tax implications for the buyer:

Share transfers may be subject to duty on documents (more commonly referred to as stamp duty). However, exemptions from duty on documents apply if the company has more than 90% of its business interests or activities outside Malta. Other exemptions are available if the majority of the shareholders are owned and controlled, directly or indirectly, by non-resident persons. If the share transfer is not exempt, then duty on documents is computed on the market value of the shares. In practice, the market value is usually taken to be the Net Asset Value ("NAV") of the shares, adjusted to reflect the market value of any immovable property, any investment in another company and goodwill. Duty on documents is levied at EUR2 on every EUR100 of the market value, with the rate being EUR5 on every EUR100 if the company has more than 75% of its assets in immovable property situated in Malta.

- Tax implications for the seller:

The seller may be subject to tax on any gain realised from the disposal of the shares. The gain is computed by deducting the cost of the investment from the consideration or the market value of the shares, whichever is the higher. Prescribed rules are available to determine the market value of shares which are not sold on an open market. The transfer of shares by a non-resident person is exempt from capital gains tax if the company in which the shares are being transferred is not considered to be a property company because it has real estate in Malta. An exemption also applies to securities listed on a recognised stock exchange.



It is also possible for a group of companies to avail from an exemption from the payment of tax upon the transfer of shares if the ultimate ownership of the company does not change. It is pertinent to point out that any share transfer which is not exempt will take the original cost of investment to calculate the gain realised.

f. "Purchase Accounting" Applicable to Share Acquisitions

Following the transposition of the EU Single Accounting Directive, the default accounting framework for Small and Medium Sized Enterprises ("SMEs") is the GAPSME. Consolidated accounts qualifying for General Accounting Principles for Small and Medium Enterprises ("GAPSME"), are required to apply the purchase method for business combinations. Entities which do not qualify for GAPSME or opt out of applying GAPSME as the accounting framework for consolidated accounts, apply IFRS as adopted by the EU. In such cases, business combinations are accounted for using the acquisition method.

g. Share Purchase Advantages

Any change in the shareholding of a company does not have any impact on the tax base of the assets held therefore no opportunities are available in this respect. A step up is possible upon a redomiciliation or a change in the tax residence of a company (to Malta).

It is possible for a company to seek a tax clearance certificate from the tax authorities to confirm that no tax balances are due by the company. These are asked for, ,and given, after the completion of the transaction. If a tax clearance certificate is required before a transaction takes place, then this is done through a written tax confirmation or an advance revenue ruling ("ARR"), if applicable. ARRs are only issued in particular transactions which normally involve international business.

h. Share Purchase Disadvantages

A share transfer may be more onerous with respect to filing requirements than a transfer of an asset. The transfer of moveable property is normally done through a private agreement and it is only immovable property which requires a public deed done in front of a notary.

Another disadvantage of "non-exempt share transfers" is the calculation of the capital gain which requires the calculation of goodwill by taking the company's profits for the last five years and other adjustments.

4. ASSET ACQUISITION

a. General Comments

The transfer of assets is given effect by means of a private agreement and it is only immovable property which requires a public deed done in front of a notary. Certain assets such as trademarks and trade names and other intellectual property will require registration formalities.

The assets which are subject to capital gains are immovable property, securities, business goodwill and intellectual property. Other assets are not subject to any capital gains tax; duty on documents is only applicable on immovable property and securities.

As a general rule, the acquisition of an asset does not involve any taxes for the buyer unless the asset is immovable property or securities which may therefore be subject to duty on documents. No other taxes apply.

On the other hand, the seller, is subject to capital gains tax upon the transfer of certain assets. Capital gains are taxed together with other chargeable income and therefore the standard applicable tax rates apply. These are immovable property, securities, business, goodwill, business permits, copyright, patents, trademarks, trade names and any other intellectual property. Other assets are not subject to capital gains.



b. Purchase Price Allocation

The proper purchase price allocation is important given that assets are not all subject to the same tax treatment, as well as the determination of the cost base which may be relevant for depreciation or amortisation. The purchase price is also relevant and necessary when the transfer involves an exchange for the same reasons. An exchange is considered as two transfers.

c. Tax Attributes

Assets used in a business and on which capital allowances have been claimed are subject to a balancing statement. So, if the price paid for the assets exceeds the capital allowances previously claimed then the seller is liable to a balancing charge which is included in their taxable income and if the price paid for the assets is lower than the capital allowances previously claimed then the seller is entitled to claim a balancing allowance which can be offset against taxable income.

d. Tax Free Reorganisations

As indicated above, the transfer of assets within a group is exempt.

Rollover relief provisions are also available if a business asset, and used for a period of three years, is replaced by another asset within one year and used for the same purpose.

e. Purchase Agreement

The purchase agreement is a private agreement between the buyer and the seller and does not need to be registered unless the asset in question is immovable property situated in Malta.

The sale of assets may also trigger the obligation / requirement to issue an invoice as is required by the VAT Act.

f. Depreciation and Amortisation

Assets such as industrial buildings (which include hotels and offices) and plant and machinery used in the production of the income, qualify for a tax deduction in form of capital allowances or wear and tear at prescribed rates using the straight-line method.

Intangible assets such as intellectual property and scientific research may also be depreciated / amortised for income tax purposes over their useful economic life. Goodwill is not deductible or allowable for income tax purposes and it may not be amortised for income tax purposes.

g. Transfer Taxes, VAT

The transfer of assets may be subject to VAT (at the standard rate of 18%) unless the transfer is that of a going concern, in which case no VAT is applicable. If the sale is an intra-community supply, then it may also be possible to apply the reverse charge mechanism. In order to qualify as a transfer of a going concern, the sale must cover the whole business or at least a separate functional business operation and thus the relief does not apply to a supply of standalone assets and/or inventory only. The assets transferred must be used by the transferee to carrying on the same kind of business as that which was performed at the time of the transferor.

No other transfer taxes apply.



h. Asset Purchase Advantages

Assets such as industrial buildings (which include hotels and offices) and plant and machinery used in the production of the income, qualify for a tax deduction in the form of capital allowances or wear and tear at prescribed rates using the straight-line method.

Intangible assets such as intellectual property and scientific research may also be depreciated / amortised for income tax purposes over their useful economic life. Also, business assets are transferred by means of a private agreement and only immovable property situated in Malta requires a public deed in front of a notary.

Asset transfers maybe subject to a step up in value / cost.

Finally, an asset transfer may not require tax due diligence unlike a share transfer which is often subject to tax due diligence. This is because in the case of an asset transfer, the tax history typically remains with the seller.

i. Asset Purchase Disadvantages

The transfer of an asset does not give rise to particular disadvantages except that any tax losses which a company may have and which may have arisen from the ownership and use of the asset, cannot be transferred.

5. ACQUISITION VEHICLES

a. General Comments

A special purpose vehicle ("SPV") may be used for both asset acquisitions as well as for share purchases, however vehicles are not typically used in Malta as none offer any particular incentive to the buyer or the seller.

However, an SPV, usually a limited liability company, may be used to "protect" or ringfence the asset in question.

b. Domestic Acquisition Vehicle

An SPV may be used as a Domestic Acquisition Vehicle.

c. Foreign Acquisition Vehicle

An SPV may be used as a Foreign Acquisition Vehicle.

d. Partnerships and Joint Ventures

Partnerships and joint ventures are not considered as separate legal entities but are "look through" and are considered transparent for income tax purposes. As a result, it is the partners or the parties to the joint venture who are subject to tax.

e. Strategic vs Private Equity Buyers

Apart from the group concept which apply for group relief provisions and VAT grouping, there are no particular differences when it comes to the application of tax rules in relation to transactions carried out by corporate groups or by private equity investors.



6. ACQUISITION FINANCING

a. General Comments

Malta has implemented EU Anti-Money Laundering ("AML") directives and has regulations related to the Prevention of Money Laundering and Funding of Terrorism ("PLMFT"). As a result, banks invariably request supporting documentation especially if the amounts involved are not small.

b. Equity

Unless a company is a regulated or licensed entity, there are no minimum capital requirements other than the normal minimum capital contained in The Companies Act. Malta does not have debt to equity ratios or thin capitalisation rules.

With the introduction of the Notional Interest Deduction ("NID") mentioned below, there is no tax advantage in financing operations through loans.

The NID rules provide for a more "equal treatment" for debt and equity financing by allowing companies and partnerships resident in Malta to claim for a deduction for the return on their risk capital against their chargeable income. The risk capital includes the share capital, share premium, reserves resulting from a contribution to the company, interest-free loans and any other positive equity components. The NID is calculated by multiplying the risk capital as at year end by the notional interest rate which currently is 7.12%. The maximum deduction cannot exceed 90% of the chargeable income before deducting the NID. However, if the company is trading in nature any excess is not lost as it may be carried forward to the following year.

c. Debt

i Limitations on Use of Debt

Malta does not have any debt to equity ratio rules. Tax legislation provides that interest is allowable on capital employed in acquiring the income but there are no limitations as such on the use of the debt (e.g. working capital, capital expenditure, back-to-back).

ii Limitations on Interest Deductions

As a result of the implementation of ATAD1, an interest limitation rule came into force as of 1 January 2019. The new rules require that "exceeding borrowing costs" are deducted in the period when incurred subject to the higher of EUR3 million or 30% of EBIDTA. Exceeding borrowing costs is defined as the excess of deductible borrowing costs over taxable interest revenues and other economically equivalent taxable revenues. Malta has adopted the minimum standard thereby allowing the application of maximum possible deductions and exclusions in terms of the Directive.

iii Related Party Debt

Maltese laws do not distinguish between related party debt and third party financing arrangements, however, anti-abuse provisions may limit any arrangements considered to be artificial in nature.

Also, the Maltese tax authorities adopt the arm's length principle when considering related party debt. Malta is in the process of introducing Transfer Pricing Rules applicable to cross border arrangements as from 2024.

iv Debt Pushdown

Since Malta has no thin capitalisation rules or debt to equity ratio rules, it is possible to push down debt by an assignment, transfer or contribution. Tax legislation provides that any interest payable on capital employed in acquiring the income is allowable for income tax purposes as long as the interest charged is at arm's length and in line with ATAD1 as explained above. No duty on documents is payable on the assignment, transfer or contribution of a debt and there are no limitations on debt pushdowns.

d. Hybrid Instruments

Malta does not have any specific tax provisions to finance acquisitions through instruments such as convertible bonds or preferred stocks.

e. Other Instruments

This section is left intentionally blank.

f. Earn-outs

Earn-outs may be used in Malta but there are no specific tax provisions or rules on how to treat earn-outs for tax purposes and therefore it will be necessary to consider carefully and determine what is brought to charge and when, since the tax legislation presupposes that the consideration is known. If not, the tax authorities may take the market value.

7. DIVESTITURES

a. Tax Free

Malta does not have any specific legislation for divestitures.

Divestitures resulting in gains arising outside Malta and derived by a company that is either not domiciled or not ordinarily resident in Malta are not subject to tax in Malta.

The Maltese tax legislation exempts gains realised by non-residents upon the transfer of units in Maltese collective investment schemes, similar investments relating to linked long-term insurance business, or shares in Maltese companies that do not hold immovable property (real estate) situated in Malta.

b. Taxable

Where a divestiture by a Maltese company results in realised gains from the transfer of immovable property (real estate), shares (unless the participation exemption applies), business, goodwill, business permits, copyrights, patents, trade names, trademarks, any other intellectual property ("IP"), interests in a partnership, and beneficial interests in a trust, such capital gains are brought to charge with any other income.

A Maltese company in receipt of foreign source income or capital gains (which do not qualify for the participation exemption) may claim a Flat Rate Foreign Tax Credit ("FRFTC") of 25% so that the tax payable is reduced from 35% to 18.75%. Upon a distribution of such gains or profits, the shareholder may be entitled to claim a tax refund equivalent to two thirds of the tax paid by the company so that the combined overall Maltese effective tax ("COMET") is reduced to 6.25%. The COMET of 6.25% may be reduced even further if the company also claims the NID.



Malta's participation exemption applies to dividend income as well as to capital gains arising from the transfer of a participating holding investment.

If the equity investment made by a Maltese company qualifies as a participating holding, then any capital gains realised upon the disposal or transfer of such investment is exempt from any tax. An investment qualifies as a participating holding if any one of the following conditions is satisfied:

- The Maltese company has at least 5% of the equity shares in another company; or
- The Maltese company is an equity shareholder in a company and is entitled to purchase the balance of the equity shares of the company, or it has the right of first refusal to purchase such shares; or
- The Maltese company is an equity shareholder in a company and is entitled to either sit on the board or appoint a person on the board of that subsidiary as a director; or
- The Maltese company is an equity shareholder which invests a minimum of EUR1,164,000 (or the equivalent in a foreign currency) as at the acquisition date/s, and such investment is held for a minimum uninterrupted period of 183 days; or
- The Maltese company holds the shares in a company to further its own business, and the holding is not held as trading stock for the purpose of a trade.

The participation exemption is also applicable to dividend income received from a participating holding if the body of persons in which the participating holding is held, satisfies any one of the following three conditions:

- It is resident or incorporated in the EU; or
- It is subject to foreign tax of a minimum of 15%; or
- It does not derive more than 50% of its income from passive interest and royalties.

Alternatively, the equity investment must satisfy the following two conditions:

- The shares in the non-resident company must not be held as a portfolio investment;
- The non-resident company or its passive interest or royalties have been subject to tax at a rate not less than 5%.

c. Cross Border

The participation exemption applies to a participating holding investment irrespective of whether the equity investment is cross border or not. If the investment is cross border then the Flat Rate Foreign Tax Credit ("FRFTC") provisions may be applicable since the only condition for a company to claim the FRFTC is that the gain or income is foreign source and an auditors' certificate is presented to confirm that the income is indeed foreign source.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Companies resident and domiciled in Malta are subject to tax in Malta on their worldwide income.

Companies which are not incorporated in Malta, are resident in Malta when their management and control is shifted to Malta. Such companies are subject to the remittance basis of taxation and hence are taxed on income and capital gains (unless exempt) arising in Malta as well as foreign source income which is remitted to Malta. Foreign income which is not remitted to Malta is not subject to Maltese tax.

b. CFC Regime

Malta introduced CFC rules on 1 January 2019 as a result of ATAD1. The rules define a CFC as:

- An entity in which a Maltese resident taxpayer, alone or together with its associated enterprises, holds a direct or indirect participation of more than 50% of the voting rights, or owns directly or indirectly, more than 50% of the capital or is entitled to receive more than 50% of the profits of that entity; and
- The actual corporate tax paid by the entity is lower than the difference between the tax that would have been charged on the entity under the Income Tax Acts and the actual foreign tax paid.

A CFC also includes a permanent establishment of a Maltese resident taxpayer situated outside Malta which satisfies the second condition outlined above.

The income of a CFC will be taxed in Malta if, and to the extent that, the activities of the CFC that generate this income are managed by the Maltese corporate taxpayer as the people functions in relation to the activities of the CFC are performed by the Maltese corporate taxpayer.

Where an entity or a permanent establishment is deemed to be a CFC, the non-distributed income of the CFC which arises from non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage are to be included in the tax base of the Maltese resident entity to the extent that the significant people's functions are carried out in Malta. The attribution of CFC income shall be calculated in accordance with the arm's length principle, computed in proportion to the taxpayer's participation in the CFC and is included in the tax period of the Maltese taxpayer in which the tax year of the CFC ends. Any tax paid by the CFC is allowed as a tax credit to the taxpayer.

The CFC rule applies only if:

- The CFC's accounting profits exceed EUR750,000 and non-trading income exceeds EUR75,000, or
- The CFC's accounting profits amount to more than 10% of its' operating costs.

c. Foreign Branches and Partnerships

Income or capital gains derived by a Maltese registered company that are attributable to a permanent establishment (including a branch) situated outside Malta, are exempt from tax in Malta under the provisions of the participation exemption.



d. Cash Repatriation

There are no cash repatriation restrictions, however the transfer of funds is subject to Anti-Money Laundering ("AML") provisions and Prevention of Money Laundering and Funding of Terrorism Regulations ("PMLFT") regulations.

Malta does not impose any withholding taxes on outgoing dividends, interest and royalties. Any withholding tax on incoming dividends, interest and royalties may be claimed as a tax credit against the Maltese tax.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Companies owning real estate in Malta (whether directly or indirectly) are referred to as property companies and although there are no special rules as such for these types of companies, they have to allocate the profits originating from the real estate to the Immovable Property Account ("IPA") or in some cases to the Final Tax Account ("FTA") and any distributions from such tax accounts (IPA and FTA), do not entitle any foreign shareholder to claim any tax refunds.

Apart from the above, the duty on documents or stamp duty on the transfer of shares in a property company amounts to EUR5 on every EUR100 or part thereof and not EUR2 on every EUR100 or part thereof as is the case for the transfer of shares of non-property companies. Also, an exemption from capital gains tax applicable to non-resident shareholders when transferring shares in a Maltese company, does not apply to property companies. However, an exemption applies if the shares are listed on a recognised stock exchange.

The Minister for Finance indicated that REITS ("Real Estate Investment Trusts") will be introduced to enable investors indirectly invest in real estate however to date no further details or draft bills are available.

b. CbC and Other Reporting Regimes

Malta adopted the EU Council Directive 2016/881/EU (DAC4). The ultimate parent entity ("UPE") of an MNE group must prepare a CbC report for each fiscal year of the group commencing on or after 1 January 2016 and file the report within 12 months of the end of the fiscal year with the Commissioner for Revenue. An exception from this general rule applies where the MNE group has total consolidated revenues of less than EUR750 million in the immediately preceding fiscal period.

An MNE group should only be required to file a CbC report once for each reporting fiscal year, in the jurisdiction of its ultimate parent entity. However, there may be cases where a constituent entity (i.e. an entity within the MNE group) that is not the ultimate parent entity may be required to file the CbC report directly with its local tax authority (also known as "local filing") but only if one or more of the following conditions have been met:

- There is no obligation on the UPE to file a CbC report in its residence jurisdiction;
- There is an international agreement allowing automatic exchange of information between the jurisdictions of the UPE and the constituent entity but there is no competent authority agreement in effect providing for the automatic exchange of CbC reports (i.e the exchange relationship has not yet been activated);
- There has been a systemic failure by the residence jurisdiction of the UPE to exchange CbC reports that has been notified to the constituent entity by the local tax authority.



Constituting entities forming part of an MNE group are required to notify the Commissioner for Revenue the details of the ultimate parent entity which is responsible for the CbC reporting within the last day for filing of a tax return of that constituting entity for the preceding fiscal year.

10. TRANSFER PRICING

Malta has recently introduced an enabling provision in the Income Tax Act on transfer pricing and draft rules have been published by the Maltese tax authorities. In essence these follow the arm's length principle and it is expected that the methodology applied by the Commissioner for Revenue for the arm's length principle will be based on the OECD Transfer Pricing Guidelines.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

Hybrid entities are not used in Malta.

b. Use of Hybrid Instruments

Hybrid instruments are not used in Malta.

c. Principal/Limited Risk Distribution or Similar Structures

Principal/limited risk distribution or similar structures are not available in Malta.

d. Intellectual Property (licensing, transfers, etc.)

Any expenditure of a capital nature on intellectual property ("IP") may be amortised for tax purposes, provided the amortisation period is not less than three years and provided the IP is used or employed in the production of the income.

A Maltese company in receipt of foreign source licensing fees, royalties and other income from IP as well as foreign source capital gains arising from any disposals of IP, will entitle the Maltese company to claim a Flat Rate Foreign Tax Credit ("FRFTC") equivalent to 25% of the income / gains. The FRFTC claimed will increase the chargeable income, but the same amount may be claimed as a tax credit against the Maltese tax, thus reducing the standard income tax rate of 35% applicable to companies to 18.75%. Once the company distributes such income or gains as a dividend, the shareholder is entitled to claim a tax refund equivalent to two thirds of the tax paid (that is, 18.75%) and therefore the combined overall Maltese effective tax ("COMET") is reduced to a maximum of 6.25%. If the company has allowable expenses or NID, the COMET will be reduced even further.

In 2019 Malta introduced the Patent Box Deductions ("PBD") whereby a fiscal regime was announced for income arising from patents, similar IP rights and copyrighted software. The rules additionally provide that small companies may utilise the PBD rules on income from any intellectual property based on an invention that could be patented. A taxpayer qualifying for the PBD will be entitled to deduct a percentage of its income from taxable income. This deduction will be adjusted depending on the percentage resulting from dividing the qualifying IP expenditure by the total expenditure related to the particular IP.



e. Special Tax Regimes

Malta does not have special tax regimes and has moved away from ringfencing companies. However, companies may be entitled to claim tax deductions and tax reliefs such as the FRFTC referred to above. Another deduction is the Notional Interest Deduction ("NID"), which is calculated as a percentage (7.12% as at 31 March 2022) of the share capital, positive reserves and interest-free loans, details of which have been provided further above. Although certain limitations apply in both FRFTC and NID, the COMET or even the tax payable by the Malta company may be reduced significantly. The limitation with respect to FRFTC is that the tax credit cannot exceed 85% of the Malta tax and in the case of NID the limitation is that it is limited to 90% of the chargeable income.

A non-resident shareholder may also claim tax refunds upon the distribution of taxed profits from a Maltese company. The tax refund varies between two thirds, five sevenths and six sevenths of the tax paid on the dividend distribution.

12. OECD BEPS CONSIDERATIONS

Malta is not a member of the OECD and has not taken all of the BEPS action points on board. However, since some of the BEPS action points have been taken on board by the EU and found themselves in EU Directives, Malta has had to adopt the EU Directives and as a result, one may also say that Malta is adopting some of the BEPS action points, such as CFC rules and interest deduction limitation.

Malta deposited its instrument of ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI") with the OECD, together with a list of reservations and notifications. Therefore, Malta's tax treaty network of over 70 countries will have to be interpreted in the light of the provisions of the MLI.

13. ACCOUNTING CONSIDERATIONS

The EU Single Accounting Directive 2013/34/EU, which repealed the fourth and seventh Accounting Directives on Individual and Consolidated Accounts, introduced a simplified procedure for financial statement reporting. This Directive was transposed into Maltese law. As a result, GAPSME is now the default accounting framework for SMEs in relation to financial reporting periods starting on or after 1 January 2016, unless a resolution is passed by the Board of Directors to the effect that IFRS (or the "International Financial Reporting Standards" as adopted by the EU) are to be used.

All domestic companies whose securities trade in a regulated market are required to use IFRS adopted by the EU in their consolidated financial statements.

Therefore, the accounting considerations of combinations and divestitures will be as provided for in IFRS as adopted by the EU or GAPSME as the case may be.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Reserves of a revenue nature are distributable but reserves of a capital nature (e.g. share premium) and unrealised profits may not be distributable. However, it is possible to use capital reserves for a bonus issue and tax legislation provides that a bonus issue is tantamount to a dividend. Since Malta applies the full imputation system of taxation, dividends are generally not subject to any further tax in the hands of the shareholder.



b. Substance Requirements for Recipients

The tax legislation does not contain any specific substance requirements, but the International and Corporate Tax Unit of the Inland Revenue Department will ask for a directors' declaration confirming that the effective management and control is in Malta before issuing a tax residence certificate. The tax authorities may also ask for copies of board minutes to confirm that board meetings are held in Malta and decisions taken by the board in Malta.

The so called "unshell directive" otherwise known as ATAD3 may change all this.

c. Application of Regional Rules

The tax legislation does not contain special provisions for specific regions but the concept of regional rules, apply in the case of aid intensity measures and tax credits granted to businesses in the sister island of Gozo.

d. Tax Rulings and Clearances

The tax legislation provides for tax rulings in the form of Advance Revenue Rulings ("ARRs") which are valid for five years and are renewable for further five year periods. Also, if there is a change in legislation affecting the ARR, the tax ruling remains valid for a period of two years. Apart from ARRs it is also possible to obtain tax confirmations and tax clearances.

However, the importance or use of ARRs has reduced drastically following the introduction of automatic exchange of information on tax rulings within the EU.

15. MAJOR NON-TAX CONSIDERATION

The Companies Act contains detailed provisions on mergers and acquisitions as well as divisions. There are various types of mergers and divisions: such as merger by acquisition; merger by formation of a new company; acquisition of one company by another which holds 90% or more of its shares; division by acquisition; division by the formation of new companies; division by a combination of a division by acquisition with a division by the formation of one or more new companies; and a division under the supervision of the court.

The EU Directive 2005/56/EC on cross border mergers of limited liability companies has also been implemented in Malta.

16. APPENDIX I - TAX TREATY RATES

Malta does not impose any withholding taxes on outgoing dividends, interest and royalties. Any withholding tax on incoming dividends, interest and royalties may be claimed as a tax credit against Maltese tax.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Typically in Malta we would recommend a minimum of the three latest years open to audit are reviewed during a tax due diligence process, however if possible, a review of the last five years is advisable.

Nº	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Details of tax contact person to discuss tax matters.
2	Tax Due Diligence	General	A current organisation chart, including all entities by full legal name, jurisdiction, date and place of formation, current tax residence, entity type, class of shares, and ownership percentages.
3	Tax Due Diligence	General	Copies of the Company's audited financial statements (not abridged) together with all explanatory notes, any schedules and reports.
4	Tax Due Diligence	Income Tax	Copy of form DDT10 and related reply from Inland Revenue Department
5	Tax Due Diligence	Income Tax	Copies of the Company's income tax returns together with all prescribed schedules and attachments and the Tax Index of Financial Data (TIFD) and the relevant acknowledgements.
6	Tax Due Diligence	Income Tax	Workings of FRFTC optimisation and Notional Interest Deduction (NID).
7	Tax Due Diligence	Income Tax	Auditors' certificates to enable the Company claim FRFTC.
8	Tax Due Diligence	Income Tax	Shareholders' resolution to approve NID claim.
9	Tax Due Diligence	Income Tax	Proof of foreign tax suffered and claimed as credit under the unilateral relief or treaty provisions.
10	Tax Due Diligence	Income Tax	Any certificates for tax credits issued by Malta Enterprise.
11	Tax Due Diligence	Income Tax	Copies of Tax Statements issued by the Commissioner for Revenue.
12	Tax Due Diligence	Income Tax	Copies of any Adjustment Forms filed.
13	Tax Due Diligence	Income Tax	Copies of any Advance Revenue Rulings (ARRs) and / or tax confirmations issued by the International Tax Unit of the Inland Revenue Department.
14	Tax Due Diligence	Income Tax	Dividend warrants, supporting resolutions and tax refund claims submitted to tax authorities.
15	Tax Due Diligence	Income Tax	Any important communications with the Inland Revenue Department including correspondence with the Tax Compliance Unit.
16	Tax Due Diligence	VAT	Copy of VAT Certificate and details of VAT grouping.
17	Tax Due Diligence	VAT	VAT returns submitted to VAT Department, recaps (if applicable) and acknowledgements.
18	Tax Due Diligence	VAT	VAT statements showing payments and any outstanding balance.
19	Tax Due Diligence	VAT	Any important communications with the VAT Department.
20	Tax Due Diligence	FSS	FS7 submitted to the Inland Revenue Department and relevant acknowledgements.

MALTA

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MAURITIUS

1. INTRODUCTION

a. Forms of Legal Entity

The main types of entities that exist in Mauritius, and their key features, are as follows:

- Domestic Companies – Commonly set up by Mauritian residents for operating in the local market, or for international trade .
- Global Business Companies – Mostly set up when the majority of the shareholders are not Mauritian citizens and the companies propose to conduct business outside Mauritius.
- Partnership – Commonly used when two or more partners propose to do business together. Partnerships may be tax transparent or opt to be taxed as a company.
- Authorised Companies - Used when the company is centrally managed and controlled outside Mauritius, and conducts business outside of Mauritius.
- Trust – Mostly used for succession planning, and subject to tax as a company.

b. Taxes, Tax Rates

i Corporation Tax

The Corporation Tax rate for company profit is 15% except for companies engaged in the exports of goods, in which case the tax rate is 3%.

Companies may benefit from an 80% partial exemption on certain specified income (e.g foreign dividend, interest among others) subject to carrying out Core Income Generating Activities in Mauritius.

Local dividends are fully exempt from tax in Mauritius.

Capital gains realised are treated as exempt income in Mauritius.

There is no withholding tax ("WHT") on dividends paid by Mauritian resident companies.

ii Personal Income Tax

Individuals resident in Mauritius are subject to tax at 15% on their worldwide income. However, income derived from outside Mauritius is taxable only to the extent that it is remitted to Mauritius.

Individuals resident in Mauritius are allowed an Income Exemption Threshold ("IET") as follows:

Category	Amount (MUR)
Category A : An individual with no dependant	325,000
Category B : An individual with one dependant	435,000
Category C : An individual with two dependants	515,000
Category D : An individual with three dependants	600,000
Category E : An individual with four or more dependants	680,000

Resident individuals whose leviable income exceeds MUR3 million (approx. USD70,000) are also subject to a Solidarity Levy of 25% on the excess amount, but restricted to 10% of the net income.

iii Value Added Tax ("VAT")

VAT is charged by VAT registered entities at either the standard rate of 15% or zero rate of 0% on all goods and services supplied by them in Mauritius.

An entity should register for VAT if its taxable supplies exceed MUR6 million (approx. USD140,000) over the next 12 months. However, certain service providers (e.g. accountants and auditors, attorneys and solicitors, consultants, surveyors and valuers) should register for VAT irrespective of their turnover.

c. Common divergences between income shown on tax returns and local financial statements

The income and expenditure shown in the financial statements of a company are generally reflected in the company's tax return. The tax adjustments are then applied to calculate the chargeable income.

2. RECENT DEVELOPMENTS

- Mauritius has undergone a major tax reform to comply with the International Standards of the EU and the Organisation for Economic Co-operation and Development ("OECD").
- The previous tax regime, whereby only Category 1 Global Business Companies would benefit from the Deemed Foreign Tax Credit of 80% on all their foreign source income, has been abolished.
- With effect from 1 January 2019, Mauritius has instead introduced an 80% partial exemption regime on specified income streams such as foreign dividends and interest among others.
- The partial exemption is available only if, among others, a company carries out its Core Income Generating Activities ("CIGA") in Mauritius and meets the required level of substance as prescribed in respect to these income streams.

3. SHARE ACQUISITION

a. General Comments

Acquisition of a target company can be made either through the purchase of its shares (share acquisition) or of its business asset (asset acquisition). In this section we discuss the former, share acquisitions.

There is no direct tax implication for either a Mauritian buyer or seller from a share acquisition as there is no CGT in Mauritius.

b. Tax Attributes

Please note that if the company being acquired has losses brought forward, these will be lapsed if there is a change of more than 50% in shareholding at the level of the ultimate beneficiary.

c. Tax Grouping

There is no concept of Tax Grouping in Mauritius.

d. Tax Free Reorganisations

There is no Capital Gains Tax in Mauritius. Gains arising from transactions involving shares are exempt from tax in Mauritius.

e. Purchase Agreement

On acquisition of the shares of an entity, the buyer also takes over the history of the entity. The tax authorities may query the affairs of the company for the current year of assessment and the three preceding years of assessment, irrespective of a change in ownership. To protect the buyer, warranties can be put in place to cover any tax liability arising from a period prior to the acquisition.



f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

The Registration Duty Act provides, among others, for a duty at an effective rate of 5% on the sum of money paid as a condition of an exchange of immovable property, or a division in kind of immovable property, where such sum does not exceed MUR100,000.

The transfer of shares of a company, other than those listed on the Stock Exchange of Mauritius or traded on the secondary market, is subject to registration duty if the company holds immovable property.

Global Business Licence ("GBL") companies are exempt from stamp duties and registration duties.

g. Share Purchase Advantages

There is no Capital Gains Tax upon disposal of shares in Mauritius.

h. Share Purchase Disadvantages

Please note that if the company being acquired has losses brought forward, these will be foregone if there is a change in ownership of more than 50% of the shares at the level of the ultimate beneficiary.

4. ASSET ACQUISITION

a. General Comments

From a buyer's perspective:

The buyer shall be allowed a deduction of the capital expenditure incurred by way of an annual allowance in that income year, and in each of the succeeding years offsetting taxable income, at a rate prescribed as follows:

	Capital Expenditure incurred on	Rate of annual allowance Percentage of	
		Base Value	Cost
1	Industrial premises excluding hotels	-	5
2	Commercial premises	-	5
3	Hotels	30	-
4	Plant or Machinery		
	(a) Costing less than MUR60,000	-	100
	(b) Costing more than MUR60,000		
	(i) Ships or aircraft	20	-
	(ii) Aircraft and aircraft simulators leased by a company engaged in aircraft leasing	-	100
	(iii) Motor vehicles	25	-
	(iv) Computer hardware and software	50	-
	(v) Electronic, high precision machinery or equipment and automated equipment	-	100
	(vi) Furniture and fittings	20	-
	(vii) Other	35	-
6	Research and development, including innovation, improvement or development of a process, product or service	-	50
7	Golf course	15	
7A	Acquisition of patents	25	-
7B	Green technology equipment	-	50
7C	Acquisition of solar units	-	100
8	Any other item subject to depreciation	-	5

Any annual allowance is provided as long as the expenditure is incurred towards production of gross income.



From a seller's perspective:

Where a person sells an asset on which annual allowance has been claimed, the proceeds are compared to the tax written down value of the asset. A balancing charge arises, which is taxable, should the proceeds exceeds the tax written down value. The balancing charge is restricted to the amount of annual allowance claimed. The converse is true for balancing allowances.

b. Purchase Price Allocation

The purchase consideration should be allocated to each asset and balancing charges or allowances are calculated on an item by item basis.

c. Tax Attributes

When a person sells an asset to a relative or to a related company and the asset is used by the related party for the production of gross income, the sale shall be deemed to have been made at a price equal to the base value of the plant, machinery or industrial premises at the date of sale or transfer. Unlike share transfers, there is no impact on tax losses on an asset transfer.

d. Tax Free Reorganisations

This section is left intentionally blank.

e. Purchase Agreement

Please refer to 4.a and 4.c.

f. Depreciation and Amortisation

Please refer to 4.a and 4.c.

g. Transfer Taxes, VAT

Sales of assets by a VAT-registered person are subject to VAT at 15%.

When immovable property is sold, registration duty at an effective rate of 5% of the sum of money paid as a condition of an exchange of immovable property is applicable, provided this sum does not exceed MUR100,000.

h. Asset Purchase Advantages

The tax history remains with the seller entity in an asset deal.

i. Asset Purchase Disadvantages

This section is left intentionally blank.



5. ACQUISITION VEHICLES

a. General Comments

The most common acquisition vehicles used in Mauritius are holding companies with a GBL, mainly for the following reasons:

- Dividends from local companies are exempt from Income tax;
- 80% partial exemption on foreign dividends and interest among others subject to meeting the related substance requirements;
- No withholding tax ("WHT") on dividend payment to shareholders;
- No WHT on interest payment if paid out of foreign source income.

Mauritius currently has 45 Double Taxation Treaty Agreements in force, which enable people and companies to benefit from preferential withholding tax rates.

In addition to withholding tax, Mauritian companies may also claim a credit ("underlying tax credit") for the corporate tax paid on the profit out of which the dividend is paid, as long as the company owns more than a 5% shareholding in the dividend paying company.

Mauritius also allows a tax-sparing credit under its local tax legislation. If a Mauritius company receives dividends from a foreign company and that foreign company is exempt from tax under its domestic laws, then the Mauritius company can take a tax credit against the Mauritius tax on the foreign dividend as if the foreign company has suffered corporate tax on its profits out of which the dividend was paid.

b. Domestic Acquisition Vehicle

This section is left intentionally blank.

c. Foreign Acquisition Vehicle

This section is left intentionally blank.

d. Partnerships and joint ventures

Investments may be acquired via a Mauritian partnership. Partnerships are transparent for tax purposes in Mauritius, i.e. the partners are subject to tax on their respective share of income.

Partnerships can also opt to be taxed as a corporation in Mauritius.

Partnerships are mainly used for investment in Mauritius by US investors;

e. Strategic vs Private Equity Buyers

This section is left intentionally blank.



6. ACQUISITION FINANCING

a. General Comments

Transactions are generally funded by a mix of equity and debt, for the following reasons:

- No WHT on dividends paid to shareholders;
- No WHT on interest payments, provided this is paid out of foreign source income; and
- Tax deductions for interest expenses.

It is important to note that the tax authorities may restrict or deny interest deductions if they are deemed not to be at arm's length.

b. Foreign Acquirer

Where the majority beneficial owners of an entity are not Mauritian citizens and the entity proposes to conduct business outside Mauritius, it should apply for a Global Business Licence ("GBL").

c. Debt

i Limitations on Interest Deductions

The tax authorities may restrict or deny interest deductions if they are deemed not to be at arm's length, or the debt is not used towards the production of gross income. Additionally, when interest accrued is not paid within a reasonable time in cash, the tax authorities may deny a deduction.

ii Related Party Debt

Mauritius does not currently have transfer pricing legislation. However, related party transactions are required to be carried out at arm's length. The tax authorities may restrict or deny interest deductions if i they are deemed not to be at arm's length.

iii Debt Pushdown

This section is left intentionally blank.

d. Hybrid Instruments

This section is left intentionally blank.

e. Other Instruments

This section is left intentionally blank.

f. Earn-outs

This section is left intentionally blank.



7. DIVESTITURES

a. Tax Free

Mauritius does not tax capital gains.

b. Taxable

Gains on the sale of shares are exempt from tax.

c. Cross Border

This section is left intentionally blank

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

A Mauritian resident company is taxed on its worldwide income, with credit available for foreign tax suffered. Resident individuals are taxed on their worldwide income only on a remittance basis.

Permanent establishments of non-resident companies are subject to taxation in Mauritius, but only on the income that is attributable to that permanent establishment.

b. CFC Regime

A Controlled Foreign Company ("CFC") is an entity that is not resident in Mauritius, in which more than 50% of its total participation rights are held directly or indirectly by a Mauritian resident company.

The CFC regime applies only to companies whose:

- Accounting profits in an income year are more than EUR750,000, and whose non-trading income is more than EUR75,000;
- Accounting profits amount to more than 10% of its operating costs in an income year; or
- Tax rate in the country of residence of the CFC is less than 50% of the tax rate in Mauritius.

When a resident company carries on business through a CFC, and the tax authorities consider that the non-distributed income of the CFC arises from non-genuine arrangements that have been put in place for the essential purpose of obtaining a tax benefit, that income shall be deemed to form part of the chargeable income of the Mauritian resident company.

c. Foreign Branches and Partnerships

When a Mauritian tax resident company has operations in another country through a permanent establishment abroad, such profits of the branch are taxed in Mauritius. Credit for foreign tax suffered can be offset in Mauritius.

The resident company may also take advantage of an 80% partial exemption on the profit attributable to the permanent establishment.



d. Cash Repatriation

Dividends paid by a Mauritian resident company to non-residents are not subject to withholding tax in Mauritius.

For a payment to be considered as a dividend, it needs to be paid out of retained earnings and approved by the board of directors in Mauritius.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Land transfer tax is levied on the transfer of land and is payable by the transferor at the rate of 5%.

Land transfer tax is also payable by the transferor upon transfer of the shares of a company owning immovable properties, based on the value of shares or property, whichever is the lower.

Registration duty at an effective rate of 5% is applicable on the money paid as a condition of an exchange of immovable property - or a division in kind of immovable property - where this sum does not exceed MUR100,000.

Where there is a transfer of shares, registration duty and land transfer tax will apply if there is a change in control in the underlying company.

b. CbC and Other Reporting Regimes

Multinational ("MNE") groups with consolidated revenue exceeding EUR750 million are required to prepare a Country by Country ("CbC") report and file it with the Mauritian Tax Authorities within 12 months of the last day of their reporting fiscal year.

Companies resident in Mauritius forming part of an MNE as described above should notify the Mauritian Tax Authorities where their ultimate parent entity has filed the CbC report within 12 months of the last day of their reporting fiscal year.

Additional reporting regimes include, among others, mandatory reporting under the Foreign Account Tax Compliance Act ("FATCA") and common reporting standard ("CRS").

10. TRANSFER PRICING

Currently, there is no formal transfer pricing legislation in force in Mauritius. However, the Income Tax Act requires companies deriving income in or from Mauritius to carry out their transactions at arm's length. The tax authorities may adjust the chargeable income of a company if they deem the transaction is not at arm's length.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

This section is left intentionally blank



b. Use of Hybrid Instruments

This section is left intentionally blank

c. Principal/Limited Risk Distribution or Similar Structures

This section is left intentionally blank

d. Intellectual Property

Any intellectual property amortised under normal accounting principles is not allowed as an expense for tax purposes. However, the cost amount can be capitalised, and an annual allowance of 5% of cost can be claimed.

e. Special Tax Regimes

Mauritius is an inclusive member of the OECD Base Erosion and Profit Shifting ("BEPS") framework. As a result, there is no preferential tax regime in Mauritius.

Companies engaged in the export of goods are liable to income tax at the reduced rate of

3% on the chargeable income attributable to that export.

12. OECD BEPS CONSIDERATIONS

Mauritius joined the Inclusive Framework in November 2017 and has committed to implement the BEPS minimum standard. The status of implementation is as follows:

BEPS Action 5:

The 80% deemed foreign tax credit regime available only to Global Business Companies that was considered harmful has been abolished as from 1 January 2019 and replaced by the 80% partial exemption on specified income.

BEPS Action 6:

Mauritius signed the Multilateral Convention ("MLI") to implement tax treaty related measures to prevent BEPS on 5 July 2017 and deposited its instrument of ratification on 18 October 2019. The MLI came into force for Mauritius on 1 February 2020 and the amendments to the treaties being modified by the MLI took effect from 1 August 2020. Forty-four of our 46 treaties have been listed as Covered Tax Agreements and these treaties as amended will include the minimum standards under the MLI, with the Principal Purpose Test ("PPT") as the main anti-abuse provision.

BEPS Action 13

Mauritius has signed the CbC Multilateral Competent Authority Agreement ("MCAA") and passed legislation to enable exchange of country by country reports as from the fiscal year starting 1 July 2018.

The online platform for CbC reporting was launched in July 2019.



BEPS Action 14

The BEPS Action 14 Minimum Standard seeks to improve the resolution of tax-related disputes between jurisdictions. Since the MLI came into effect, existing treaties covered under the MLI have been modified to reflect the positions adopted by each jurisdiction. In this context, the Article dealing with Mutual Agreement Procedures ("MAP") should be amended to allow a taxpayer to present a case to the competent authority of either contracting jurisdiction for mutual agreement assistance.

13. ACCOUNTING CONSIDERATIONS

Mauritius applies International Financial Reporting Standard ("IFRS").

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

A dividend in Mauritius is a distribution authorised by the Board of Directors of a company. It is made out of the retained earnings of the company - after having made good any accumulated losses at the beginning of its accounting period - either in cash or in shares to its shareholders.

There is no withholding tax on payment of dividend by a Mauritian resident company.

If the distribution does not meet the above definition of a dividend, the distribution shall not qualify as a dividend and tax may be withheld upon payment.

b. Application of Regional Rules

This section is left intentionally blank

c. Tax Rulings and Clearances

This section is left intentionally blank

15. MAJOR NON-TAX CONSIDERATIONS

The tax authorities and registrar of companies need to be notified of any mergers.



16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Albania	0	0	0	
Argentina	0	0	0	
Armenia	0	0	0	
Australia	0	0	0	
Austria	0	0	0	
Azerbaijan	0	0	0	
Bangladesh	0	0	0	
Barbados	5	5	5	
Belarus	0	0	0	
Belgium	5 / 10	10	Exempt	[A]
Bolivia	0	0	0	
Bosnia and Herzegovina	0	0	0	
Botswana	5 / 10	12	12.5	[B]
Brazil	0	0	0	
Bulgaria	0	0	0	
Canada	0	0	0	
Chile	0	0	0	
China	5	10	10	
Croatia	Exempt	Exempt	Exempt	
Cyprus	Exempt	Exempt	Exempt	
Czech Republic	0	0	0	
Denmark	0	0	0	
Egypt	5 / 10	10	12	[B]
Estonia	0 / 7	0 / 7	0 / 5	[C] [D]
Faroe Islands	0	0	0	
Finland	0	0	0	
France	5 / 15	15	15	[E]
Gambia	0	0	0	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Georgia	0	0	0	
Germany	5 / 15	Exempt	10	[E]
Greece	0	0	0	
Hungary	0	0	0	
Iceland	0	0	0	
India	5 / 15	7.5	15	[E]
Indonesia	0	0	0	
Ireland	0	0	0	
Israel	0	0	0	
Italy	5 / 15	15	15	[F]
Jamaica	0	0	0	
Japan	0	0	0	
Kazakhstan	0	0	0	
Kenya	0	0	0	
Korea, Republic of	0	0	0	
Latvia	0	0	0	
Lithuania	0	0	0	
Luxembourg	5 / 10	Exempt	Exempt	[A]
Macedonia	0	0	0	
Malaysia	5 / 15	15	15	[E]
Malta	Exempt	Exempt	Exempt	
Mauritius	0	0	0	
Mexico	0	0	0	
Montenegro	0	0	0	
Namibia	5 / 10	10	5	[B]
Netherlands	0	0	0	
New Zealand	0	0	0	
Nigeria	0	0	0	
Norway	0	0	0	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Pakistan	10	10	12.5	
Philippines	0	0	0	
Poland	0	0	0	
Portugal	0	0	0	
Romania	0	0	0	
Russia	0	0	0	
Saudi Arabia	0	0	0	
Serbia	0	0	0	
Singapore	Exempt	Exempt	Exempt	
Slovakia	0	0	0	
Slovenia	0	0	0	
South Africa	5 / 10	10	5	[A]
Spain	0	0	0	
Sri Lanka	10 / 15	10	10	[G]
Switzerland	0	0	0	
Taiwan	0	0	0	
Tanzania	0	0	0	
Thailand	10	10 / 15	5 / 15	[H] [I]
Trinidad and Tobago	0	0	0	
Tunisia	Exempt	2.5	2.5	
Turkey	0	0	0	
Ukraine	0	0	0	
United Kingdom	Exempt / 15	Same rate as under domestic law	15	
United States	0	0	0	
Venezuela	0	0	0	
Vietnam	0	0	0	
Zambia	0	0	0	
Zimbabwe	10 / 20	10	15	



Footnotes	
[A]	5% WHT on dividend if the beneficial owner is a company which holds directly or indirectly at least 10% in the capital of the company paying dividend.. WHT of 10% in any other case
[B]	5% WHT on dividend if the beneficial owner is a company which holds directly or indirectly at least 25% in the capital of the company paying dividend. WHT of 10% in any other case.
[C]	0% WHT if the beneficial owner is a company. 7% WHT rate in all other cases.
[D]	0% WHT if the beneficial owner is a company. 5% WHT rate in all other cases.
[E]	5% WHT on dividend if the beneficial owner is a company which holds directly or indirectly at least 10% in the capital of the company paying dividend. WHT of 15% in any other case.
[F]	5% WHT on dividend if the beneficial owner is a company which holds directly or indirectly at least 25% in the capital of the company paying dividend. WHT of 10% in any other case.
[G]	10% WHT on dividend if the beneficial owner is a company which holds directly or indirectly at least 10% in the capital of the company paying dividend. WHT of 15% in any other case.
[H]	10% WHT on interest paid to a financial institution including and insurance company. 15% WHT in any other case.
[I]	5% WHT on royalties for use or right of use of copyright, literary, artistic or scientific work excluding cinematograph films, tapes or disc for radio or television broad casting. WHT 15% in any other case.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Copy of target/group structure chart.
2	Tax Due Diligence	General	Copies of target/group incorporation certificate(s) and relevant licenses
3	Tax Due Diligence	General	Copies of the audited financial statements for last four years.
4	Tax Due Diligence	General	Copies of loan, management and any other agreements relevant to the operation of the company.
5	Tax Due Diligence	General	Copies of any tax rulings the company has applied.
6	Tax Due Diligence	General	Please provide details of any ongoing tax assessment or tax audits on the company.
7	Tax Due Diligence	Corporation Tax	Copies filed tax returns for the last four years of assessment.
8	Tax Due Diligence	Corporation Tax	Copies of the tax computations for the last four years of assessment.
9	Tax Due Diligence	Value Added Tax	Copies of the filed VAT returns of the company and the related computations for the last four years.
10	Tax Due Diligence	Value Added Tax	Copies of the sales and expenses schedule for the last four years.
11	Tax Due Diligence	Payroll tax	Copies of the payroll list and payroll calculation.
12	Tax Due Diligence	Payroll tax	Copies of the filed returns with regards to payroll taxes for the last four years.
13	Tax Due Diligence	Tax deducted at source	A summary of payments made during the last four years and the filed tax deducted at source return.

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MEXICO

1. INTRODUCTION

a. Forms of Legal Entity

Business in Mexico is typically carried on through two types of corporate vehicles regulated by the Mexican Mercantile Companies Law:

- Limited liability companies (*sociedades de responsabilidad limitada*) ("SRL"); or
- Corporations (*sociedades anónimas*) ("SA").

Although there are other corporate organisation forms, SAs and SRLs are the most customary forms of corporate organisation. SRLs are commonly used by US investors since this type of entity can elect to be a pass-through entity for US tax purposes. On the other hand, SAs are more commonly used by Mexican and non-US investors, since they operate as a general corporation which permits a more flexible transfer of equity. All publicly traded companies must be a sociedad anónima bursátil ("SAB"), which is a variation of a regular SA, but with specific rules for publicly listed entities.

Investments can also be made through other structures such as trust agreements ("fideicomisos"), the terms of which can vary based on the particular needs of a specific investment. Fideicomisos that are engaged in entrepreneurial activities are treated as a taxpayer and the trustee has to comply with the tax obligations on behalf of the beneficiaries, whereas Fideicomisos that are engaged in passive income generating activities are treated as pass-through. Recently, due to amendments to the law which affect the tax treatment of foreign vehicles such as limited partnerships or trusts, this type of Fideicomisos have become more attractive since they can still provide transparency on the investments made through them.

b. Taxes, Tax Rates

For income tax purposes, Mexican legal entities that are not pass-through, as well as Permanent Establishments ("PE") in Mexico of foreign residents, are taxed on their worldwide income at a rate of 30% on a net basis. PE's are taxed on the income attributable to them. Mexican resident individuals are taxed at progressive rates with a highest bracket taxed at 35%.

Non-Mexican residents without a PE in Mexico are taxed on income arising from a source of wealth situated in Mexico. The Mexican Income Tax Law ("ITL") establishes the criteria applicable to determine whether there is a Mexican source of wealth and the withholding tax applicable per type of income (i.e. employment income, pensions, professional services, director's fees, lease of movable and immovable property, touristic services and time sharing, transfer of immovable property, transfer of shares and other corporate rights, exchange of public debt for equity, financial derivative transactions, dividends, interest, royalties, construction services, prizes, artists, sports and public shows and other income). The highest withholding tax rate applicable to non-Mexican residents is 35%, or 40% if certain conditions are met.

c. Differences between income shown on tax returns and local financial statements

Mexican resident legal entities that are not pass-through and non-Mexican residents with a PE in Mexico are obligated to apply particular tax accounting principles to certain items of income and deduction which will result in differences between tax and financial accounting and give rise to temporary or permanent book/tax differences. The most common divergence relates to the maximum annual depreciation and amortisation rates of assets allowed by the ITL, which may differ from the depreciation methods used for financial accounting purposes. Another item of difference is the effect of inflation that has to be considered for tax purposes (depreciation, monetary position, tax basis of assets and shares, among others).



2. RECENT DEVELOPMENTS

a. Fiscal year 2019

The Federal Revenue Law for fiscal year 2019 incorporated a provision that eliminates the ability to utilise credit balances ("balances in favour") that a taxpayer has with respect to a certain tax against federal taxes of a different category, including income tax withholdings. For example, with respect to VAT, this provision provides that a taxpayer may only offset VAT using a credit balance which is also related to VAT until the credit balance has been fully utilised. Taxpayers will also be able to request a refund of the balances. Likewise, federal taxes may only be offset using balances in the tax payers' favour relating to the same category of tax, eliminating the possibility to offset them against tax withheld from other parties. Nevertheless, administrative guidelines were issued to allow taxpayers to offset balances in their favour generated as of 31 December 2018 against other federal taxes generated by the taxpayer (excluding withholding taxes) after 1 January 2019. As of fiscal year, 2020, these provisions have been included in the Federal Fiscal Code, meaning that this limitation will be applicable from 1 January 2020 onwards.

Additionally, effective 1 January 2019, a tax incentive has been made available to qualified taxpayers operating in the northern border region of Mexico (as defined therein). The tax credit is applied against either a taxpayer's annual income tax determined at the end of the year or prepayments of income tax. The amount of the tax credit is equal to one third of the annual income tax due by the taxpayer (or the tax prepayment), effectively reducing the income tax rate from 30% to 20%, and the current VAT rate from 16% to 8%. Initially, this incentive was only applicable for 2019 and 2020, however, it was amended on 30 December 2020 to extend its duration until 31 December 2024. Likewise, the same tax incentive was granted to qualified taxpayers operating in the southern border region of Mexico and will also expire on 31 December 2024.

Lastly, effective 8 January 2019, a tax incentive has been made available for certain taxpayers who establish procedures which promote investment in corporate debt bonds and standardise the tax treatment of publicly traded shares. Mexican tax residents that are required to withhold income tax from interest payments (at a 4.9% or 10% withholding tax rate, as the case may be) derived from securities issued by Mexican resident companies and placed in recognised markets are granted a tax credit equal to 100% of the withholding tax provided such interest payments are made to a resident in a country or jurisdiction with which Mexico has a treaty for the avoidance of double taxation or a broad exchange of information agreement in effect. Furthermore, for fiscal years 2019, 2020 and 2021, Mexican tax resident individuals and non-Mexican tax residents shall apply a 10% income tax rate on gains generated from said taxpayers from the sale of securities issued by Mexican resident entities, subject to the fulfilment of certain requirements. The aforementioned 10% income tax rate may also be applicable to venture capital investment trusts and other trusts or similar investment vehicles.

b. Fiscal year 2020

Effective 1 January 2020, a comprehensive tax reform was introduced which contained several items of domestic and international relevance.

A general anti-avoidance rule ("GAAR") was enacted allowing the tax authorities to recharacterise the legal acts entered into by taxpayers when such acts are deemed to lack business reasons and generate a direct or indirect tax benefit, to those that would have generated the reasonably expected economic benefit.

Following BEPS Action 12, mandatory disclosure rules were introduced as of fiscal year 2020. Tax advisers, either Mexican residents or non-Mexican residents with a PE in Mexico who advise in connection with the design, commercialisation, organisation, implementation or administration of certain schemes considered to be potentially aggressive and which are listed in the Federal Fiscal Code, are obligated to report such "reportable schemes" as of fiscal year 2020, or prior to fiscal year 2020 when the corresponding tax effects are reflected in such fiscal year and onwards, in this last case, to be reported by the tax advisors. In certain other cases, the taxpayers themselves are obligated to report the reportable schemes instead of the tax advisers.



As of fiscal year 2020, Mexican residents earning income through foreign fiscally transparent legal entities or foreign legal vehicles, whether transparent or not, shall accrue and report such income for Mexican tax purposes regardless of whether the income is distributed or not, in the proportion of their participation in said legal entities or legal vehicles.

Furthermore, foreign fiscally transparent legal entities and foreign legal vehicles will cease to be considered fiscally transparent for Mexican tax purposes as of fiscal year 2021, regardless of the tax treatment given abroad in the case of foreign legal vehicles. The aforementioned shall not be applicable in the context of the tax treaties entered into by Mexico, in which case the provisions contained therein shall apply. Furthermore, a tax benefit also applicable as of fiscal year 2021 will allow certain foreign transparent legal vehicles organised as private equity investment funds shall be deemed to be fiscally transparent provided that such legal vehicles, their members and the administrators are resident of, or have been incorporated in a jurisdiction with which Mexico has entered into a broad exchange of information agreement, and provided that the administrator of such transparent legal vehicles complies with certain reporting obligations.

In the context of BEPS Action 4, Mexico introduced, in addition to already existing thin capitalisation provisions, a general interest deductibility limitation rule whereby interest deductibility is limited to 30% of the taxpayers adjusted tax profits, applicable when the accrued interest resulting from the taxpayers liabilities exceeds MXN$20 million.

Pursuant to BEPS Action 3, the Controlled Foreign Corporation ("CFC") rules were amended to address OECD recommendations, amending the cases and thresholds in which such regime shall be applicable.

Mexico introduced passive income deductibility limitations concerning payments made to foreign related parties subject to preferential tax regimes, including scenarios as a result of hybrid mismatches. This limitation is also applicable in cases where the payment is not subject to a preferential tax regime but the direct or indirect counterparty uses such proceeds to make tax deductible payments to another group member or through a structured arrangement, subject to a preferential tax regime.

We would also note that, payments made by a taxpayer that are also deductible for a member of the same group or that are deductible for the taxpayer in another country or jurisdiction are non-deductible in Mexico if the relevant income is not accrued abroad for tax purposes.

c. Fiscal year 2021

On 20 April 2021, the Senate of the Republic approved amendments to labour and tax provisions dealing with the labour outsourcing regime. The most relevant modifications include: (i) the prohibition of subcontracting of personnel, it being understood as a provision of services in which an entity or individual provides or makes available to another entity its own employees for the other entity's benefit; (ii) contracting specialised services will be permitted only if such services or tasks are not part of the corporate purpose or main economic activity of the recipient, and as long as the contractor is listed in a public registry; (iii) supplementary or shared services provided between companies of the same corporate group will also be considered as specialised as long as they are not part of the corporate purpose or the main economic activity of the recipient of such services or tasks; (iv) individuals or entities providing personnel outsourcing services will be required to complete a registration process before the Labour Ministry and to renew such registration every three years; (v) a joint and several liability is recognized between the individual or entity who contracts the specialised services or specialised works and the contractor who fails to comply with the obligations resulting from the relationships with its workers; (vi) the amount of profit sharing to be paid to employees, will be capped to three months of salary or the average



amount received by the employee in the last three years; being applicable the amount that results more favourable to the employees; (vii) economic sanctions could result for employers who benefit from personnel subcontracting arrangements in violation of the new provisions of the Mexican Labour Law; (viii) for tax purposes, it is established that tax invoices issued for disallowed subcontracting of personnel will not have legal effects (i.e. non-deductible expense for income tax purposes and inability to claim a value added tax credit on such expense); and (ix) the use of simulated schemes of provision of specialised services or the execution of specialised works, as well as the subcontracting of personnel, will be considered a tax criminal offence.

These provisions became effective for tax purposes on 1 September 2021.

d. Fiscal year 2022

Several reforms were made to the ITL which became effective on 1 January 2022.

Among the most relevant reforms are the inclusion of new requirements to apply for an authorisation for a transfer at tax basis in the case of corporate restructures involving Mexican entities, thin capitalisation rules are modified to eliminate an option that taxpayers had to calculate the shareholder's equity based on the company's tax attributes and to expand their application to multiple purpose financial entities ("SOFOM") that are not supervised by the National Banking and Securities Commission ("CNBV") and the inclusion of additional restrictions for the use of accumulated tax losses in the case of change of ownership.

The Federal Fiscal Code was also modified to include, among other changes, new situations in which a purchase of assets may result in a joint liability for the purchaser and to include the ability for the tax authorities to challenge the tax neutral treatment of mergers and spin offs if they deem that such transactions lack a business reason.

e. COVID-19 measures

There have been no comprehensive nor significant tax measures enacted by the Federal Executive in order to combat the adverse economic climate resulting from the Covid-19 pandemic which are relevant for M&A taxes, however, certain measures, such as the possibility for taxpayers to remit unpaid tax debts relating to different types of taxes in a separate manner per each type of tax, plus surcharges and inflation adjustment, or the suspension of certain administrative deadlines for procedures that cannot be carried out through electronic means, have been implemented.

At State level, several tax measures consisting of the deferral or reduction of vehicle ownership tax, payroll tax, property tax, lodging tax and public spectacles tax, as well as the reductions of surcharges and penalties and the suspension of tax audit procedures in certain cases have also been implemented.

As such, whilst the Mexican Government has not introduced significant Covid-19 tax measures as we see in other countries, the above will still be relevant considerations in respect of due diligence exercises.



3. SHARE ACQUISITION

a. General Comments

In general, capital gains generated from the transfer of shares are subject to income tax by Mexican residents and non-Mexican residents with a PE in Mexico. The gain is equal to the difference between the sales price and the tax basis in the transferred shares. The funds used to purchase shares are considered to be sourced from Mexico if the issuer of the shares is a Mexican resident entity, or if more than 50% of the underlying book value of such shares is attributable, directly or indirectly, to real property situated in Mexico. Non-Mexican residents may elect to pay income tax equal to 25% of the sales price, or 35% of the capital gain realised for tax purposes. If the latter method is chosen (i.e. 35% of the capital gain), certain formalities must be satisfied by the non-Mexican resident including the designation of a Mexican resident legal representative and a formal determination of the tax basis of the transferred shares by a registered public accountant. The acquisition price will be considered for purposes of determining the basis of the shares in the event of a subsequent sale. Where shares are sold to a related party who is also a tax resident of a jurisdiction deemed to have a preferential tax regime, a 40% withholding rate may apply to such sale.

It is worth noting that due to recent amendments to the ITL, a Mexican resident who is appointed as a legal representative of a foreign resident will have to comply with several additional requirements, including having to prove to the tax authorities the capacity to bear the tax burden of the corresponding transaction and have the power to dispose of assets of the foreign taxpayer to cover a potential tax deficiency. Thus, a foreign resident disposing of stock in a Mexican entity will be faced with additional complications to apply a more beneficial treatment either under domestic law or through the application of a double tax treaty, options that generally require the appointment of a legal representative in Mexico.

Capital gains derived from the sale of shares of resident Mexican companies listed on a recognised stock exchange and shares issued by variable yield investment funds are subject to a 10% tax rate on the gains. The sale of such shares may be exempt if the seller is resident in a jurisdiction with which Mexico has a double tax treaty in force and certain formalities are met.

In general, Mexican resident target companies remain liable for taxes owed by the former shareholders in a share acquisition if the target company registers the acquiring shareholder in its shareholder registry and does not receive proof of withholding tax compliance from the acquiring shareholder or proof that the seller has paid all taxes derived from the sale. Thus, in the case of a foreign acquiror, it is important to ensure that the seller duly complies with its income tax payment obligations.

b. Tax Attributes

Mexican residents and non-Mexican residents with a PE in Mexico may offset any losses derived from the transfer of shares only against capital gains derived from other transfers of shares. A loss obtained by a non-Mexican resident seller on the sale of an entity may not be offset against future capital gains for Mexican tax purposes.

Following an acquisition of shares, tax attributes remain with the acquired entity although limitations may apply for the application of net operating tax losses. For example, net operating tax losses transferred by a merged entity to a surviving entity may be used by the surviving entity only against profits generated by the same business line in which the losses were generated. Additionally, if there is a change of shareholders that control the entity that has generated the net operating tax losses, and the losses, prior to the change of control exceed the sum of the income obtained by the entity in its last three fiscal years, such losses may only be used against profits generated in the same business line in which they were generated.



Where tax losses have been generated pursuant to certain regulated scenarios and the tax loss generating entity is part of a business restructuring or change of shareholders in such a way that the entity entitled to offset said losses ceases to be part of the original group, then the right to offset such losses may be challenged by the tax authorities absent proof of non-tax related motives. However, when the party that generated the tax losses no longer forms part of the original group after any form of restructuring that causes the entity to exit the group, the exit of tax losses from the group may be deemed unlawful. For example, when the taxpayer that generated the losses forms part of any of the regulated scenarios, the use of tax losses by such taxpayer may be disallowed if deemed unlawful by the tax authorities. The rules prevent groups from selling loss generating entities to third parties by targeting certain fraudulent schemes whereby losses are considered to have been generated artificially and then sold to group companies as "tax assets".

c. Tax Grouping

Tax integration (consolidation) is available under the ITL, which allows for the deferral of income tax for a period of three years, i.e. in Mexico there is never a permanent deduction/offset reducing the taxable profit and tax payments of the group, only ever a deferral of tax due. The application of the integration regime requires the holding company and the subsidiaries to be Mexican residents and the holding company must have above 80% ownership in all integrated subsidiaries, directly or indirectly. Furthermore, the holding company's voting stock must not be owned more than 80% by persons other than Mexican resident individual shareholders or foreign resident shareholders resident in a country who has entered into a broad exchange of information agreement with Mexico.

Each entity of the integrated group determines an individual taxable income or operating losses, as the case may be and in the annual return the losses belonging to group members may be offset pursuant to a specific mechanic. The difference between the integrated taxable income and the taxable income that would have been realised had there been no integration will be deferred for three years and updated for inflation. The deferred amount must be paid to the tax authorities in the tax return corresponding to the following fiscal year to that in which the end of the three-year period takes place.

Furthermore, the tax integration regime is allowed only for companies which are resident in Mexico for tax purposes. As a consequence, it is not possible to consolidate a foreign company with a Mexican company for tax purposes.

d. Tax Free Reorganisations

Mexican law provides for a tax neutral regime applicable to some qualifying corporate restructurings, such as mergers, spin-offs, contributions-in-kind and exchanges of shares. Subject to certain requirements, companies can achieve tax-free mergers and spin-offs whereby any transfer of assets is not considered as such for income tax and VAT purposes. In the case of mergers and spin-offs resulting from a corporate restructuring, the requirements set forth in the ITL described in the following paragraph must be met. Tax free mergers and spin-offs can only be achieved where the entities entering into the merger or resulting from the spin-off are Mexican resident for tax purposes.

In the case of corporate restructurings involving Mexican resident legal entities, the Mexican tax authorities may authorise a transfer of shares at cost basis between entities in the same corporate group. Subject to other requirements, the shares received and the shares transferred by each entity must remain directly held by the acquirer and within the group for a period of at least two years following the date of authorisation of the restructure, and the shares received by the taxpayer must represent the same percentage in the paid in capital of the entity whose shares are received, as the percentage that the shares being transferred in turn would represent, prior to the transfer, in the consolidated capital of both entities. Additionally, a new requirement has been established, consisting in the obligation to inform to the tax authorities any relevant transactions carried out during the five-year period preceding the request for the authorisation. Additionally, the tax authorities are granted with the power to forfeit the authorisation if they deem that the corporate restructure lacked a valid business reason.



Regarding contributions-in-kind and exchange of shares carried out by non-Mexican residents, the Mexican tax authorities must authorise the corporate restructuring before it is executed. The benefit of the authorisation is a deferral in the payment of the tax that would have been triggered without the reorganisation authorisation. The transfer value to be considered for purposes of the deferral is the tax basis of the shares. In any case, several formalities and requirements must be fulfilled to qualify for the tax neutral regime. Among other requirements, the related parties must not be subject to a preferential tax regime. Mexico also has some Double Tax Treaties in place which allow for tax free or tax deferred reorganisations (e.g. United States, the Netherlands, Luxembourg, Hong Kong and Spain, among others).

Tax free reorganisations are not allowed between foreign entities and Mexican entities. For example, a Mexican entity merging with a foreign resident entity cannot apply for a tax-free transfer of assets.

e. Purchase Agreement

Where the seller is a Mexican resident individual or a non-Mexican resident and the purchaser is a Mexican resident, the purchaser must withhold income tax due by the seller unless the seller elects to pay income tax due on the gain, in which case specific documentation should be provided to the purchasers to relieve them from the obligation to withhold income tax. In this regard, special provisions should be included to guarantee that the seller provides the required documentation within the time frame required by law.

f. Transfer taxes on share transfers

Acquisitions of shares of a corporation or partnership interest of a limited liability company are not subject to VAT or stamp tax in Mexico. Furthermore, no transfer taxes are triggered by a share acquisition (e.g. real estate transfer tax).

g. "Purchase accounting" applicable to share acquisitions

Purchase accounting is not applicable for tax purposes in a stock acquisition. The purchase price is fully allocated to the stock and may not be allocated to the individual assets and liabilities of the target entity for a step-up in the tax basis.

h. Share Purchase Advantages

Acquisitions of shares of a corporation or partnership interest of a limited liability company are not subject to VAT or stamp tax in Mexico. No transfer taxes are triggered by a share acquisition (e.g. real estate transfer tax).

The acquisition price will form part of the tax basis of shares of the buyer for subsequent sales.

Tax attributes remain with the acquired entity although limitations may apply for the application of tax losses.

i. Share Purchase Disadvantages

A loss incurred by a non-Mexican resident seller on the sale of an entity may not be offset against future capital gains for Mexican tax purposes.

The target company's liabilities and possible tax contingencies remain in the target company. The statute of limitations in Mexico is five years.

The buyer is generally not allowed to deduct the financing costs of the acquisition against the target's future profits.



If the buyer is a foreign resident and acquires shares at a value that is at least 10% lower than the appraisal value of the shares, the tax authorities may assess a deemed income to the foreign buyer on the difference between the actual sales price and the appraisal value of the shares. The foreign buyer must pay a 35% income tax on the difference between the sales price and the appraisal value.

There are no tax clearances available.

4. ASSET ACQUISITION

a. General Comments

The transfer of assets is subject to income tax on the capital gain realised by the seller, if the seller is a Mexican resident or a non-Mexican resident with a PE in Mexico, Special considerations apply to the transfer of real property situated in Mexico. The sale of real property situated in Mexico, transferred by a non-Mexican resident without a PE in Mexico is deemed to be sourced in Mexico and subject to tax either at a 25% rate on the purchase price or 35% on the gain realised by the foreign resident. To pay tax on gain rather than the purchase price, certain requirements must be satisfied, such as that a Mexican resident legal representative is designated and the transaction is conducted through a notary public.

b. Purchase Price Allocation

The purchaser may reasonably allocate the purchase price among the individual assets being acquired, which will result in a step-up in the taxable basis of each individual asset. Usually, an independent appraisal of the assets is needed to support the allocation.

c. Tax Attributes

The tax attributes of a target, such as accumulated net operating tax losses, are not transferred to the purchaser in an asset acquisition.

d. Tax Free Reorganisations

It is not possible to apply for a tax-free reorganisation in an asset transaction, other than the transfer of assets through a merger or spin-off subject to complying with the requirements mentioned above.

e. Purchase Agreement

Special attention should be given to the proper issuance of invoices by the seller for the assets being transferred. In order to document the deductibility of assets, the tax cost basis shall be backed up by electronic invoices that meet legal requirements.

Furthermore, special attention should also be placed on any withholding VAT or IT obligations that may be imposed on the purchaser.

Additionally, given the recent amendments to the Federal Fiscal Code, the purchaser of assets may be considered jointly liable for taxes attributable to an ongoing concern.



f. Depreciation and Amortisation

The cost of tangible and intangible assets purchased may be deducted via depreciation or amortisation beginning either in the fiscal year that they are put to use or in the following year. The depreciation for tax purposes is determined on the straight-line method and restricted to maximum annual percentages set forth in the ITL per kind of asset or business line to which they are destined. Purchased inventories may not be deducted via depreciation and shall be deducted as the cost of goods sold when such goods are effectively sold.

The ITL does not allow for the deduction of goodwill. Goodwill paid as part of the purchase price of shares of a company is part of the tax basis of the shares, which can be deducted from the sales price in a subsequent sale (provided however that the overall original acquisition price was at market value at the time of purchase).

g. Transfer Taxes, VAT

The transfer of assets is generally subject to VAT at a 16% rate and paid by the seller. The cost, however, is transferred to the purchaser. Certain assets may be subject to a 0% VAT rate or exempt from VAT. VAT borne by the purchaser may be credited against the VAT in charge due for the sale of goods, the provision of services, the granting of the temporary use or enjoyment of goods or the importation of goods which are subject to a 16% or a 0% rate. If the purchaser is a non-Mexican resident, the VAT is not recoverable and will represent an additional cost for the transaction.

Additionally, the transfer of real property situated in Mexico will be subject to real estate transfer tax at local level, generally imposed on the purchaser. The rate may go from 2% to 5% on the higher of the transaction value, the cadastral value, or an appraisal value.

Excise tax may apply on the transfer of certain goods, such as fuel, tobacco or alcohol.

There are no other stamp duties or transfer taxes in Mexico than those discussed above.

h. Asset Purchase Advantages

Step-up of the value of the assets for the purchaser.

The cost of assets purchased may be deducted via depreciation beginning either in the fiscal year that they are used or in the following year. Seller may be able to offset accumulated net operating tax losses against capital gains derived from the disposition of assets.

The target company's liabilities and possible tax contingencies are not transferred to the buyer unless the transfer is deemed the acquisition of an ongoing concern. However, as mentioned above, new provisions have been included which could result in a limited transfer of assets being considered an ongoing concern.

i. Asset Purchase Disadvantages

Tax attributes such as accumulated tax losses of the target are not transferred to the buyer.

Real estate transfer tax is applicable on the transfer of real estate property situated in Mexican territory. This tax is levied at the local level at a rate that may go from 2% to 5% of the value of the property.

Regardless of the general rule that the target company's liabilities are not transferred to the buyer, Mexican tax provisions establish that, in case of the acquisition of an ongoing concern, the buyer will be jointly and severally liable with the seller for any taxes triggered from the activities carried out by such business.



5. ACQUISITION VEHICLES

a. General Comments

In the acquisition of Mexican resident targets, it is common to set up either a domestic or foreign acquisition vehicle, depending on the characteristic of the financing that will be provided. Special considerations must be taken into account to obtain relief for the financing cost of the acquisition. For instance, special planning will be required to implement a debt pushdown strategy.

b. Domestic Acquisition Vehicle

Domestic acquisition vehicles are generally used when it is envisaged that the transaction will be financed via third party debt and it is envisaged that the target will generate enough operating income to pay principal and interest and will be able to take advantage of the interest deductibility. Since a tax-free merger cannot be achieved between a Mexican resident and a non-Mexican resident entity, a domestic acquisition vehicle is required to implement a debt push-down strategy as described below.

c. Foreign Acquisition Vehicle

Foreign acquisition vehicles are generally used when there are special considerations to be taken into account with respect to the tax regime in the country or jurisdiction in which the foreign acquisition vehicle is tax resident. Since the corporate income tax rate of Mexico is relatively high compared to international standards (30%), payments made abroad to lower tax jurisdictions may result in an overall benefit for a multinational enterprise group. Furthermore, when the target acquired is a holding entity itself, it will not be necessary to set up a domestic acquisition vehicle as a blocker of any withholding taxes due from payments abroad by the operating target such as interest, royalty or dividend income tax withholdings.

Private equity investment acquisitions are commonly carried out through foreign transparent legal vehicles. The recently introduced fiscal transparency rules described in Section 2.b. of this chapter shall be considered as of fiscal year 2021 to achieve the desired tax transparency.

d. Partnerships, joint ventures and trusts

Joint ventures (*asociaciones en participación*) and partnerships (*sociedades civiles*) are taxed in the same manner as Mexican resident corporations. However, partnerships are taxed on a cash flow basis rather than on an accrual basis. Joint ventures, although not corporate bodies, are treated as a single taxpayer for Mexican tax purposes.

As opposed to joint ventures in the terms described above, it is common to set up investment vehicles through Mexican trusts (*fideicomisos*), which are treated in the same manner as Mexican resident corporations when they conduct entrepreneurial activities. Foreign residents conducting business through such "business trusts" are deemed to have a PE in Mexico for the income attributable to such trusts. Conversely, passive income trusts are treated as transparent entities (pass-through) and their members are taxed on distributions made to such trust in accordance with their applicable tax regime.



e. Strategic vs Private Equity Buyers

There are no particular tax considerations for strategic vs. private equity acquisitions since there is no particular tax treatment applicable to majority shareholders (which is normally the case of strategic buyers) as opposed to minority shareholders (which may be the case of private equity buyers) pursuant to domestic law. However, certain tax treaties entered into by Mexico do provide preferential withholding taxes on dividend distributions or capital gains depending on the level of ownership of the foreign resident.

With respect to private equity investments, the ITL contemplates special investment vehicles such as a Capital Risk Investment Trust ("FICAP" is its acronym in Spanish) which are treated as transparent vehicles for Mexican tax purposes (i.e no withholding applies to the distributions made by the operating target to the FICAP, and each member of the FICAP is taxed individually, being eligible to apply the benefits of a double tax treaty). FICAP must invest in non-publicly-traded Mexican resident targets and at least 80% of the proceeds received by the trust every year must be distributed to investors in the first two months of the subsequent year.

6. ACQUISITION FINANCING

a. General Comments

The introduction of funds into Mexico does not present particular difficulties. Mexico does not currently have exchange control regulations or limitations with respect to the transfer of funds outside Mexico. Notwithstanding the above, please note that as a practical matter, transfers of funds through Mexican financial institutions may trigger reporting requirements pursuant to anti-money laundering regulations. Furthermore, Mexico does not impose any taxes or duties on capital contributions nor stamp taxes on foreign currency being introduced into Mexico.

Based on the foregoing, funding may be provided immediately and with no setbacks once the target vehicle has been incorporated.

b. Equity

There are no local substance requirements for foreign holding companies in Mexico, nor is Mexico a jurisdiction suitable for holding companies given the high tax burden applicable to passive income earned by Mexican residents. Based on the foregoing, a holding jurisdiction is typically chosen based on the benefits that are available under a double tax treaty entered into with Mexico and the network of tax treaties available in such jurisdiction. Some common holding company jurisdictions for Mexican businesses are Spain, the Netherlands, Luxembourg and the United States.

Nevertheless, the ITL has certain requirements in place to tackle what would be considered as abusive structures by the Mexican tax authorities: in addition to the requirement that Mexican residents must obtain a certificate of residence of the non-Mexican resident to apply treaty benefits, the Mexican tax authorities may request such non-Mexican resident taxpayers to prove the existence of juridical double taxation being relieved under the applicable tax treaty, as well as an explanation of the tax treatment given in the country of residence. In addition, Mexico has opted to include the Simplified Limitation of Benefits provision to its Covered Tax Agreements under the Multilateral Instrument, and in recent treaty negotiations Mexico has included a principal purpose test or limitation on benefits clauses to restrict treaty benefits in abusive situations.

Furthermore, there are no tax incentives for equity financing under Mexican ITL such as a deemed interest deduction for equity contributions or deductibility of paid in capital. However, capital reimbursements that do not exceed the paid in capital, subject to certain computations set forth in the ITL, are considered tax free distributions. There are however anti-abuse provisions set forth to avoid the result of a transfer of shares through capital increases and future capital redemptions by another shareholder.



c. Debt

For income tax purposes, interest is deductible when:

- The capital is invested for the attainment of the purpose of the business.
- If the taxpayer grants loans to third parties, employees or shareholders, only the interest accrued on borrowed capital for up to the amount of the lowest interest rate set forth in the loans to third parties or to the taxpayer's employees or shareholders on the portion of the loan made to the latter parties will be deductible. These limitations do not apply to banking institutions, regulated multiple purpose financing companies or ancillary credit organisations regarding transactions that are inherent to their activities.
- Interest must be determined at a fair market value. Any excess will be considered non-deductible.
- Tax withholding obligations and other disclosure obligations must be complied with.

As of fiscal year 2020, a general interest deductibility limitation rule has been introduced whereby interest deductibility is limited to 30% of the taxpayers adjusted tax profits, applicable when the accrued interest resulting from the taxpayers liabilities exceeds MXN $20 million. The limitation shall be applicable to all Mexican resident legal entities or non-Mexican resident legal entities with a PE in Mexico forming part of the same group.

Thin capitalisation rules disallow the deduction of interest on debt owing to foreign related parties if the total amount of interest-bearing debt exceeds a three to one debt equity ratio. Likewise, interest may be re-characterised as a dividend if the loan is considered a back-to-back loan, and therefore non-deductible. Furthermore, according to the tax provisions applicable as from fiscal year 2022, financing structures lacking a business reason will qualify as back-to-back-loans, and therefore, non-deductible.

Although interest expense on a debt subscribed for dividend distribution purposes is not generally prohibited, Mexican tax authorities have the position that interest derived from a loan obtained to pay dividends to shareholders is non-deductible because they consider that the loan is not used for the business purpose of the company. In a similar fashion, the Mexican tax authorities are not fond of debt pushdowns even if there is no particular provision that prohibits them.

The usual strategy to push down debt on an acquisition is to incorporate a Mexican acquisition company to borrow the purchase funds. Following the purchase, the acquisition company is merged into the target company, so it pays debt and interest from operating cash flows. The merger may qualify as a tax neutral transfer of assets subject to the fulfilment of certain requirements. Nevertheless, the Mexican tax authorities may challenge the deduction of the interest considering that such interest is not strictly necessary for the purposes of the surviving company.

Tax consolidation was used to optimise a group's tax burden utilising the deduction of acquisition debt interest (with the associated recapture of losses if the holding company did not individually generate sufficient profits to amortise the loss derived from financing). However, as from fiscal year 2014, the tax consolidation regime was replaced by a fiscal unity regime which only allows the deferral of taxes for a three-year period.

d. Earn-outs

Earn-outs will be subject to income tax in Mexico depending on how they are structured in the transaction. If, for example, earn-outs are agreed as adjustments to the final purchase price, they will be taxable under the rules applicable to the sale of shares. If they are structured as service fees or non- compete payments, for example, they will be subject to tax in Mexico to the extent that they are either earned by a Mexican resident or a non-Mexican resident with a PE in Mexico, or if they are earned by a non-Mexican resident for activities carried out in Mexico.



Generally, an earn-out payment will not require the performance of activities in Mexico so they may not be subject to tax under certain considerations. Nevertheless, a specific analysis should be conducted to determine the nature of such earn-out payments in order to accurately determine the Mexican tax ramifications.

7. DIVESTITURES

a. Tax Free

Capital redemptions will not be subject to taxation in Mexico to the extent the amounts reimbursed to the shareholders/partners do not exceed the amounts originally contributed to the Mexican entity. Such amounts are reflected in the Contributed Capital Account ("CUCA" is its acronym in Spanish). The CUCA includes the paid-in capital contributions and premiums paid in the issuance of shares and is decreased by capital reductions. The balance of the account is adjusted for inflation.

Any amounts that exceed the CUCA or the net after tax profits account ("CUFIN" is its acronym in Spanish) will be treated as a taxable distributed profit as described in the following subsection.

b. Taxable

- Dividends: Dividends distributed in an amount up to the balance of the net taxable profits account ("CUFIN") are not subject to corporate taxation in Mexico at the level of the distributing entity. If distributions exceed the CUFIN, a specific gross-up procedure must be applied to the excess distributed amount, in order to determine the amount of the income tax due by the Mexican entity (at the corporate level) upon the distribution of such dividends. The corporate tax levied may be credited against income tax due in the fiscal year in which the dividend is distributed and in the following two fiscal years.

  In addition to the corporate tax, if applicable, a withholding tax applicable to individuals and foreign tax residents is established in the ITL when receiving dividends distributed by Mexican companies, which will be determined by applying the 10% rate to the gross amount of the distributed dividends and will be withheld by the company paying such dividends. The 10% rate may be reduced under the benefits granted by a double tax treaty entered into by Mexico.

- Sale of shares: The tax regime applicable to the transfer of shares is described in section 3. Share Acquisition above.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

Mexican residents are subject to tax on their worldwide income. In this regard, income tax paid abroad on income from sources located abroad may be credited against the income tax due under the ITL, provided that (i) such income is subject to tax under the ITL, (ii) the income considered as gross income includes the income tax paid abroad, and (iii) certain crediting requirements are met.

The tax credit granted by Mexico shall be limited to the income tax that would have been due under Mexican law.

As of fiscal year 2020, the tax credit will not be granted in situations where (i) the corresponding tax has been credited in another country or jurisdiction for a reason other than the application of a foreign tax credit in similar terms granted under the ITL, unless the income to which said tax corresponds was accrued in said country or jurisdiction and/or (ii) in the case of a dividend distribution, such distribution is deductible or represents a similar reduction for the distributing entity abroad.



b. CFC Regime

Mexico has a CFC regime applicable to preferential tax regimes where income is obtained through a subsidiary in a low tax jurisdiction. Accordingly, Mexican resident entities and non-Mexican residents with a PE in Mexico that carry out activities through preferential tax regimes are taxed on income obtained through a CFC even if no distributions have been made, provided that they exercise control over those vehicles. Additionally, they are required to file an annual disclosure return reporting income obtained subject to a preferential tax regime or income obtained through entities subject to such regimes or in certain blacklisted jurisdictions.

Pursuant to the ITL, Mexican tax residents and non-Mexican residents with a PE in Mexico could be deemed to receive income from jurisdictions considered as preferential tax regimes whenever: (i) such income is not taxed abroad, or (ii) the income tax abroad is less than 75% of the income tax that would be levied and paid in Mexico. The regime is not applicable when the foreign legal entity carries out entrepreneurial activities, not more than 20% of their total income is passive income, as defined therein, and not more than 50% of the income earned by such foreign legal entity is sourced in Mexico or has represented a tax deductible payment, directly or indirectly, in Mexico.

As of fiscal year 2020, income earned by Mexican resident through a transparent entity or legal vehicle (i.e. a trust, an association, an investment fund or any other legal figure under foreign law that does not have its own legal personality) are subject to similar income accrual rules regardless of whether they are incorporated, or resident in a low tax jurisdiction. Transactions carried out through foreign transparent entities or figures should also be reported regardless of whether they are subject to a preferential tax regime or not.

Taxes levied on the taxpayer for the aforementioned transactions may be credited against the IT due in Mexico, subject to certain limitations.

c. Foreign branches

Foreign branches of Mexican resident entities are subject to the provisions stated in subsections a. and b. above. Profits attributable to a PE of a Mexican resident will be taxed as part of the worldwide income of that Mexican resident and taxes levied at source may be credited against income tax due in Mexico for such activities.

d. Cash Repatriation

- Dividends received by Mexican residents from foreign entities are considered taxable income. However, the corporate income tax paid abroad by those foreign entities may be credited in proportion to the dividends or profits received by the Mexican entity, under a specific procedure established by the ITL.
- In past years the Federal Executive has issued repatriation decrees by means of which Mexican residents may regularise their tax situation with respect to offshore investments at preferential tax rates. Currently, no repatriation decrees are in force. The most recent such decree was issued during fiscal year 2017, which granted an incentive to Mexican residents consisting of applying an 8% tax rate to the resources kept abroad before 1 January 2017, which were brought back to Mexico. This decree is no longer in force.



9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

The tax regime applicable to the transfer of real property situated in Mexico is described in section 4.a. General Comments and 4.g. Transfer Taxes, VAT above.

As previously stated, pursuant to the ITL, the source of wealth from the acquisition of shares issued by a foreign entity is considered to be in Mexico, when the accounting value of such shares (issued by a foreign entity) is represented more than 50%, directly or indirectly, by real property situated in Mexico.

b. CbC and Other Reporting Regimes

- Transfer pricing disclosure returns: Pursuant to the ITL and in line with BEPS Action 13, in certain cases taxpayers are required to file information returns: (i) a master information return of related parties from the multi-national business group, (ii) local information return of related parties, and (iii) information return, Country-by-Country, of the multi-national business group. The master information return and Country-by-Country report shall be filed no later than 31 December of the following fiscal year, whereas the local file shall be filed no later than 15 May of said following fiscal year.
- Information return on income from preferential tax regimes: No later than February of each fiscal year, Mexican resident taxpayers and non-Mexican residents with a PE in Mexico must submit an information return with respect to income subject to a preferential tax regime that they have earned in the immediately preceding year or the income earned through corporations or other entities subject to that regime in the preceding year, along with account statements that specify deposits, investments, savings or any other items.

  Taxpayers that earn income of any kind in blacklisted jurisdictions, as well as those that conduct transactions through fiscally transparent foreign entities or legal vehicles, are also required to file the above-mentioned information return.

  Financial institutions are released from the obligation to file this return, provided that they keep a copy of the return filed in due time and in proper form by the holders and co-holders of income subject to a preferential tax regime.
- CRS/FATCA: There are rules and reporting requirements in force requiring Mexican financial institutions, including their foreign branches, to comply with the exchange of information requirements under the Foreign Account Tax Compliance Act ("FATCA") and the Common Reporting Standards ("CRS").

10. TRANSFER PRICING

Mexican resident corporations and non-Mexican residents with a PE in Mexico who engage in transactions with related parties are obligated to determine their taxable income and deductions considering the prices and amounts of consideration that would have been agreed upon with or between independent parties under comparable circumstances. The Mexican tax authorities can modify the tax profit or loss of taxpayers, through the presumptive determination of the price at which taxpayers acquire or sell goods, among other situations, when the agreed price of the transaction is higher or lower than fair market value.



Formal and pre-established methods to determine an arm's length consideration, following OECD transfer pricing guidelines, are contemplated in the ITL, giving preference to the comparable uncontrolled price method. Mexican entities are required to obtain and keep transfer pricing studies for transactions carried out with domestic and foreign related parties. Regarding transfer pricing documentation, Mexico has implemented Action 13 of the BEPS project, obligating Mexican residents to comply with Country-by-Country, Master File and Local File reporting, following OECD standards, for information pertaining to fiscal year 2016 onwards.

Advance Pricing Arrangements ("APA") and Mutual Agreement Procedures ("MAP") are available for taxpayers who wish to approach the tax authorities and seek private rulings (or APAs / MAPs) to obtain juridical certainty of their transfer pricing policies. These procedures are lengthy and cumbersome, however.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

As from 2014, a hybrid mismatch rule was introduced establishing that the deduction of any payments made by Mexican tax residents will be disallowed if the deduction is also picked up at the level of a national or a foreign resident related party (unless such related party considered such payment in its taxable basis). As from 2020, this limitation is also applicable to the PE of non-Mexican residents when the payment is also deductible for the non-Mexican resident in its country of residence, or in cases of dual resident taxpayers, to the extent that in the latter case, the income accrued in Mexico is also accrued abroad.

Starting in fiscal year 2020, payments made to related parties or through structured arrangements are non-deductible when the recipient of such payments is subject to a preferential tax regime. This limitation shall not be applicable in the case of income derived from entrepreneurial activities and other requirements are met, unless the payment is deemed to be subject to a preferential tax regime by virtues of a hybrid mechanism. For these purposes, a hybrid mechanism is deemed to exist when the Mexican and foreign legislations characterise in a different way a legal entity, a legal vehicle, income, the owner of assets, or a payment, and which results in a deduction in Mexico when the totality or part of a payment is not subject to tax abroad.

b. Use of Hybrid Instruments

Please see the deductibility limitation with respect to payments made to related parties or through structured arrangements mentioned in Section 6. above.

c. Toll Manufacturing

Mexico has in place a toll manufacturing regime (*maquila*) to attract foreign investment and take advantage of low manufacturing costs. Under this regime, non-Mexican residents will not be deemed to have a PE in place derived from the juridical or economic relations maintained with companies that carry out maquila operations, that habitually process within Mexico goods or merchandise kept by the non-Mexican resident in Mexico, utilising assets provided, directly or indirectly by that non-Mexican resident, as long they are resident in a jurisdiction with which Mexico has a double tax treaty in place. In addition, the toll manufacturing company must comply with certain profitability safe harbours derived from the services rendered to the non-Mexican resident for the latter not to trigger a PE in Mexico for its activities.



Furthermore, non-Mexican residents that provide directly or indirectly raw materials, machinery or equipment, to carry out maquila operations through companies with a maquila permit under the shelter modality, authorised by the Ministry of Economy, will not be deemed to have a PE in Mexico, to the extent that the foreign resident is not, directly or indirectly, a related party of the company with the maquila permit. As of fiscal year 2020, said non-Mexican residents shall enrol before the Federal Taxpayers Registry through the Mexican resident with which they have entered into the shelter programme. The Mexican resident company shall determine the profits earned by the non-Mexican resident and file the corresponding tax returns containing the income tax due in charge of said non-Mexican resident. The Mexican resident company shall be jointly liable for the determination and payment of income tax due by the non-Mexican resident, which taxable profits shall be determined pursuant to specific safe harbour rules.

d. Intellectual Property

Payments of any sort for granting the temporary use or enjoyment of patents, certificates of invention or improvement, brands, trade names, authors' rights over literary, artistic or scientific works, including films and recordings for radio or television, blueprints, formulas, industrial, commercial or scientific procedures or equipment, or information relating to commercial, industrial or scientific experiences, or other rights or ownership of a similar kind, are treated as royalties. The granting of temporary use of aeroplanes for commercial use in the transportation of passengers or cargo, is considered royalty as well.

The transfer of intellectual property by the seller is subject to the same tax treatment as the transfer of intangible assets described in section IV above. However, income obtained by a foreign resident from the transfer of goods or rights treated as royalties shall be subject to the tax treatment described below when the transfer of such goods or rights is conditioned to the productivity, use or subsequent disposal of said goods or rights.

Royalty payments shall be sourced in Mexico when goods or rights for which royalties are being paid are enjoyed in Mexico or when the payment is made by a Mexican resident or a non-Mexican resident with a PE in Mexico. The withholding tax applicable varies from 1% to 35% depending on the goods, assets or rights for which the royalties are being paid.

e. Special tax regimes

The ITL includes special tax regimes applicable to particular forms of investments through Mexican trusts ("fideicomisos"). In particular, there is a special tax regime applicable to real estate investment trusts (*Fideicomisos de Inversión y Bienes Raíces* or "FIBRAS") for the acquisition or development of real estate in Mexico where the beneficiaries benefit from the rental income or similar rights over the real estate assets subject to the trust estate. As of fiscal year 2020, the FIBRAS regime is solely applicable to publicly held investments, providing for a transitional exit regime for privately held real estate investment trusts. Additionally, a regime applicable to energy and infrastructure investment trusts ("FIBRA E") is also available to promote the financing of projects in those sectors.



12. OECD BEPS CONSIDERATIONS

The tax reforms introduced in Mexico effective as from 1 January 2014 and 1 January 2020, along with administrative regulations, have led to a comprehensive early adoption of BEPS actions within the Mexican tax regime.

In addition, Mexico has signed the Multilateral Instrument, which is still pending approval from the Mexican Senate to become effective. The Multilateral Instrument will be applicable to 61 Covered Tax Agreements. Mexico already has in its Covered Tax Agreements several provisions in line with the Multilateral Instrument, for which reservations have been issued in connection with transparent entities and dual residence issues, which will need to be analysed case by case. Furthermore, as previously stated, Mexico has opted for the Simplified Limitation of Benefits provision.

Mexico has not chosen to apply the arbitration mechanisms contained in the Multilateral Instrument.

13. ACCOUNTING CONSIDERATIONS

Mexican companies must present their financial information in accordance to the Mexican Financial Reporting Standards (*Normas de Información Financiera* or "NIF"). Publicly listed companies however must present their financial information in accordance with the International Financial Reporting Standards ("IFRS"). Furthermore, there are specific Mexican reporting standards applicable to the banking and financial system.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Please refer to Section 7. for the considerations with respect to distributions.

b. Substance Requirements for Recipients

There are no specific substance regulations or requirements in the Mexican tax provisions, however, the recently introduced GAAR allows the tax authorities to recharacterise the legal acts entered into by taxpayers when such acts are deemed to lack business reasons and generate a direct or indirect tax benefit. Moreover, additional "business reason" provisions have been included in the tax legislation as from 2022, including information obligations in connection with relevant transactions (such as restructures, mergers, spin-offs, change of shareholders, among others); identification of ultimate beneficiaries of companies, trusts, etc (with steep penalties if non-compliant); to provide tax authorities with more tools to evaluate the substance of transactions and deny, if any, tax benefits or recharacterise transactions.

c. Application of Regional Rules

This section is left intentionally blank.



d. Tax Rulings and Clearances

The Mexican tax authorities may issue rulings concerning inquiries issued by taxpayers on specific and factual situations. The tax authorities are bound to apply the criteria contained therein, provided that the inquiries meet specific formal requirements and that the facts and circumstances put forward by the taxpayer are accurate and real. The ruling issued will be binding during the fiscal year in which they are requested, or during the immediately preceding fiscal year when granted during the first three months of the fiscal year in which it is requested. The ruling shall not be binding to the taxpayer, allowing the latter to challenge any assessment issued by the Mexican tax authorities based on the application any unfavourable criterion issued. Favourable resolutions may be challenged by the Mexican tax authorities solely before a tax court. The Mexican tax authorities may also issue replies to consultations concerning theoretical inquires issued by taxpayers, however certain matters are restricted, and the reply obtained is not binding.

Furthermore, as mentioned in Section 10. above, the Mexican tax authorities may also rule upon inquiries regarding the methodology used to determine prices or consideration amounts in transactions with related parties. The rulings may result from an agreement with the competent tax authorities of a country with which Mexico has a double tax treaty in force. These rulings shall be valid for the fiscal year in which they are requested, the immediately preceding fiscal year, and for up to the three fiscal years following fiscal years. The rulings may be valid for a longer period if they derive from a mutual agreement procedure in accordance with an international convention to which Mexico is a party.

There are no tax clearances available in Mexico for federal tax purposes, but local governments do tend to grant clearances with respect to local taxes such as payroll tax or property tax to attract investment in their localities.

15. MAJOR NON-TAX CONSIDERATIONS

In general, there are no major non-tax considerations for M&A activities in Mexico nor investment restrictions, except for strategic sectors which are totally or partially served to the Mexican State or to full or a minimum Mexican participation. In this regard, activities such as exploration and production of hydrocarbons, planning and distribution of energy and the generation of nuclear energy is reserved to the Mexican State. Other activities such as national passenger, tourist and freight transportation is reserved to Mexican residents, and activities that involve, for example, the ownership of land destined to agriculture, livestock or forestry activities require a minimum level of Mexican participation.

Some transactions may require notice or authorisation from the Mexican Anti-trust Commission, depending on value of transaction, value of assets involved and other considerations.



16. APPENDIX I – TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Argentina	10 / 15	12	10 / 15	[1] [2]
Australia	0 / 15	10 / 15	10	[3] [4]
Austria	5 / 10	10	10	[5]
Bahrein	-	4.9/10	10	[54] [55]
Barbados	5/10	10	10	
Belgium	Exempt / 10	5 / 10	10	[6] [7]
Brazil	10 / 15	15	10 / 15	[8] [9]
Canada	5 / 15	10	10	[10]
Chile	5 / 10	5 / 10	10	[11] [12] [13]
China	5	10	10	
Colombia	Exempt	5 / 10	10	[14]
Costa Rica	5/12	10	10	[56]
Croatia	Non applicable			
Cyprus	Non applicable			
Czech Republic	10	10	10	
Denmark	0 / 15	5 / 15	10	[15] [16]
Ecuador	5	0 / 10 / 15	10	[55]
Estonia	Exempt	4.9 / 10	10	[57]
Finland	Exempt	10 / 15	10	[17]
France	Exempt / 5 / 15	5 / 10	10	[18] [19] [20]
Germany	5 / 15	5 / 10	10	[21] [22]
Greece	10	10	10	
Hong Kong	Exempt	4.9/10	10	[55]
Hungary	5 / 15	10	10	[23]
Iceland	5/15	10	10	
India	10	10	10	
Indonesia	10	10	10	
Ireland	5 / 10	5 / 10	10	[24] [25]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Israel	5/10 /10	10	10	
Italy	15	10	15	[26]
Jamaica	5/10	10	10	[58]
Japan	Exempt / 5 / 15	10 / 15	10	[27] [28]
Kuwait	Exempt	4.9/10	10	[55]
Lithuania	0/15	10	10	
Luxembourg	5 / 8 / 15	10	10	[29]
Malaysia	Non applicable			
Malta	Exempt	5 / 10	10	[30]
Mauritius	Non applicable			
Netherlands	5 / 15	5 / 10	10	[31] [32]
Norway	Exempt / 15	10 / 15	10	[33] [34]
Panama	5 / 7.5	5 / 10	10	[58] [55]
Philippines	5 / 10 / 15	12.5	15	[35]
Poland	5 / 15	10 / 15	10	[36] [37]
Portugal	10	10	10	
Puerto Rico	Non applicable			
Qatar	Exempt	5 / 10	10	[55]
Romania	10	15	15	
Russia	10	10	10	
Saudi Arabia	5	5 / 10	10	[59]
Serbia	Non applicable			
Singapore	Exempt	5 / 15	10	[38]
Slovakia	Exempt	10	10	
Slovenia	Non applicable			
South Africa	5 / 10	10	10	[39]
South Korea	0 / 15	5 / 15	10	[40] [41]
Spain	Exempt / 10	4.9 / 10	10	[42] [43]
Sweden	Exempt / 5 / 15	10 / 15	10	[44] [45]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Switzerland	Exempt / 15	5 / 10	10	[46] [47]
Turkey	5 / 15	10 / 15	10	[48] [49]
UK	Exempt / 15	5 / 10 / 15	10	[50] [51]
Ukraine	5 / 15	10	10	[58]
United Arab Emirates	Exempt	4.9 / 10	10	[55] [60]
Uruguay	5	10	10	
USA	Exempt / 5 / 10	4.9 / 10 / 15	10	[52] [53]
Venezuela	Non applicable			

Footnotes	
1	Dividends – Maximum rate of 15%. Reduced rate of 10% applies if the beneficial owner is a company which owns at least 25% of the company paying the dividends.
2	Royalties – Maximum rate of 15%. Reduced rate of 10% applies to royalties on certain cultural works (e.g. literary, dramatic, musical, artistic or scientific work), as well as to payments for the use of certain designs, models, blueprints, secret procedures or formulas, commercial, industrial or scientific equipment, computer software, patents and information concerning industrial, commercial and scientific experience, and payments for technical assistance.
3	Dividends – Maximum rate of 15%. 0% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the voting stock of the company paying the dividends, and the dividends are paid out of profits that have been subject to corporate tax.
4	Interest – Maximum rate of 15%. 10% rate if paid to banks or insurance companies, or when the interest is derived from bonds and securities traded on recognised markets or paid by banks or by the purchaser to the seller of machinery and equipment.
5	Dividends – Maximum rate of 10%. 0% rate applies if the beneficial owner is a company which owns at least 10% of the voting stock of the company paying the dividends.
6	Dividends – Maximum rate of 10%. Exemption applies when the beneficial owner is a company which has directly owned at least 10% of the voting stock of the company for an uninterrupted period of 12 months.
7	Interest – Maximum rate of 10%. 5% rate if paid to banks or insurance companies, or when the interest is derived from bonds and securities traded on recognised markets.
8	Dividends – Maximum rate of 15%. 10% rate applies if the beneficial owner is a company which owns at least 20% of the voting stock of the company paying the dividends.
9	Royalties – Pursuant to the most favoured nation clause, reduced rate of 10% applicable to royalties that do not proceed from the use of commercial and industrial brands. 15% rate applicable in other cases.
10	Dividends – Maximum rate of 15%. 5% rate applies if the beneficial owner is a company which holds (directly or indirectly) at least 10% of the voting stock of the company paying the dividends.



Footnotes	
11	Dividends – Maximum rate of 10%. 5% rate applies if the beneficial owner is a company which owns at least 20% of the voting stock of the company paying the dividends.
12	Interest – Pursuant to the most favoured nation clause, 5% rate if paid to banks, and 10% rate in other cases.
13	Royalties – Reduced rate of 10% is applicable pursuant to the most favoured nation clause.
14	Interest – Maximum rate of 10%. 5% rate if paid to banks or insurance companies.
15	Dividends – Maximum rate of 15%. Reduced rate of 0% applies if the beneficial owner is a company which directly owns at least 25% of the company paying the dividends.
16	Interest – Maximum rate of 15%. 5% rate if paid to banks.
17	Interest – Maximum rate of 15%. 10% rate if paid to banks, or when the interest is derived from bonds and securities traded on recognised markets or paid by banks or by the purchaser to seller of machinery and equipment.
18	Dividends – Maximum rate of 15% applies when a French company pays dividends to a Mexican company that does not hold (directly or indirectly) at least 10% of the capital of the company paying the dividends. 5% rate applies when dividends are paid by a company of a Contracting State to a company of the other Contracting State whose capital is held in more than 50% by residents of third States. Exempt in any other case.
19	Interest – Pursuant to the most favoured nation clause, reduced rate of 5% rate if paid to banks or insurance companies, or when the interest is derived from bonds and securities traded on recognised markets, and 10% rate applicable in other cases.
20	Royalties – Pursuant to the most favoured nation clause, reduced rate of 10% is applicable to royalties.
21	Dividends – Maximum rate of 15%. 5% rate applies if the beneficial owner is a company (other than a partnership) which directly owns at least 10% of the company paying the dividends.
22	Interest – Maximum rate of 10%. 5% rate if paid to banks.
23	Dividends – Maximum rate of 15%. 5% rate applies if the beneficial owner is a company (other than a partnership not subject to taxation) which directly owns at least 10% of the company paying the dividends.
24	Dividends – Maximum rate of 10%. 5% rate applies if the beneficial owner is a company which owns at least 10% of the voting stock of the company.
25	Interest – Maximum rate of 10%. 5% rate if paid to banks.
26	Interest – Pursuant to the most favoured nation clause, reduced rate of 10% is applicable to interests.
27	Dividends – Maximum rate of 15%. 5% rate applies if the beneficial owner is a company which has owned at least 25% of the voting stock of the company paying the dividends for a period of 6 months prior to the end of the fiscal year in which the dividends are distributed. Additionally, if (i) the requirements for applying the 5% rate are met, (ii) the shares of the beneficial owner are traded on a recognised market of its country of residence, and (iii) more than 50% of said shares are property of either the government of the Contracting State on which the beneficial owner resides, or natural persons or legal entities of said Contracting State, dividends are not subject to taxation on the Contracting State on which the company paying the dividends resides.
28	Interest – Maximum rate of 15%. 10% rate if paid to banks or insurance companies, or when the interest is derived from bonds and securities traded on recognised markets, or paid by banks or by the purchaser to seller of machinery and equipment.



Footnotes	
29	Dividends – Maximum rate of 15%. 8% and 5% rate applies in Mexico and Luxembourg, respectively, if the beneficial owner is a company (other than a partnership) which owns at least 10% of the company paying the dividends.
30	Interest – Maximum rate of 10%. 5% rate if paid to or by banks.
31	Dividends – Maximum rate of 15%. 5% rate applies if the beneficial owner is a company which directly or indirectly owns at least 10% of the company paying the dividends.
32	Interest – Maximum rate of 10%. 5% rate if paid to banks or other financial institutions, or when the interest is derived from bonds and securities traded on recognised markets.
33	Dividends – Maximum rate of 15%. Exempt when the beneficial owner is a company (other than a partnership) which directly owns at least 25% of the company paying the dividends.
34	Interest – Maximum rate of 10%. 5% rate if paid to banks.
35	Dividends – Maximum rate of 15%. 10% rate applies if the beneficial owner is a company (other than a partnership) which directly owns at least 10% of the company paying the dividends. 5% rate applies if the beneficial owner is a company (other than a partnership) which directly owns at least 70% of the company paying the dividends.
36	Dividends – Maximum rate of 15%. 5% rate applies if the beneficial owner is a company which directly owns at least 25% of the company paying the dividends.
37	Interest – Maximum rate of 15%. 10% rate if paid to banks or insurance companies, or when the interest is derived from bonds and securities traded on recognised markets.
38	Interest – Maximum rate of 15%. 5% rate if paid to banks.
39	Dividends – Maximum rate of 10%. 5% rate applies if the beneficial owner is a company which at least owns 10% of the company paying the dividends.
40	Dividends – Maximum rate of 15%. Reduced rate of 0% applies if the beneficial owner is a company (other than a partnership) which directly owns at least 10% of the company paying the dividends.
41	Interest – Maximum rate of 15%. 5% rate if paid to banks.
42	Dividends – Maximum rate of 10%. Exempt when the beneficial owner is a company (whose capital is divided into shares or equity quotas) which directly owns at least 10% of the company paying the dividends.
43	Interest – Maximum rate of 10%. 4.9% rate if paid to banks or any other financial institution, or when the interest is derived from bonds and securities traded on recognised markets.
44	Dividends – Maximum rate of 15%. 5% rate applies if the beneficial owner is a company which directly owns at least 10% of the voting stock of the company paying the dividends. Additionally, if (i) the beneficial owner is a company which directly owns at least 25% of the voting stock of the company paying the dividends, and (ii) at least 50% of the voting stock of the beneficial owner is owned by residents of the same Contracting State, dividends are not subject to taxation on the Contracting State on which the company paying the dividends resides.
45	Interest – Maximum rate of 15%. 10% rate if paid to banks.
46	Dividends – Maximum rate of 15%. Exempt when the beneficial owner is a company which directly or indirectly owns at least 10% of the company paying the dividends.



Footnotes	
47	Interest – Maximum rate of 10%. 5% rate if paid to banks or other financial institution, or when the interest is derived from bonds and securities traded on recognised markets.
48	Dividends – Maximum rate of 15%. 5% rate applies if the beneficial owner is a company (other than a partnership) which directly owns at least 25% of the company paying the dividends.
49	Interest – Maximum rate of 15%. 10% rate if paid to banks.
50	Dividends – Maximum rate of 15% applicable a beneficial owner other than a pension fund, provided that the dividends derive from profits obtained through real estate investment trusts that distribute the majority of their profits annually and which profits derived from such real estate are exempt . Exempt in any other case.
51	Interest – Maximum rate of 15%. 10% rate applicable to interests paid by banks or by the buyer of machinery and equipment, when such interest is not paid to banks or insurance companies. 5% rate if paid to banks or insurance companies, or when interests derived from bonds and securities traded on recognised markets.
52	Dividends – Maximum rate of 10%. 5% rate applies if the beneficial owner is a company which directly owns at least 10% of the voting stock of the company paying the dividends. Exempt if the beneficial owner is a company which has owned at least 80% of the voting stock of the company for a period of 12 months previous to the dividends decree date.
53	Interest – Maximum rate of 15%. 10% rate applicable to interests paid by banks or by the buyer of machinery and equipment, when such interest is not paid to banks or insurance companies. 4.9% rate if paid to banks or insurance companies, or when interests derived from bonds and securities traded on recognised markets.
54	Dividends – The treaty does not limit the withholding tax rate in the source state.
55	Interest – The lower rate applies to interest paid to banks.
56	Dividends – The lower rate applies if the beneficial owner is a company, other than a partnership, which holds directly at least 20% of the capital of the company paying the dividends.
57	Interest – The lower rate applies to interest paid to banks, pension funds and schemes.
58	Dividends – The lower rate is applicable with respect to participations of at least 25% of the capital.
59	The lower rate applies to interest paid to financial entities or pension funds.
60	Royalties – A most favoured nation clause may be applicable with respect to royalties.



17. APPENDIX II – GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº	Category	Sub-Category	Description of Request
1	Tax Due Diligence	Federal Taxes	Copy of the annual tax returns (*declaraciones anuales*) for the last five fiscal years, including filing receipts. Annual tax returns for prior fiscal years, in case an amended return was filed during the last five fiscal years.
2	Tax Due Diligence	Federal Taxes	Copy of the monthly advance federal tax payments and withholdings of the last five fiscal years and those that correspond to the current fiscal year, including employees' profit sharing annual payments.
3	Tax Due Diligence	Federal Taxes	Copy of disclosure returns regarding operations with third parties ("DIOT").
4	Tax Due Diligence	Federal Taxes	Copy of disclosure returns (*declaración informativa múltiple*) of the last five fiscal years, including their acceptance receipts and exhibits filed.
5	Tax Due Diligence	Federal Taxes	Copy of the Official Forms 76 "Relevant Transactions Disclosure Return" filed in terms of article 31-A of the Federal Fiscal Code corresponding to the last five fiscal years ("DIOR").
6	Tax Due Diligence	Federal Taxes	Copy of the tax residence certificates requested by the Mexican Subsidiaries for a reduced withholding tax rate or exemption to be applied to the payments made to a foreign entity according to the provisions of the applicable Tax Treaty to avoid double taxation between the foreign entity's country of residence and Mexico.
7	Tax Due Diligence	Federal Taxes	Worksheets containing the determination of monthly and annual income tax corresponding to the five last fiscal years.
8	Tax Due Diligence	Federal Taxes	Worksheets containing the determination of value added tax balances corresponding to the five last fiscal years.
9	Tax Due Diligence	Federal Taxes	Worksheets including the computation of (i) the Capital Contribution Account balance ("CUCA"), (ii) Net After Tax Profits Account balance ("CUFIN"), and (iii) loss carry-forwards.
10	Tax Due Diligence	Federal Taxes	Confirmation that the Company does not apply and/or has not applied any of the non-binding criteria (*Criterios no Vinculativos*) issued by the Mexican tax authorities.
11	Tax Due Diligence	Federal Taxes	Worksheets containing calculations in order to determine whether or not thin capitalisation rules result applicable, in accordance with section XXVII of article 28 of the Mexican Income Tax Law.
12	Tax Due Diligence	Federal Taxes	Worksheets containing calculations in order to determine any non-deductible interest exceeding 30% of the adjusted tax profits, in accordance with section XXXII of article 28 of the Mexican Income Tax Law.
13	Tax Due Diligence	Federal Taxes	Copy of electronic tax invoices ("CFDI") corresponding to income tax withholdings regarding payments made to foreign resident related and non-related parties.
14	Tax Due Diligence	Federal Taxes	Worksheets containing the tax depreciation of fixed assets.
15	Tax Due Diligence	Federal Taxes	If applicable, copy of the labour subcontracting information, in terms of article 27 section V of the Mexican Income Tax Law, and 32 section VIII of Mexican Value Added Tax Law until 31 December 2019.

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Nº	Category	Sub-Category	Description of Request
16	Tax Due Diligence	Federal Taxes	If applicable, documentation supporting value added tax withheld in connection with labour subcontracting and similar activities, in terms of section IV of article 1-A of the Value added Tax Law, from 1 January 2020 and onwards.
17	Tax Due Diligence	Foreign Trade	Confirmation of any foreign trade or maquila programme applicable (e.g. IMMEX, PROSEC) and if applicable, the authorisations (including IMMEX, PROSEC and VAT certification) issued.
18	Tax Due Diligence	Foreign Trade	Copy of import declarations and related information that support the payment of import duties, such as import applications (*pedimentos de importación*).
19	Tax Due Diligence	Federal Taxes	Copy of audited financial statements for tax purposes (*dictamen fiscal*) of the last five fiscal years. Regarding the foregoing, for fiscal years 2014 and following, copy of either the optional audited financial statements for tax purposes in terms of article 32-A or the informative return of tax situation in terms of article 32-H of the Federal Fiscal Code.
20	Tax Due Diligence	General	Opinion of compliance with the corresponding tax obligations issued by the Mexican tax authorities through the section "Mi Portal" contained in the Mexican tax authorities' web page (www.sat.gob.mx).
21	Tax Due Diligence	General	Copy of audited financial statements for financial purposes of the last five fiscal years.
22	Tax Due Diligence	General	Transfer Pricing Studies of the last five fiscal years.
23	Tax Due Diligence	General	Acceptance receipts of the monthly electronic accounting information filed since fiscal year 2015.
24	Tax Due Diligence	General	Copy of the records of visits made by the Mexican tax authorities during the last five fiscal years, as well as information of any review carried out by such authorities (including any claim asserted, rulings and resolutions by any Mexican tax authority).
25	Tax Due Diligence	General	Appeals made pending of resolution. Certification issued by the Target's legal director, describing the proceedings, status, amount and success probability.
26	Tax Due Diligence	General	Information about tax liabilities pending to be paid; including information regarding the tax to be paid, defence proceedings, amount, surcharges, penalties, etc.
27	Tax Due Diligence	General	Information about any historical transactions that may have a significant tax impact (such as mergers, spin-offs, capital reductions, among others) and, if applicable, any information attached to such transactions.
28	Tax Due Diligence	General	Information regarding the cancellation or temporary suspension of the use of digital seal certificates, in terms of article 17-H and 17-H Bis of the Federal Fiscal Code.
29	Tax Due Diligence	General	Information regarding the implementation of any reportable schemes pursuant to Title Sixth of the Federal Fiscal Code.
30	Tax Due Diligence	General	Information regarding transactions entered into with taxpayers whose transactions have been deemed to be inexistent in terms of any of the lists published in the Official Gazette in terms of article 69-B of the Federal Fiscal Code.



Nº	Category	Sub-Category	Description of Request
31	Tax Due Diligence	Local Taxes	Copy of payments of local taxes, such as payroll tax, real estate tax and real estate transfer tax, among others for the last five fiscal years. If applicable, copy of local taxes reports by independent auditors of the last five fiscal years.
32	Tax Due Diligence	Local Taxes	If applicable, copy of real estate tax certificates stating there are not amounts owed (*certificado de no adeudo*).
33	Tax Due Diligence	Social Security	Copy of social security contributions payments of the last five fiscal years. If applicable, copy of the Mexican Social Security Institute ("IMSS") and Federal Workers Housing Fund ("INFONAVIT") reports by independent auditors of the last five fiscal years.

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NETHERLANDS



1. INTRODUCTION

The Netherlands offers multiple options in terms of legal structures for holding and business activities. Most commonly:

a. Forms of Legal Entity

i Private limited company ("BV")

A BV is a legal entity with a capital divided into shares. Different types of shares may be created, including non-voting or non-profit-participating shares. A BV is the most frequently used legal entity in the Netherlands due to its flexible character. There is no minimum capital requirement for a BV. BVs are generally subject to Corporate Income Tax ("CIT").

ii Public limited company ("NV")

A public limited company is a legal entity with a capital divided into shares. Shares of an NV can be listed on a stock exchange. The minimum share capital for an NV is EUR45,000. NVs are generally subject to CIT.

iii Cooperative

Similar to the BV and NV, a cooperative is a legal entity (a special type of association). Participants in a cooperative are called members and cooperatives must have a minimum of two members upon incorporation. Some civil law notaries take the view that after incorporation one member is sufficient. Limited liability for the members of a cooperative can be achieved and furthermore a cooperative is generally considered to be a very flexible entity. Unlike the BV and NV, dividends paid by a cooperative were formerly, as a general rule, not subject to Dutch dividend withholding tax except for abusive situations. Therefore, cooperatives grew to be popular holding entities in international group structures. Currently, typically profit distributions by "holding" cooperatives are subject to Dutch dividend withholding tax, specific exceptions apply to operational cooperatives (see section 9.a.).

iv Partnerships

Under Dutch law, different forms of partnerships may be used. The Dutch limited partnership ("commanditaire Vennootschap or "CV") is a commonly used vehicle that can either qualify as tax transparent or opaque. The Netherlands has very specific rules to determine the tax status of a partnership.

b. Taxes, Tax Rates

All non-transparent legal entities are generally subject to Dutch corporate income tax. In 2022, taxable profits up to EUR395,000 are taxed at a rate of 15%. From 2022, taxable profits over EUR395,000 are taxed at a rate of 25%.



c. Common divergences between income shown on tax returns and local financial statements

Common book to tax differences include, amongst others:

- Tax exempt dividends and capital gains from subsidiaries under the participation exemption;
- Limitation on depreciation of assets for tax purposes;
- Non-deductible expenses, including transaction costs;
- Application of interest deduction limitation rules;
- Non-deductible self-developed goodwill; and
- Foreign exchange results.



2. RECENT DEVELOPMENTS

There are various relevant developments for M&A deals and private equity in the Netherlands:

- The EU Anti-Tax Avoidance Directive II ("ATAD II") has been implemented as of 1 January 2020. From a Dutch tax perspective, the most relevant provisions included in both directives are the reverse hybrid mismatch rule, the introduction of the CFC legislation and the earnings stripping rule. Furthermore, the Dutch Government published the Dutch blacklist of low taxed jurisdictions which is relevant in the application of: (i) the CFC legislation (see paragraph 8.b.) and (ii) the conditional withholding taxes rule (see below and section 9.c and d.) and (iii) the new ruling practice (see section 14.e.).
- Another relevant development for private equity deal structures based on Dutch domestic tax law is the introduction of the conditional withholding taxes on interest and royalty payments to blacklisted jurisdictions per 2021. As the conditional withholding tax may also apply on payments to hybrid entities (not being a low-taxed jurisdiction), it is key to review this position.
- Moreover, from 1 January 2024, the conditional withholding tax on interest will be extended to cover dividends. This withholding tax on dividends will be levied on dividend payments to related entities in low-taxed or EU blacklisted jurisdictions, hybrid entities or in abusive situations.
- In addition to specific interest deduction limitation rules (see section 6.b.), interest in private equity deal structures may be non-deductible in specific situations under the application of the abuse of law doctrine following recent Supreme Court rulings (for more details see section 6.b.) and EU GAAR.
- The 2022 Budget introduced among others: (i) new loss deduction rules (see section 3.a.), (ii) new brackets and rates for corporate income tax (see section 1.b.) and (iii) changes to the earnings stripping rules, from 30% to 20% of fiscal EBITDA.
- Furthermore, the following is on the tax policy agenda in the near future: (i) the introduction of a new group taxation regime (see section 3.b.), (ii) increased substance requirements (see section 14.b.), (iii) implementation of the EU Directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU ("ATAD III") (see section 14.b. and 14.d.), (iv) the introduction of Pillar One and Two (see section 12), (v) the introduction of new measures to combat transfer pricing mismatches in cross border situations (see section 14.f.) and (vi) material adjustments to the Decree for the qualification of partnership entities (see section 14.g.).

Finally, the following tax measures apply to taxpayers that opted in for the postponement of taxes (until 31 March 2022), to reduce the economic impact of COVID-19 :

- Payment arrangement to pay the accrued tax debt in a maximum of 60 equal monthly instalments starting 1 October 2022 (mandatory); and
- Up until 30 June 2022, 0.01% interest on underpaid tax. This will gradually increase to the standard rate of 4% starting on 1 January 2024.



3. SHARE ACQUISITIONS

a. General Comments

Transaction costs (incurred by the acquiring or selling holding company) related to the purchase or sale of a subsidiary to which the participation exemption applies are not tax deductible for Dutch corporate income tax purposes. However, costs related to the financing of the acquisition, such as advisory fees, are tax deductible. In this regard it is important to carefully document the nature of the costs.

The Supreme Court ruled that (i) costs are non-deductible if there is a direct causal link between those costs and the acquisition or disposal of a specific subsidiary, (ii) the non-deductibility of acquisition or disposal costs applies to both internal and external costs of the taxpayer, (iii) the non-deductibility relates only to the acquisition and disposal costs of a successful acquisition or disposal, (iv) if the disposal of a subsidiary fails, but continues later, it must be determined to what extent costs were incurred that would also have been incurred if the subsequent disposal had not taken place and (v) costs relating to an intended acquisition or disposal of a subsidiary must be recorded on the tax balance sheet as a transitory asset. At the moment that it is certain that an acquisition or disposal of a subsidiary will take place, the transitory asset is written off to the extent that cost is deductible.

VAT on transaction costs may only be recovered if the costs relate to VATable output of the relevant company. In principle, the mere acquisition of shares does not result in any VATable output and therefore does not allow for recovery of VAT on (transaction) costs solely attributable to the acquisition. As the sale of shares is exempt from VAT, the VAT on costs solely attributable to the sale of shares also is not recoverable (exceptions could apply through the use of special allowances, published by the State Secretary of Finance).

Notwithstanding the foregoing, VAT on transaction costs can be recoverable if these costs are not solely attributable to the acquisitions or disposal of shares. For acquisitions, this can for example be the case if the acquiring company will provide VATable services (e.g. management services) to the acquired company following its acquisition. In such situation, the acquiring company can take the position that the transaction costs also relate to these VATable services and that the transaction costs therefore should be regarded as general costs of the acquiring company. This allows for VAT recovery according to the acquiring company's pro rata. For disposals of shares, the transaction costs might be regarded as general costs if the disposing company, for example, provides transaction support services to the disposed company in return for remuneration.

The recovery of VAT on transaction costs can be subject to debate and should be carefully reviewed and implemented for each transaction.



b. Tax Attributes: Restrictions on use following change in control

Net operating losses ("NOLs") (at the level of the target company) may be restricted as a result of the transfer of the ultimate beneficial ownership in the target company. Under the anti-abuse rules NOLs cannot be carried forward if the ultimate ownership in the target company has changed substantially (30% or more), compared to the year of the oldest loss. This restriction is not applicable if the target company is an active trading company which has not substantially decreased its activities and does not intend to significantly increase in the future. A taxable step up in asset basis for the amount of hidden reserves (built in gains) can be claimed if the NOLs will be forfeited due to the application of these rules.

Loss relief is further restricted from 2022. Losses carried forward and carried back will only be fully available up to an amount of EUR1 million of the taxable profit per year. If the annual profit is higher than EUR1 million, any excess NOL position can only be offset against 50% of the taxable profits higher than EUR1 million in that year. However, the losses carried forward are no longer subject to a time limit. The carry back period is one year. The changes apply to the full NOL position as at 1 January 2022 (i.e. including historical NOLs that are still available for carry forward on 1 January 2022).

Upon a merger or demerger, NOLs can be transferred at a joint request if certain conditions are met. Furthermore, the transfer of NOLs should be considered upon an exit from a fiscal unity. Losses in principle remain with the parent company, but so called pre-fiscal unity losses and losses of the fiscal unity that are attributable to the target company can be transferred to the target company on exit.

c. Tax Grouping

Dutch resident corporate taxpayers can form a corporate tax fiscal unity when certain conditions are met (e.g. the parent company holds at least 95% of the shares and voting interest in its subsidiaries). In line with EU case law, a fiscal unity can also be formed between Dutch tax resident companies that have a common parent company resident in another Member State of the European Union or by a Dutch resident parent company and a Dutch resident sub-subsidiary that is held by an intermediate company located in another Member State of the European Union.

The main benefit of a fiscal unity is that profits and losses can be offset by companies included in a fiscal unity. Furthermore, companies can reorganise in a tax neutral way, as transactions between companies belonging to the same fiscal unity are, for the most part, disregarded for corporate income tax purposes. Also, only one corporate income tax return must be filed.

However, anti-abuse provisions may trigger a tax claw back and should be carefully monitored. In the case of a transfer of an asset with built in capital gain outside the ordinary course of business between companies included in a fiscal unity, a clawback may arise if the fiscal unity ceases to exist with respect to the transferee or the transferor within six years after the transaction (three years in the case of a transfer of a standalone business for shares). Furthermore, companies included in the fiscal unity remain jointly and severally liable for Dutch corporate income tax liabilities of the fiscal unity for the period they formed a fiscal unity.

Following case law of the European Court of Justice, the Dutch government has adopted a legislative proposal, with retroactive effect, to avoid erosion of the tax base due to the partial fictitious application of the fiscal unity regime. Following this legislation, the fiscal unity regime will be disregarded in certain situations. This may result in interest expenses no longer being deductible at the level of the fiscal unity. It is expected that a new group taxation regime will be implemented in the future. It is currently uncertain when a final legislative proposal for the introduction of a new group taxation regime can be expected.

VAT taxable persons established in the Netherlands or VAT fixed establishments in the Netherlands, can be included in a VAT fiscal unity with other VAT taxable persons, if they have sufficient financial, organisational and economic links with each other. The main benefit of a VAT fiscal unity is that transactions between the VAT fiscal unity members are ignored for VAT purposes.



A VAT fiscal unity exists by virtue of law, (i.e. it is not required to seek approval/confirmation from the tax authorities). Confirmation from the authorities can however be requested. If the existence of the VAT fiscal unity is confirmed in writing by the authorities, the relevant taxable persons are allowed to file consolidated VAT returns. However, if a VAT fiscal unity is confirmed in writing by the authorities, fiscal unity members are also jointly and severally liable for VAT debts of the fiscal unity as of the moment mentioned in the decision. This liability continues to build for such member until (i) the requirements for its inclusion in the VAT fiscal unity are no longer met and (ii) this has been communicated to the tax authorities. The liability will continue to exist for the period that the tax authorities consider that the taxable person was included in the VAT fiscal unity, until the statute of limitations for assessment risk has expired (i.e. a confirmed breach/deconsolidation of the VAT fiscal unity does not alter the historical liability).

d. Tax Free Reorganisations

Dutch law provides several mechanisms ("rollover facilities") to reorganise in a tax neutral manner at two levels (i.e. for the Dutch tax resident shareholders and for the merging or demerging entities), in line with the EU Merger Directive. Taxpayers can in principle claim a reorganisation facility in case of a merger, a (partial) demerger, a business merger and a share for share merger. These reorganisation facilities may, under circumstances, also apply in cross border situations within the EU/EEA.

The reorganisation facilities can in principle be claimed by law. In certain situations, however (e.g. if the entities involved report carried forward losses, claim a reduction to avoid double taxation or apply the innovation box regime), the reorganisation facility is subject to additional conditions and parties involved should file a request for the application of the reorganisation facility. A reorganisation facility will not be allowed if the reorganisation is primarily aimed at avoiding or postponing taxation and is not based on sound business reasons, such as a valid restructuring or rationalisation of the corporate structure. It is possible to request a confirmation in advance from the Dutch Tax Authorities ("DTA") that the reorganisation is based on sound business reasons. A denial of such request is open to appeal.

As a result of the reorganisation facility, the entity receiving the assets or shares will value them at the original fiscal book value as reported by the transferring entity. The tax claim is therefore postponed and possible claw back should be carefully monitored during a future reorganisation (e.g. a clawback may arise if the acquiring entity is sold within three years after the reorganisation took place).

If a real estate company is merged, the Real estate transfer tax ("RETT") may be imposed unless the transaction qualifies for an exemption for mergers or spin offs.

See the discussion under 3.b. Tax Grouping above for the effects of reorganisations within a fiscal unity.

Mergers or reorganisations of real estate rich companies might result in a taxable event for real estate transfer tax ("RETT") purposes. As with corporate tax, exemptions for mergers and (internal) reorganisations can apply for RETT. This should be reviewed on a case by case basis.

e. Purchase Agreement

The Dutch acquisition company and target may be included in a fiscal unity for Dutch corporate income tax purposes.

If the Dutch target entity was included in a fiscal unity for Dutch corporate income tax purposes, specific provisions should be included in the sale and purchase agreement ("SPA"). Specific provisions with respect to the Collection of State Taxes Act may also be relevant to include in the SPA in terms of warranties, indemnities and tax governance.



f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

The Netherlands does not levy capital tax, stamp duties or a minimum tax. If a company is considered to be a real estate company (see section 9.e.), the transfer of shares in the company may trigger a 8% (9% from 2023) (or 2% in the case of owner occupied housing) RETT.

g. Share Purchase Advantages

- In a share purchase, the buyer may benefit from the target company's loss carry forwards, subject to change of ownership rules. If the losses are forfeited under the change of ownership rules, a step up for the amount of hidden reserves (built in gains) can be claimed.
- If the target company owns Dutch real estate, a share purchase may present better structuring opportunities to mitigate Dutch RETT and defer corporate income tax on built in gains.
- The seller may be able to apply the participation exemption, which exempts income (capital gains and dividends) derived from qualifying shareholdings.

h. Share Purchase Disadvantages

- In a share purchase, the buyer will not obtain assets that can be depreciated or amortised. Shares and goodwill on the acquisition of shares cannot be depreciated.
- Costs relating to acquisitions as well as disposals of participations qualifying for the participation exemption are not tax deductible at the level of the acquiring (Dutch) company. In addition, the buyer may incur a potential dividend withholding tax liability on retained earnings, and an interest deduction limitation may apply at the level of the acquiring company.
- The buyer may bear the burden of the target company's existing tax liabilities, if any.

4. ASSET ACQUISITION

a. General Comments

The transfer of assets generally results in a taxable capital gain.

b. Purchase Price Allocation

Assets should be acquired at fair market value. To substantiate the fair market value of the assets, a valuation report is recommended.

c. Tax Attributes

Tax attributes remain with the company selling the assets. Accordingly, upon an asset acquisition, no tax attributes should carryover and be taken into account by the buyer.



d. Tax Free Reorganisations

Transactions between companies belonging to the same fiscal unity are, mostly, disregarded for corporate income tax purposes. Assets can be transferred between companies in the fiscal unity without taxation of gain. Clawback provisions may be applicable if a company which has been party to intra-fiscal unity transactions exits the fiscal unity. See section 3.b. for more information regarding the Dutch fiscal unity regime.

e. Depreciation and Amortisation

The acquired assets and goodwill can be depreciated or amortised for tax purposes based on the purchase price (fair market value). Goodwill generated from an asset acquisition can be depreciated over a minimum of 10 years at an annual rate of 10%. Other (in)tangible assets can be amortised over a minimum of 5 years at an annual rate of 20%.

f. Transfer Taxes, VAT

Dutch RETT of 2%-8% (9% as of 2023) on the fair market value of the property or the consideration for the transaction (whichever is higher) may be due if the assets include Dutch real estate.

In principle, VAT is due on the acquisition of assets. However, an asset transaction may be out of scope of VAT if the transaction qualifies as the transfer of a totality of assets or an independent part thereof, provided that the acquirer will use the (totality of) assets to carry out an economic activity (e.g. business). In most situations this results in a cashflow advantage. Advantages could also be sought in the continuance of running VAT adjustment periods for Dutch real estate assets.

g. Asset Purchase Advantages

- The acquired assets and goodwill generated from the transaction can be depreciated or amortised for tax purposes at the purchase price (fair market value). In principle, all acquisition costs are tax deductible.
- In general, the buyer does not inherit any tax liabilities of the person selling the assets.

h. Asset Purchase Disadvantages

- The seller will incur capital gains taxation, which should be reflected in the purchase price.
- Dutch RETT (see above) may be due if the assets include Dutch real estate.
- Existing loss carry forwards (which are not utilised in connection with the sale) do not carry over to be used by the buyer.

5. ACQUISITION VEHICLES

a. Domestic Acquisition Vehicle

Generally, a Dutch BV will be established as an acquisition vehicle for the acquisition of a Dutch target entity. The acquisition BV can then form a fiscal unity with the Dutch target entity as a result of which the taxable results can be offset against each other.

b. Foreign Acquisition Vehicle

The application of the Dutch participation exemption regime should be reviewed if a foreign acquisition vehicle is used by a Dutch group (acting as buyer). In case a foreign buyer sets up a foreign resident acquisition vehicle to acquire a Dutch Target entity it cannot form a Dutch fiscal unity with the Dutch target entity.

c. Partnerships and joint ventures

A joint venture can be established by using a legal entity (such as a BV) or by establishing a partnership. With regard to partnerships, the qualification of the partnership as tax transparent for Dutch tax purposes should be carefully reviewed. as the Dutch qualification rules for foreign entities and partnerships are strongly deviating from international practice. There are plans to align the Dutch qualification of partnerships more with international practice in the coming years.

6. ACQUISITION FINANCING

a. General Comments

In principle, no restrictions should be imposed on a buyer's ability to bring funds into the Netherlands to fund an acquisition. The establishment of a BV, for example, can be completed in approximately one to two weeks. The opening of a bank account may, however, be time consuming and carries an administrative burden in terms of KYC procedures.

b. Debt

Under Dutch tax law, the qualification of financial instruments in principle follows the qualification for civil law purposes.

Requalification debt as equity

Debt is however reclassified as equity if the instrument is considered: (i) a loan for which the legal documentation differs from the commercial intention i.e. a sham loan; that is, if it appears that the parties intended to contribute equity, but that the contribution was documented as a loan, (ii) a loan which will, upon grant, very likely not be repaid or (iii) a profit participating loan.

Arm's length principle

The DTA may try to limit the total amount of debt under the arm's length principle, via a loan to value test or in case the loan is considered as non-commercially motivated. Although there is no defined ratio, a loan to value ratio of up to 70% is generally acceptable in the context of real estate investments. For other companies a minimum of at least 15% equity and 85% debt was required under the "old" ruling practice but should be based on a transfer pricing analysis.

Finally, the terms of the loan should also meet arm's length requirements. The DTA may challenge the interest rate applied if a taxpayer cannot demonstrate the arm's length nature of the loan terms.



Earnings stripping rules

The earnings stripping rule limits the deductibility of net interest expense (broad definition) in excess of EUR1 million or to 20% of the taxpayer's EBITDA for tax purposes. The earnings stripping rule applies to both related and unrelated party debt, other financing arrangements and foreign exchange results.

Anti-base erosion rules

For share deals, interest deductions may be denied under the application of a specific anti-base-erosion provision (article 10a CITA). Under this provision, an interest deduction is denied in respect of intragroup loans relating to certain tainted transactions, including the acquisition of a subsidiary. Exceptions may apply if both the transaction and the loan are based on sound business reasons or if the interest is effectively taxed at a sufficient rate (10% in accordance with Dutch standards) at the creditor's level and there is no abuse. The specific anti-base erosion provision applies only to related party debt. Unrelated party debt can be qualified as a related party loan for purposes of the anti-base erosion rules if it is subject to guarantees provided by related entities. Related party debt that can be directly linked to an unrelated party debt used for a third party acquisition may not be targeted by this provision if specific requirements are met.

Abuse of law/ EU GAAR

Even if interest would be deductible under transfer pricing restrictions and (specific) interest deduction limitation rules, such as article 10a CITA, interest may nevertheless be non-deductible under the concept of abuse of law and EU GAAR. Private equity deal structures are lately under severe scrutiny by the DTA, as such recent case law is extensive. The DTA typically aim to target private equity deal structures by (in addition to other charges) claiming abuse of law. In a recent ruling, also referred to as the Hunkemoller case, the Dutch Supreme Court did not disallow interest deductibility under application of article 10a CITA. However, the Supreme Court did rule that interest should be non-deductible under the concept of abuse of law..

Debt pushdown

Debt pushdowns can, amongst others and subject to interest deduction limitation rules, be created by including the leveraged acquisition company and the target company in a CIT fiscal unity.

c. Hybrid Instruments

Under the implementation of ATAD II in 2020, hybrid mismatches (including hybrid financial instruments) are targeted under Dutch tax law. Furthermore, the Dutch participation exemption does not apply to the extent that the payment is treated as tax deductible at the level of the payer.

d. Earn-outs

Earn-out payments directly related to the purchase price for the acquisition or sale price of the shares of subsidiaries fall within the scope of the participation exemption regime and are consequently non-deductible or exempt from Dutch corporate income tax.



7. DIVESTITURES

a. Tax Free

Any capital gain realised upon the divesture of qualifying subsidiaries should be exempt from corporate income tax under application of the participation exemption.. The participation exemption should generally apply when the Dutch corporate taxpayer holds 5% or more of the nominal paid-in capital of a subsidiary and that subsidiary is engaged in operational activities and/or effectively subject to corporate income tax at a rate of at least 10% (subject to specific exclusions). Subject to certain conditions, a reinvestment reserve may be taken into account for tax purposes.

b. Taxable

As a general rule, any gain realised upon a divesture that is not exempt under the reinvestment reserve exemption or the participation exemption is subject to corporate income tax at a maximum rate of 25.8% (2022).

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide tax system

Dutch resident taxpayers are subject to Dutch tax on their worldwide income. Double tax relief is granted unilaterally under domestic legislation or under the application of double tax treaties.

b. CFC Regime

Under the CFC legislation, certain kinds of undistributed income of the CFC (see below) less related costs will be attributed to the tax base of the Dutch parent company and taxed at the standard Dutch corporate income tax rates.

Blacklisted jurisdictions

The Netherlands will apply CFC legislation only in specific situations in relation to certain listed low-taxed (statutory tax rate <9%) and blacklisted jurisdictions. For this purpose, the government will annually issue a blacklist with jurisdictions in relation to which the CFC legislation may be applicable.

Controlled entities

CFC legislation may be applicable in situations where a Dutch taxpayer and / or a related entity or person holds a majority interest in an entity or permanent establishment. Related means connected by ownership of 25% or more in share capital, voting rights or profit rights. Majority Interest means 50% or more of the share capital, voting rights or profit rights. The CFC legislation also applies to indirect subsidiaries and to permanent establishments of Dutch taxpayers.

Exceptions are made if the CFC carries out substantial economic activities and if the income of the CFC consists for 70% or more of non-CFC income.



Until recently, the CFC was considered to carry out substantial economic activities if the CFC met the "relevant substance" requirements. Following case law of the European Court of Justice ("Danish cases") however, meeting the "relevant substance" requirements is no longer considered a safe harbour. The substance requirements remain relevant, but their relevance shifts to a discussion regarding the burden of proof. If taxpayers meet the substance requirements, the burden of proof to demonstrate that a structure should nevertheless be qualified as abusive shifts to the DTA. If the substance requirements are not met, the taxpayer can still prove that the structure is driven by sound business motives.

The below categories of income are considered CFC income:

- Interest;
- Royalties;
- Dividends and capital gains on shares;
- Income from a financial lease;
- Income from insurance and banking activities; and
- Low value-added invoicing activities.

If all criteria are met, passive CFC income less related costs will be attributed to the Dutch parent company. The CFC income and costs are calculated in accordance with Dutch tax principles.

c. Foreign branches and partnerships

Foreign permanent establishments of Dutch taxpayers are exempt from Dutch corporate income tax under the so called "object exemption". The definition of a permanent establishment is aligned with the permanent establishment definition under the relevant tax treaty.

d. Cash Repatriation

Distributions received from qualifying participations are exempt from Dutch corporate income tax at the level of the recipient under application of the participation exemption.

The participation exemption generally applies when the Dutch entity holds 5% or more of the share capital and the participation is not held as a passive, low taxed investment. The participation exemption does not apply to the extent that the payment is treated as tax deductible at the level of the payer.



9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Domestic dividend withholding tax exemption and dividend withholding tax position of cooperatives

Under the Dutch dividend withholding tax act, dividend distributions are in principle subject to 15% dividend withholding tax.

Domestic dividend withholding tax exemption

The Netherlands introduced a domestic dividend withholding tax exemption as implementation of the EU Parent Subsidiary Directive which also applies to residents of tax treaty jurisdictions.

Under the domestic dividend withholding tax exemption, distributions to non-resident shareholders may be exempt from withholding tax under certain conditions:

- The non-resident shareholder is resident in an EU Member State or a tax treaty jurisdiction with a tax (and the treaty contains an article on dividends); and
- The Dutch participation exemption would have been applicable if the shareholder were tax resident in the Netherlands; and
- The structure is not considered abusive.

A structure is considered abusive if the following two conditions are met:

- The principal purpose (or one of the principal purposes) of the shareholding is to avoid dividend withholding tax at the level of another person or entity . ("avoidance or subjective test"); and
- It concerns an artificial structure or a series of artificial structures ("artificiality or objective test").

Arrangements are considered to be "artificial" to the extent that they are not put in place for valid commercial reasons which reflect economic reality. Valid commercial reasons will be deemed present however in the following ""safe harbour" situations:

- The shareholder conducts operational business activities and the business of the shareholding or lower tier companies is in line with that business ("business link"); or
- The shareholder functions as a top holding entity within the group and as such is performing substantial managerial, strategic or financial functions for the group.

Following case law of the European Court of Justice ("Danish cases"), an intermediary holding company that meets the "relevant substance" requirements is no longer considered a safe harbour. The substance requirements remain relevant, but their relevance shifts to a discussion regarding the burden of proof. If taxpayers meet the relevant substance requirements, the burden of proof to demonstrate that a structure should nevertheless be qualified as abusive shifts to the DTA. If the relevant substance requirements are not met, the taxpayer can still prove that the structure is driven by sound business motives.



Dividend withholding tax position of cooperatives

As a general rule, so called "holding" cooperatives are subject to Dutch dividend withholding tax, similar to other Dutch entities such as BV's. However, the domestic dividend withholding tax exemption (see above) may also apply in relation to cooperatives.

The dividend withholding tax position of cooperatives differs from the position of other companies, such as BVs, in that only so called profit distributions "holding cooperatives" and a "qualifying membership interest" are subject to Dutch dividend withholding tax.

Holding cooperatives are those whose activities usually consist for 70% or more of owning shareholdings that qualify for the participation exemption or granting, directly or indirectly loans to affiliated companies or persons. The parliamentary history provides specific guidance with respect to private equity investments. In private equity structures, a cooperative may however very well not qualify as a holding cooperative based on other relevant factors even if the assets of the cooperative consist for 70% or more of participations. Relevant factors in this regard are, amongst others, personnel, office space and the active involved in the management of the participations. Furthermore, the cooperative is subject to dividend withholding tax only in relation to members holding a "qualifying membership interest" of at least 5%.

b. Foreign substantial shareholder regime

Non-resident corporate shareholders may be subject to Dutch corporate income tax under the foreign substantial shareholder regime. The regime may be applicable to non-resident corporate shareholders that hold a share or membership interest of 5% or more in a Dutch entity. Under the foreign substantial shareholder regime, income (dividends, capital gains and interest on shareholder loans) derived from the interest in the Dutch entity is taxed at the applicable corporate income tax rates (2022 : 15/25.8%).

The regime is applicable in abusive situations and is mirrored to the anti-abuse legislation under the domestic dividend withholding tax exemption. As such, the foreign substantial shareholder regime is applicable if the following two conditions are met:

- The main purpose or one of the main purposes of the shareholding is to avoid income tax at the level of another person or entity ("avoidance or subjective test"), and
- It concerns an artificial structure or a series of artificial structures ("artificiality or objective test").

The same safe harbours apply as under the domestic dividend withholding tax exemption (see section 9.a.). Also under the foreign substantial shareholder regime, meeting the "relevant substance" requirements is no longer considered a safe harbour.



c. Conditional withholding taxes on interest and royalties

In principal no withholding tax applies on interest and royalties under Dutch tax law. However, from 1 January 2021, a conditional withholding tax on interest and royalty payments may be applied in specific situations only. The conditional withholding tax will only be due on intragroup interest or royalty payments:

- To related entities in low-taxed or EU blacklisted jurisdictions (see CFC legislation: section 8.b.); and
- In specific hybrid entity structures; and
- In abuse situations.

A structure is considered abusive if it meets both the "avoidance or subjective test" and "artificiality or objective test" (as described under section 9.a.). Whether a structure is considered artificial is determined on a case by case basis taking into account all relevant facts and circumstances. There are no safe harbours under the anti-abuse legislation for the conditional withholding taxes on interest and royalties. In line with CFC legislation, the domestic dividend withholding tax exemption and the foreign substantial shareholder regime, the substance requirements are relevant in the discussion regarding the burden of proof.

Genuine economic activities in the Netherlands or in the low-taxed or EU blacklisted jurisdiction do not prevent the conditional withholding tax in case the payment is made directly to the low-taxed or EU blacklisted jurisdiction.

The withholding tax rate is 25.8% in 2022 (in line with the highest applicable corporate income tax rates at that time).

In relation to low taxed jurisdictions, with whom the Netherlands has concluded a tax treaty (such as Bahrein, Barbados, Panama, and the UAE), the conditional withholding tax will only become effective as from 2024. In the meantime, the Netherlands will start to renegotiate the respective tax treaties in order to be able to effectuate this.

Note that the interest or royalty payment may be considered non-deductible under e.g. Dutch anti-hybrid rules while also be subject to the conditional withholding tax.

d. Conditional withholding tax on dividends from 2024

As indicated above in section 9.a., dividend payments are in principle subject to 15% Dutch withholding tax unless the domestic dividend withholding tax exemption applies. However, from 1 January 2024, additionally a conditional WHT on dividends will be introduced similar to the conditional withholding tax on interest and royalties at a rate of 25.8% (2022) (see section 9.c. above). This conditional withholding tax will apply in addition to currently existing dividend withholding tax legislation. Hence, as from this date, dividend distributions may fall within scope of both the currently existing dividend withholding tax (15%) as well as the conditional withholding tax (25.8%) .

As the extension will be included in the same conditional withholding tax law as for interest and royalties, the same exemptions and exceptions apply. Certain specific rules will be added, e.g. to ensure alignment with the existing Dividend Withholding Tax Act 1965. If a dividend distribution falls within the scope of both the Dividend Withholding Tax Act 1965 (15% dividend withholding tax) as well as the Conditional Withholding Tax Act 2021 (25.8% dividend withholding tax), a credit should be available.

Note that the conditional withholding tax on dividends may apply to dividend distributions made by a non-holding cooperative, whilst no "regular" dividend withholding tax should be due in such situation (see section 9.a. "Dividend withholding tax position of cooperatives").



e. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

The transfer of shares in a real estate company can trigger RETT. RETT is imposed on the party that acquires the shares. As any company that owns Dutch real estate can qualify as a Dutch real estate company, the transfer of shares in a foreign company that owns Dutch real estate may be subject to Dutch RETT, even if the transferor, the transferee and the real estate company itself are not Dutch tax residents.

The transfer of shares in a real estate company is subject to RETT only if the purchaser directly or indirectly acquires an economic interest of one third or more in the company (including any shares already owned by the purchaser or other group companies) or increases such an economic interest.

A company qualifies as a real estate company if:

- 50% or more of the company's consolidated assets consist of real estate assets and at least 30% of the assets consist of Dutch real estate assets; and
- At least 70% of the real estate is exploited by sale or lease, rather than used in the business of the company.

The current RETT rate is 2% for residential real estate and 8% for non-residential real estate (9% as of 2023). RETT is calculated on the fair market value of the Dutch real estate assets owned by the real estate company. If real estate assets are acquired instead of shares, RETT is calculated on the acquisition price if this is higher than the fair market value. Exemptions may apply, among others in cases where the transfer of the real estate assets itself would be subject to VAT or in the case of reorganisations.

Foreign companies that own Dutch real estate are considered non-resident taxpayers in the Netherlands and any profits derived from that real estate are subject to Dutch corporate income tax. Also, depreciation of real estate held by Dutch resident or non-resident taxpayers is generally limited.

f. CbC and Other Reporting Regimes

Dutch transfer pricing documentation rules consist of three tiers: (i) a Master File, (ii) a Local File, and (iii) a Country by Country report ("CbCr").

Master File and Local File

Each company in the Netherlands that is part of an international group with a consolidated annual turnover exceeding EUR50 million should have a Master File and Local File in its records. This obligation applies to each company within the group, no matter the size or nature of the activities. The DTA take the view that the requirements apply even if the Dutch company is not engaged in any intragroup transactions. The requirements do therefore apply to holding, licensing, and financing conduit companies, private equity and conglomerates.

Country by Country Reporting ("CbCr")

The obligation to prepare and file a CbCR report applies for ultimate parent companies of an international group that are established in the Netherlands. The group's annual consolidated turnover must be at least EUR750 million.

Under CbCr, the tax inspector must be informed which company within the group will file the report and in what country.

The maximum penalties for failure to satisfy CbCr obligations in the Netherlands amount to EUR900,000 (2022). Failure to comply may also subject taxpayers to criminal prosecution.



10. TRANSFER PRICING

Under Dutch transfer pricing rules all intragroup transactions must be at arm's length and taxpayers should have sufficient documentation to substantiate the arm's length nature of their transactions.

From 1 January 2022, new legislation has entered into force in the Netherlands to combat transfer pricing mismatches. The purpose of the legislation is to eliminate transfer pricing mismatches that arise as a result of a different foreign application of the arm's length principle, which results in double non-taxation. Due to this legislation it is no longer possible to deduct additional costs or to incur additional depreciation on assets located in the Netherlands if the actual commercial price was different and the tax adjustment is not followed in the foreign jurisdiction which is involved.

11. POST ACQUISITION INTEGRATION CONSIDERATIONS

a. Innovation Box

The innovation box regulations in the Netherlands aim to stimulate technical innovation and allow companies to have profits derived from qualifying intellectual property taxed at an effective tax rate of 9%. Under the "modified nexus approach", the innovation box will not be fully available to taxpayers that outsource part of the R&D activities to affiliates. Any income that does not qualify for the innovation box is taxed at the standard Dutch CIT rates.

The innovation box distinguishes between small and medium sized taxpayers (SMEs) and larger taxpayers. SMEs are taxpayers which, over a period of five years, have profits from qualifying intangible assets of less than EUR37.5 million and consolidated net group turnover of less than EUR250 million.

Both SMEs and large taxpayers must meet the following conditions to qualify for the innovation box:

- Own a self-developed intangible asset; and
- Have been granted an R&D-certificate for wage tax purposes by the Dutch Tax Administration ("WBSO");

In order to qualify, additional requirements apply for large taxpayers, including that the taxpayer have one or more of the following:

- Patents or patent applications;
- Plant variety rights (granted or requested);
- Software (as developed in intra-company transferee projects for which an R&D-certificate for wage tax purposes has been granted);
- Licences for bringing medicines to the market;
- Registered utility models; or
- A coherent qualifying intangible asset, being an intangible asset that has been developed and for which an R&D certificate has been granted and that is analogous to an intangible asset within the meaning of one of the above listed categories.



b. Hybrid Entities

As of 2022, reverse hybrids are treated as Dutch tax residents for corporate income tax and withholding tax purposes, with certain exemptions for investment funds.

The Netherlands has a different legal entity and partnership qualification system than what is internationally common. This often leads to hybridity of especially foreign partnerships. Plans to change this have been announced but are not in effect yet. Hybrid entities may trigger adverse Dutch tax consequences under, for example, the domestic dividend withholding tax exemption, ATAD II and the conditional withholding tax on interest and royalties (and dividends per 2024). It is highly recommended to analyse the impact in detail to avoid potential exposures.

c. Hybrid Instruments

As hybrid instruments may trigger application of ATAD II regulations or deny application of the Dutch participation exemption regime, so typically it is not recommended to include hybrid instruments in structures that involve the Netherlands.

d. Principal/Limited Risk Distribution or Similar Structures

Changes in the supply chain are generally manageable. Depending on the exact business restructuring, often a dialogue is started with the Dutch tax administration, specifically to manage related tax risks. DAC6 reporting should be considered carefully.

e. Intellectual property (licensing, transfers, etc.)

Qualifying IP may benefit from the innovation box regime (see Section 11.a. above). The entity holding the IP should in principle perform the so called “DEMPE “ (Development, Enhancement, Maintenance, Protection and Exploitation) functions in relation to the IP.

Transfer of IP by a Dutch entity may trigger corporate income tax.

f. Special Regimes

Qualifying IP may benefit from the innovation box regime (see section 11.a. above).

In addition, two types of tax exempt investments fund regimes apply in the Netherlands, the so called FBI and VBI regime. The FBI is based on the REIT-model and typically used by large investors who invest in Dutch real estate. Both regimes are subject to specific shareholder, financing and activity requirements.

Specific tax incentives apply for environmentally friendly investments.



12. OECD BEPS CONSIDERATIONS

On 20 December 2021, the OECD Inclusive Framework published model legislation rules regarding Pillar Two. If adopted into domestic law (the European Commission is currently working on a Directive to implement Pillar Two throughout the European Union), member states, including the Netherlands, should apply the Income Inclusion Rule ("IIR") from 1 January 2023. The Undertaxed Payment Rule ("UTPR") should come into effect in 2024.

Pillar Two aims to ensure that large multinational groups pay an effective tax rate of at least 15% across every jurisdiction where they have a presence. If the effective tax rate in a particular jurisdiction is less than 15%, Pillar Two will come into effect. Under Pillar Two, the country where the Ultimate Parent Entity is based, may levy a top-up tax of the difference between the tax levied by the low-taxed jurisdictions and the new global minimum tax rate of 15% ("IIR"). If the IIR this does not result in the income of the MNE Group being subject to tax at the 15% minimum tax rate, the further backstop of the UTPR will apply, which ensures the payment of the minimum tax through a denial of deduction or similar mechanism in all the countries where the MNE has a presence.

On 4 February 2022, OECD released a document incorporating the draft Model Rules for the Nexus and Sourcing Rules of Amount A of Pillar One. The OECD aims to implement Pillar One by 1 January 2023. Technical work on Amount B, standardised arm's length return for baseline marketing and distribution activities, should be completed by the end of 2022.

Pillar One aims to reallocate profits from multinationals on digital services. A portion of the in-scope group's residual profit must be reallocated under Pillar One to the end-market jurisdictions where the goods or services are used or consumed. According to the Model Rules of Amount A, the nexus threshold will be EUR1 million for jurisdictions with annual GDP equal to or greater than EUR40 billion and EUR250,000 for jurisdictions with annual GDP of less than EUR40 billion. Sourcing of income is to be analysed on a transaction by transaction basis. The Netherlands has consistently supported the Pillar One and Pillar Two proposals from the beginning and is continuing to support the swift implementation of the proposals.

13. ACCOUNTING CONSIDERATIONS

This section is left intentionally blank.



14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Under the Dutch dividend withholding tax act, a formal reduction of paid-in share capital is not subject to Dutch dividend withholding tax.

b. ATAD III Substance Requirements

In the newly proposed ATAD III directive, EU undertakings are subject to certain material tax consequences if the EU undertaking could not meet the required substance indicators, could not obtain or qualify for an exemption/carve-out or could not rebut the presumption that the undertaking is a shell. The substance indicators are, the existence of local premises, the use of an active EU bank account and the local tax residency of qualified directors and/or the majority of the employees are employed on a full-time basis in the undertaking.

c. Substance Requirements for Recipients

Dutch tax law distinguishes between substance requirements for Dutch taxpayers and foreign taxpayers, as well as between different levels of substance. The level of required substance under Dutch law depends on the activities of the (Dutch) taxpayer.

In light of international developments and the aim to fight tax avoidance, substance is becoming increasingly important. Certainly with reference to ATAD III, it is reasonable to expect a further increase in the substance requirements. Furthermore, following recent "beneficial ownership" case law of the European Court of Justice, the State Secretary of Finance announced that the current substance requirements may not, in all cases, meet the criteria set forth in the case law.

d. Substance requirements for Dutch taxpayers

i Tax residency - substance

Entities that are incorporated under Dutch law are considered Dutch tax residents by law, but tax residency issues may arise if, for example, the board of directors of the Dutch entity includes only non-Dutch resident directors. Therefore, substance requirements are also relevant for determining a taxpayer's residency for tax purposes.

ii Financial services companies - minimum substance

Minimum substance requirements apply to companies that qualify as so called "financial services companies', which are entities whose activities consist at least 70% of intragroup financing or licensing activities and claim EU Directive or tax treaty benefits (e.g. reduced withholding taxes on income).

Financial services companies which claim EU-directive tax treaty benefits should meet the "relevant substance" requirements:

- At least 50% of the directors are tax residents of the Netherlands;
- The Dutch directors have sufficient professional knowledge and expertise to fulfil their tasks, which should include at least preparing and making management decisions and administration of the company's transactions;
- The company employs qualified staff that is capable of administrating the company's transactions;
- The board meetings are physically held in the Netherlands;
- The main bank account of the company is held in the Netherlands (if the bank account is held with a non-Dutch bank, at least Dutch management should be entitled to manage and control the bank account);
- The administration and management of the company is in the Netherlands;
- The company has its registered address in the Netherlands and is, to the best of its knowledge, not considered a tax resident of another jurisdiction;
- The company bears genuine risk with regard to intercompany financing and licensing activities; and
- The company has a sufficient amount of equity at risk.
- The Dutch company incurs annual relevant payroll costs of at least EUR100,000; and
- The Dutch company has an office space at its disposal for at least 24 months.

Failure to meet the minimum substance requirements results in automatic exchange of information on the financial services company to foreign tax authorities.

iii Substance requirements for foreign shareholders - Domestic dividend withholding tax exemption, non-resident substantial shareholder regime and conditional withholding taxes on interest, royalties and dividends

Until recently, additional substance requirements (so called "relevant substance", see above) may have been required of foreign shareholders under (i) the domestic dividend withholding tax exemption regime and (ii) the non-resident substantial shareholder regime. Following recent case law of the European Court of Justice ("Danish cases") however, meeting the "relevant substance" requirements is no longer considered a safe harbour. The substance requirements remain relevant, but their relevance shifts to a discussion regarding the burden of proof. If taxpayers meet the substance requirements, the burden of proof to demonstrate that a structure should nevertheless be qualified as abusive shifts to the DTA. If the substance requirements are not met, the taxpayer can still prove that the structure is driven by sound business motives.



e. Application of European Directives

EU Directives (e.g. Parent/Subsidiary Directive, Interest & Royalty Directive and ATAD I & II) are implemented into domestic legislation. Please refer to section 6.b. for more information on the implementation of the earning stripping rule and section 8.b. for more information on the implementation of the CFC rules under ATAD I. As indicated in section 2, ATAD II has been implemented as of 1 January 2020.

On 22 December 2021, the European Commission published the ATAD III Directive proposal. If an undertaking qualifies as a shell company, the shell entity will not be able to claim any tax benefits in relation to tax treaties and the IRD and PSD directive. ATAD III also sets rules regarding the automatic exchange of information and tax audits between Member States' tax authorities. Certain entities are carved out from ATAD III: listed entities, insurance companies, pension funds, including wholly owned investment entities, regulated financial undertakings, including: MIFID, UCITS, AIFM, AIF and certain domestic holding situations.

Two days after the OECD published detailed Model Rules on Pillar Two, the European Commission published a proposal for a Directive to ensure the implementation of Pillar Two in the EU. The EU Pillar Two Directive proposal is largely in line with the detailed set of Model Rules as published by the OECD on 20 December 2021. The European Commission would like to implement the IIR as of 1 January 2023 and the UTPR as of 1 January 2024. The proposed EU Pillar Two Directive gives member states the flexibility to determine in which national (tax) law the provisions of ATAD III will be implemented. This makes it possible to implement Pillar Two as part of the Dutch Corporate Income Tax Act 1969, but also as a separate tax act. The Dutch government has made clear that it is not in favour of implementing Pillar Two in the Dutch Corporate Income Tax Act 1969.

f. Tax Rulings and Clearances

The Netherlands has developed a strong ruling practice which provides taxpayers the opportunity to obtain certainty in advance about their tax position. The Dutch ruling practice is guided by Decrees defining the policy and restrictions for granting Advance Tax Rulings ("ATR's") and Advance Pricing Agreements ("APA's").

The DTA has a dedicated and specialised APA/ATR team operating from Rotterdam. An APA provides certainty in advance on the transfer pricing of intragroup transactions, while an ATR confirms the tax position of Dutch taxpayers under certain regulations.

Under the current ruling policy, the ability to obtain a tax ruling is limited in cases of tax avoidance, in cases where the taxpayer has insufficient Dutch nexus and for transactions with entities in jurisdictions that either are on the EU blacklist or are located in designated low-taxed jurisdictions.

g. Adjustments to the Decree for the qualification of foreign legal entities

On 4 March 2021, the Dutch Ministry of Finance announced plans to amend the Dutch partnership entity classification rules per 2022. This would result in deletion of the unanimous consent requirement for partnerships and therefore impact the Dutch entity classification of the partnerships. The proposed amendments are expected to impact (international) private equity / fund structures. More recently, the Ministry of Finance announced that the legislative proposal regarding the classification rules will be expected in Q3 of 2023. No further additional information is provided with respect to an envisaged entry into force date.

15. MAJOR NON-TAX CONSIDERATIONS

This section is left intentionally blank.



16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Albania	0 / 5 / 15	5 / 10	10	[1] [2] [3] [4]
Algeria	5 / 15	0 / 8	5 / 15	[5] [2] [6]
Argentina	10 / 15	0 / 12	3 / 5 / 10 / 15	[1] [2] [7]
Armenia	0 / 5 / 15	5	5	[5]
Australia	15	10	10	
Austria	5 / 15		10	[1]
Azerbaijan	5 / 10	10	5 / 10	[3] [7]
Bahrain	0 / 10			[5]
Bangladesh	10 / 15	0 / 10	10	[5] [8]
Barbados	0 / 15	0 / 5	0 / 5	[5] [2] [7]
Belarus	0 / 5 / 15	0 / 5	3 / 5 / 10	[9] [2] [7]
Belgium	5 / 15	0 / 10		[5] [10]
Bosnia- Herzegovina (was Yugoslavia)	5 / 15		10	[1]
Brazil	15	10 / 15	15 / 25	[11] [7]
Bulgaria	5 / 15		5	[1]
Canada	5 / 10 / 15	0 / 10	0 / 10	[1] [5] [2] [7]
China	5 / 10	0 / 10	10	[1] [2] [12]
Croatia	0 / 15			[5]
Czech Republic (was Tsjecho-Slovakia)	0 / 10		5	[1]
Denmark	0 / 15			[5]
Egypt	0 / 15	0 / 12	12	[1] [2]
Estonia	5 / 15	0 / 10	5 / 10	[1] [2] [7]
Ethiopia	5 / 10 / 15	0 / 5	5	[5] [13]
Finland	0 / 15			[14]
France	5 / 15	0 / 10 / 12		[1] [15]
Georgia	0 / 5 / 15			[16]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Germany	5 / 10 / 15			[5]
Ghana	5 / 10	0 / 8	8	[5] [10]
Greece	5 / 15 / 35	8 / 10	5 / 7	[13] [2] [6]
Hong Kong	0 / 10		3	[17]
Hungary	5 / 15			[1]
Ireland*	0 / 15			[1]
Iceland	0 / 15			[5]
India**	10	10	10	[18]
Indonesia	5 / 10 / 15	0 / 5 / 10	10	[1] [2]
Israel	5 / 10 / 15	10 / 15	5 / 10	[1] [7] [19]
Italy	5 / 10 / 15	0 / 10	5	[20] [2]
Japan	0 / 5 / 10	0 / 10		[20] [2] [10]
Jordan	5 / 15	0 / 5	10	[5] [2]
Kazakhstan	5 / 15	0 / 10	10	[21] [10]
Kuwait	0 / 10		5	[5]
Korea	10 / 15	0 / 10 / 15	10 / 15	[1] [11] [12]
Kosovo	0/15	0/10		[5] [2] [10]
Latvia	5 / 15	0 / 10	5 / 10	[1] [2] [7]
Liechtenstein	0/15			[5]
Lithuania	5 / 15	0 / 10	0**	[1] [2] [18]
Luxembourg	2.5 / 15			[1]
Macedonia (North)	0 / 15			[5] [22]
Malaysia	0 / 15	0 / 10	(0)/8	[1] [2] [6] [23]
Malta	5 / 15	0 / 10	10	[1] [2]
Montenegro (was Yugoslavia)	5 / 15		10	[1]
Morocco	10 / 25	10 / 25	10	[1] [11]
Mexico	5 / 15	0 / 5 / 10	10	[5] [2]
Moldova	0 / 5 / 15	0 / 5	2	[24] [10] [25]
New Zealand	15	0 / 10	10	[2]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Nigeria	12.5 / 15	0 / 12.5	12.5	[5] [10]
Norway	0 / 15			[5]
Oman	0 / 10		8	[5]
Pakistan	10 / 20	0 / 10 / 15 / 20	5 / 15	[1] [2] [6]
Panama	0 / 15	0 / 5	5	[26] [2] [6]
Philippines	10 / 15	0 / 10 / 15	10 / 15	[5] [2] [10]
Poland	5 / 15	0 / 5	5	[5] [10]
Portugal	10	0 / 10	10	[2] [10]
Qatar	0 / 10		5	[27] [6]
Romania	0 / 5 / 15	0 / 3	3	[1] [10]
Saudi Arabia	5 / 10	0 / 5	7	[5] [10]
Serbia (was Yugoslavia)	5 / 15		10	[1]
Singapore	0 / 15	0 / 10		[1] [10]
Slovenia	5 / 15	0 / 5	5	[5] [10]
Slovakia (was Tsjecho-Slovakia)	0 / 10		5	[1]
South Africa	5 / 10**			
Spain	5 / 10 / 15	10	6	[29]
Sri Lanka	10 / 15	0 / 10	10	[1] [10]
Suriname	7.5 / 15 / 20	0 / 5 / 10	5 / 10	[30] [2] [10] [7]
Sweden	0 / 15			[1]
Switzerland	0 / 15			[13]
Taiwan	10	0 / 10	10	[10]
Thailand	5 / 10 / 25	10 / 25	5 / 15	[22] [10] [6]
Tunisia	0 / 20	0 / 10	11	[5] [10]
Turkey	15 / 20	0 / 10 / 15	10	[1] [2] [10] [11]
Uganda	0 / 5 / 15	0 / 10	10	[20] [2] [10]
Ukraine	0 / 5 / 15	0 / 2 / 10	0 / 10	[24] [2] [10]
United Arabic Emirates	5 / 10			[5]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
United Kingdom	0 / 10 / 15			[5]
United States of America	0 / 5 / 15			[31]
Uzbekistan	5 / 15	10	10	[1] [13]
Venezuela	0 / 10	0 / 5	5 / 7 / 10	[1] [2] [10] [7]
Vietnam	5 / 10 / 15	0 / 10	5 / 10 / 15	[32] [8] [30] [6] [12]
Yugoslavia	5 / 15		10	[1]
Zambia	5 / 15	0 / 10	7.5	[5] [2] [10]
Zimbabwe	10 / 20	0 / 10	10	[1] [2] [10]

* The Netherlands is in the process of concluding (re)negotiations with Andorra, Australia, Bangladesh, Belgium, India, Iran, Kyrgyzstan, Morocco, Moldova, Mozambique, Philippines, Uganda, Uruguay, Portugal, Russia, Senegal, Spain, Sri Lanka, Thailand, Vietnam and Zimbabwe.

** The most-favoured nation clause is applicable. South Africa: the most-favoured nation clause only applies to treaties concluded after this treaty.

*** The tax treaties with Chile, Colombia, Cyprus, Malawi, Iraq and Kenya have been signed, but it is not clear when these tax treaties will enter into force.

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Footnotes:	
1	Dividends - The rate of 0%/2.5%/5%/7.5%/10%/15% applies if the share in the participation is at least 25%.
2	Interest - The rate of 2%/5%/10% applies if the interest paid on a loan that is granted by a bank or any other financial institutions (including investment banks, savings banks and insurance companies); or to interest paid on a loan made for a period of more than two years or in connection with a sale of industrial, commercial or scientific equipment on credit; or interest on loans granted by a bank or financial institution and on bonds and debentures traded regularly on a recognised stock market. Interest -The rate of 0% applies if the interest is paid by or to one of the Contracting States or a political sub-division, the interest is paid to other institutions in respect of loans on preferential terms, for a period of three years or more, or to interest paid in connection with the importation of machinery, or industrial, commercial or scientific equipment; or a bank, insurance company or securities company, or other non-financial institution; or interest is received relating to the sale of industrial, commercial or scientific equipment or to the construction of industrial, commercial or scientific installations as well as of public works; or pension funds; Or Interest paid or credited to a resident of the Netherlands by a person licensed to carry on banking business in Malaysia, or on an approved loan or a long term loan shall be exempt from Malaysian tax (Malaysia). Rate of 8% applies if the interest is paid to a bank or financial institution (Greece). Rate of 15% applies if the shares in the participation is at least 25% (Pakistan).
3	Dividends - The rate of 5% applies if the share in the participation is at least 25% and has invested at least EUR200,000 in the capital of the paying company.
4	Dividends - The rate of 0% applies if the shares in the participation is at least 50% and has invested at least USD250,000 in the capital paying the dividends.
5	Dividends - The rate of 0%/5%/10%/12.5% applies if the share in the participation is at least 10% or a pension fund. Kosovo and Liechtenstein: holding period of at least 365 days required for the application of the 0% rate.
6	Royalties - The rate of 0%/15% applies to copyright royalties and other like payments for the production or reproduction of literary, dramatic, musical or other artistic works (but not including royalties in respect of motion pictures and television) and royalties for computer software, patents, and information concerning industrial, commercial or scientific experience. Approved industrial royalties (as defined in paragraph 7 of Article 13) derived from Malaysia by a resident of the Netherlands shall be exempt from Malaysian tax (Malaysia). Royalties - The rate of 5% applies if royalties are paid for copyrights of literary, artistic or scientific works, including cinema films; or copyright of a literary, artistic, or scientific work, but excluding cinematograph films and tapes for television or broadcasting; or may elect to be taxed on a net basis as if he/she were a resident of the other Contracting State (Panama).



Footnotes:	
7	Royalties - The rate of 3%/7% applies to news related royalties (patents and trademarks). The rate of 5% applies to copyright royalties (or equipment). The rate of 10% applies to royalties in respect of trademarks. The rate of 10% applies to royalties for cinematograph films and films or videotapes for radio or television broadcasting (copyright). The rate of 5% applies to royalties for patents, designs or models, plans, secret formulas or processes, computer software, know how, etc is not older than three years; or paid for the use of industrial, commercial or scientific equipment. The rate of 0% applies to royalties regarding literary, artistic, scientific work, cinematographic films, and films, discs, or tapes for radio or television broadcasting. The rate of 25% applies to trademark royalties. Technical services (like 'know how') are included in the term "royalty"."
8	Interest - The rate of 0% applies if (i) interest arises in the Netherlands or Bangladesh, (ii) interest paid by the government (iii) contract of financing or of delay in payment relating to the sale of industrial, commercial or scientific equipment or to the construction of industrial, commercial or scientific installations. (Bangladesh) Interest - As long as the Netherlands does not levy a tax at source on interest then the rate of tax to be applied on interest received by a bank or any other financial institution (including an insurance company) shall not exceed 7.5%; As long as, under the provisions of the Netherlands taxation laws and to the future amendments thereto, the Netherlands does not levy a tax at source on interest paid to a resident of Vietnam, the percentage provided for in this paragraph shall be reduced to 7% of the gross amount of the interest. (Vietnam)
9	Dividends - No withholding tax applies (exclusive residence taxing right) if the share in the participation is at least 50% and at least EUR250,000 is paid in.
10	Interest - The rate of 0% applies to interest received by an enterprise which has not arisen from bearer securities representing loans or deposits of sums of money; interest derived from bearer securities representing loans or deposits of sums of money and the beneficial owner of the interest is an enterprise which carries on a banking or insurance activity and which holds the securities in question for at least three months preceding the date of the interest being payable; or the interest arises from commercial debt claims resulting from deferred payments for goods, merchandise or services; or paid to the government and interest is paid in respect of a loan granted, guaranteed or insured by the Government; or if interest paid in respect of a bond, debenture or other similar obligation of the Government of that State and the central bank of that State and interest arising in one of the States and paid in respect of loans guaranteed or insured by the Government of the other State and the central bank.
11	Interest - The rate of 10% applies if the recipient is a bank and the loan is granted for at least seven years (and or) in connection with the purchase of industrial equipment or for the purchase and installation of industrial or scientific units, or the financing of public works (Brazil, Korea). The rate of 10% applies for interest paid by a resident of one of the States to an enterprise of the other State (Morocco).



Footnotes:	
12	Royalties - Royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment are subject to a 10% withholding tax on 60% of the gross amount (China). The rate of 10% applies for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information (know-how) concerning industrial, commercial or scientific experience. The 15% rate applies to royalties paid for the use of, or the right to use, a copyright of literary, artistic or scientific works, including cinematograph films.
13	Dividends - The rate of 5% applies if a resident of the Netherlands pays dividends to a Greece resident and the share in the participation is at least 25%. The rate of 35% applies if a resident of Greece pays a dividend to a resident of the Netherlands (Greece). As long as, under the provisions of the Netherlands Corporate Income Tax Act and the future amendments thereto, a company which is a resident of the Netherlands is not charged to Netherlands Corporate Income Tax with respect to dividends the company receives from a company which is a resident of Uzbekistan, the percentage provided for in that subparagraph shall be reduced to 0% (Uzbekistan). Rate of 10% applies if the company paying the dividends is a resident of Ethiopia. Rate of 15% applies if the company paying the dividends is a resident of the Netherlands (Ethiopia). Where a resident of Switzerland receives dividends that may be taxed in the Netherlands in accordance with paragraph 9 of Article 10, the Netherlands shall grant a refund. The amount of this refund shall be equal to the tax due in Switzerland on this income but shall in no case exceed 10% of this income (Switzerland).
14	Dividends - The rate of 0% applies if the share in the participation is at least 5% or a pension fund.
15	Interest - The rate of 0% applies to interest paid in connection with a financing or deferred payment contract for the sale of industrial, commercial or scientific equipment, or the construction of such installations or the carrying out of public works; interest paid on bank loans and interest paid following a formal request for payment or a legal action as a penalty for late payment of a debt for which no interest was stipulated. The 12% rate applies to interest from negotiable bonds issued in France before 1 January 1965 (France).
16	Dividends - The rate of 0% applies if the share in the participation is at least 50% and at more than USD2 million capital is paid in.
17	Dividends - The rate of 0% applies if the shares in the participation is at least 10% provided (i) the shares are regularly traded on a recognised stock exchange, or (ii) at least 50% of the shares of the recipient company are owned by a company whose shares are regularly traded on a recognised stock exchange, paid to the government or paid to a pension fund. A person shall be considered a headquarters company if the corporate group consists of corporations resident in, and engaged in an active business in, at least five countries and the business activities carried on in each of the five countries generate at least 10% of the gross income of the group.



Footnotes:	
18	Dividends - As a result of the application of a most-favoured nation clause in the tax treaty, the withholding tax rate is reduced from 15% to 10%. Interest - As a result of the application of a most-favoured nation clause in the tax treaty, the withholding tax rate on interest is reduced from 15% to 10%. The 10% rate would apply only to interest paid on certain loans made or guaranteed by a financial institution or an enterprise that holds at least 10% of the shares in the participation. Royalties - As a result of the application of a most favoured nation clause in the tax treaty, the withholding tax rate is reduced from 20% to 10%/0%.
19	Dividends - The rate of 10% applies if the shares in the participation is at least 25%, the payer is a resident of Israel and the dividends are paid out of profits that are subject to tax in Israel at a rate lower than the normal Israeli Corporate Income Tax rate due to measures to encourage investment.
20	Dividends - The rate of 0%/5% applies if the share in the participation is at least 50%.
21	Dividends - The rate of 0% applies if the share in the participation is at least 50% and USD1 million capital is paid in.
22	Dividends - Netherlands: The rate of 5% applies if the shares in the Dutch participation is at least 25%, Thailand: The rate of 10% applies if the shares in the Thai participation is at least 25% provided that the highest Thai tax rate on profits of corporations during the financial year in which the dividends are distributed does not exceed 30%, may not exceed the Thai tax on such dividends: The rate of 15% applies if the entity paying the dividends is an industrial corporation. Otherwise, the rate of 20% applies. If the highest Thai tax rate on profits of companies during the financial year in which the dividends are distributed exceeds 30% but does not exceed 40%, the Thai tax on such dividends shall not exceed 15% of the gross amount of such dividends, if the company paying the dividends is not an industrial company. If the foregoing do not apply, the rate of 25% applies (Thailand). Dividends paid by a company which is a Netherlands resident, if according to the law in force in the Macedonian Contracting State taxation of such dividends in the Macedonian Contracting State will result in a tax burden of less than 15% of the gross amount of the dividends, the Netherlands Contracting State may levy a tax not exceeding 15% of the gross amount of the dividends (North Macedonia).
23	Technical fees - For Malaysia - A technical fee is subject to 10% of the gross amount of the technical fees for payments made on or after 1 January 1990 but before 1 January 1996; and 8% of the gross amount of the technical fees for payments made on or after 1 January 1996. For Tajikistan - there is no withholding tax for technical fees.
24	Dividends - The rate of 0% applies if the share in the participation is at least 50% and USD300,000 capital is paid in.
25	Dividends - The rate of 0% applies if the shares in the participation is at least 50% and more than USD300,000 is paid in.
26	Dividends - The rate of 0% applies if the share in the participation is at least 15%.
27	Dividends - The rate of 0% applies if the share in the participation is at least 7.5%.
28	Dividends - The rate of 5% applies if the shares in the participation is at least 25% and EUR75,000 capital is paid in.



Footnotes:	
29	Dividends - Netherlands: The rate of 5% applies if the receiving company owns 50% or more of the capital of the company paying the dividends, or if the receiving company owns 25% or more of the capital of the company paying the dividends, provided that at least one other company which is a resident of Spain also owns 25% or more of that capital. Spain: the rate of 10% applies if the receiving company owns 50% or more of the capital of the company paying the dividends, or if the receiving company owns 25% or more of the capital of the company paying the dividends, provided that at least one other company which is a resident of the Netherlands also owns 25% or more of that capital.
30	Dividends - The rate of 15% applies if the shares in the participation is below 25%, if such dividends are not included in the basis upon which tax is levied in the country of which the recipient is a resident. The provision of subparagraph (a) of paragraph 2 of Article 10 shall not apply with respect to dividends paid by a company which is a resident of Surinam to a company which is a resident of the Netherlands, if the latter company is liable to corporate tax in the Netherlands on the dividends received (Surinam). Dividends paid by a company which is a resident of the Netherlands, if according to the law in force in Kuwait, will result in a tax burden of less than 10% of the gross amount of the dividends, the Netherlands may levy a tax not exceeding 10% of the gross amount of the dividends (Kuwait). The rate of 5% applies if a resident of the Netherlands pays dividends to a Greece resident and the share in the participation is at least 25%. The rate of 35% applies if a resident of Greece pays a dividend to a resident of the Netherlands (Greece). As long as, under the provisions of the Netherlands Corporate Income Tax Act and the future amendments thereto, a company which is a resident of the Netherlands is not charged to Netherlands Corporate Income Tax with respect to dividends the company receives from a company which is a resident of Uzbekistan, the percentage provided for in that subparagraph shall be reduced to zero per cent (Uzbekistan). As long as, under the provisions of the Netherlands Corporate Income Tax Act and to the future amendments thereto, a company which is a resident of the Netherlands is not charged to Netherlands Corporate Income Tax with respect to dividends the company receives from a company which is a resident of Vietnam the percentage provided for in this subparagraph shall be reduced to 7% of the gross amount of the dividends (Vietnam).
31	Dividends - The rate of 0% applies if: (i) the share interest in the participation is at least 80%, (ii) the shares should represent at least 80% of the voting power in the company paying the dividends and (iii) the company is a qualified person within the meaning of article 26 (Limitation on Benefits). The rate of 5% applies if the share interest in the participation is at least 10%.
32	Dividends - The rate of 5% applies if the shares in the participation is at least 50% and more than USD10 million capital is paid in. The 10% rate applies if the shares in the participation is at least 25%, but less than 50%.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

The risk of an additional corporate tax charge upon a tax audit continues to exist (even if final corporate tax assessments have been imposed) under strict conditions, for a period of five years from the end of the assessment period during which the liability has accrued. This five year period is extended to twelve years if it concerns income that is kept or has accrued outside the Netherlands. These periods should be considered when determining the period for which documents and information are requested in tax due diligence processes.

The following is a tax due diligence document request list. Unless otherwise noted, please provide the requested information and documents for the Dutch target entities for the tax years as from 2016 up to and including 2021 for CIT purposes and from 2017 up to and including 2021 for VAT and wage tax purposes. This generic (initial) request list covers a broad range of information requests, however the list will, including any specific requests, will be tailored for each transaction on a case by case basis subject to what is known about the target group and its history.

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	A structure chart of the group including ownership ratio, ownership structure, legal form, permanent establishments and permanent representatives, including historical changes to the structure.
2	Tax Due Diligence	General	A description of the activities of each Target.
3	Tax Due Diligence	General	Please provide copies of tax due diligence report(s) on the Dutch Target(s) as well as copies of relevant tax clauses in the SPA(s).
4	Tax Due Diligence	General	Copies of the standalone annual accounts for the relevant years.
5	Tax Due Diligence	General	Please provide details for any COVID related tax measures, such as deferral for payment of taxes, that have been granted to each Target.
6	Tax Due Diligence	General	Please describe how the company controls and manages the tax function, including a list of the company's internal tax representatives and external tax advisors.
7	Tax Due Diligence	General	Have any legal mergers or spin offs, stock mergers, corporate mergers or similar purchase or sale transactions taken place? Please provide details of the transactions and the tax analysis performed.
8	Tax Due Diligence	General	An overview of the activities performed abroad by each Dutch Target and for each non-Dutch Target in the Netherlands (including Dutch real estate assets) and to what extent these activities might be considered as a foreign or Dutch taxable presence (permanent establishment).
9	Tax Due Diligence	General	Copies of important correspondence with tax authorities (rulings, discussions, negotiations, assessments etc.).
10	Tax Due Diligence	General	Has the Target concluded a compliance agreement with the Dutch tax authorities on horizontal monitoring ("horizontaal toezicht"), if so please elaborate.
11	Tax Due Diligence	General	Details of any tax planning schemes undertaken and any known areas of tax exposure.
12	Tax Due Diligence	General	Memos or opinions prepared by the company's tax advisor or tax advisors on potential tax exposures or tax planning.

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Nº.	Category	Sub-Category	Description of Request
13	Tax Due Diligence	General	Please describe all tax issues which are currently under discussion with the tax authorities or where a position is taken that might be challenged by the tax authorities and details on uncertain tax positions.
14	Tax Due Diligence	General	Information on any past or current tax audits.
15	Tax Due Diligence	General	Specifications (copies of documents and correspondence) of all current and anticipated objections/appeals or other litigation pending with respect to any tax authorities' decision, as well as explanations regarding the current state of affairs.
16	Tax Due Diligence	General	Confirmation whether any fines have been imposed in the past for incorrect / late filing and/or late payment of tax returns.
17	Tax Due Diligence	General	Details on procedures in relation to DAC6 as well as copies of all DAC6 filings for each Target during the relevant period.
18	Tax Due Diligence	Tax in the accounts	Details on the current tax payable and tax receivable positions for each Target (CIT, VAT, wage tax) per the effective date.
19	Tax Due Diligence	Tax in the accounts	A specification and calculation of the deferred tax asset/liability for each Target for the relevant years (if applicable).
20	Tax Due Diligence	Corporate Tax	Copies of the corporate income tax returns for each Target and related correspondence (including letters from the tax advisory firm that prepared the tax return with comments on the tax return) for the relevant years.
21	Tax Due Diligence	Corporate Tax	Copies of tax assessments (provisional and final, including additional notifications) for each Target for the relevant years.
22	Tax Due Diligence	Corporate Tax	If the assessments were not imposed in line with the returns filed, please provide comments on the deviation.
23	Tax Due Diligence	Corporate Tax	Copies of dividend withholding tax returns and dividend withholding tax declaration forms (domestic dividend withholding tax exemption).
24	Tax Due Diligence	Corporate Tax	Copy of the written confirmation of the current existence of the corporate tax fiscal unity (if applicable), including the confirmation of historic changes to the fiscal unity (companies entering or exiting the fiscal unity).
25	Tax Due Diligence	Corporate Tax	Confirmation on the open tax years and the due dates for these returns.
26	Tax Due Diligence	Corporate Tax	Information on tax losses and/or carry forward interest expenses (under the earnings stripping rule / article 15b CITA) per Target per year available for carry forward/back (including a breakdown of the losses and/or exceeding interest expenses per year and information on possible restrictions).
27	Tax Due Diligence	Corporate Tax	Confirmation whether the company incurred tax losses attributable to a foreign permanent establishment /permanent representative or real estate.
28	Tax Due Diligence	Corporate Tax	Details of risk provisions, if any, including the calculation method applied.

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Nº.	Category	Sub-Category	Description of Request
29	Tax Due Diligence	Corporate Tax	Details on the valuation for tax purposes of: i) goodwill ii) work in progress, iii) provisions for bad debt and how the book to tax differences will most likely evolve over the next three years.
30	Tax Due Diligence	Corporate Tax	Details on all book-to-tax differences (including a description of the difference, calculations and phase out) for each Target.
31	Tax Due Diligence	Corporate Tax	Details on participations held by each Target during the period under review and an analysis on application of the participation exemption and CFC rules.
32	Tax Due Diligence	Corporate Tax	Information whether the company uses the innovation box? If so, please provide a copy of the underlying documentation and correspondence with the tax authorities.
33	Tax Due Diligence	Corporate Tax	Please provide details on interest expenses in the relevant years (including details on the debt financing, the loan agreements, the amounts involved and any analysis performed on the deductibility of the interest).
34	Tax Due Diligence	Corporate Tax	Please confirm whether any of the debt financing relates to the purchase of shares, dividend or capital (re)payment, or capital contributions.
35	Tax Due Diligence	Corporate Tax	Please confirm if the group has any entities, partnerships or conducts any activities in any of the following jurisdictions (from onwards 2019 only): American Samoa, Anguilla, Bahama's, Bahrein, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Fiji, Guam, Guernsey, Isle of Man, Jersey, Kuwait, Oman, Palau, Panama, Bahrein, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Fiji, Guam, Guernsey, Isle of Man, Jersey, Kuwait, Oman, Palau, Panama, Qatar, Samoa, Saudi Arabia, Seychelles, Trinidad and Tobago, Turkmenistan, Turks and Caicos Islands, United Arab Emirates, US Virgin Islands, Vanuatu

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Nº.	Category	Sub-Category	Description of Request
36	Tax Due Diligence	Corporate Tax	Please confirm: (i) whether any company may be considered a hybrid entity (e.g. partnerships such as LP's), (ii) whether any hybrid financing arrangements are in place (e.g. PPL's) (i.e. differences in qualification of financial instruments as a result of which payments are deductible in payer jurisdiction but exempt in payee jurisdiction) and (iii) whether any mismatches in relation to permanent establishments are recognised between jurisdictions.
37	Tax Due Diligence	Corporate Tax	Please confirm all entities that are subject to US check the box elections.
38	Tax Due Diligence	Corporate Tax	Please confirm if any company falls within the scope of ATAD II legislation (hybrid mismatches) and whether the company has complied with the documentation obligation under article 12ag CITA (please provide a copy of the documentation).
39	Tax Due Diligence	Corporate Tax	An overview and copies of all significant agreements relating to all intercompany transactions / transactions with the shareholder(s) (e.g. service agreements, supply agreements, shareholder loans, loan waivers, etc.).
40	Tax Due Diligence	Corporate Tax	Please describe whether the company is subject to Country by Country reporting or the obligation to file transfer pricing documentation (Masterfile / Local File) in the Netherlands.
41	Tax Due Diligence	Corporate Tax	Please provide a copy of internal transfer pricing studies or other documents (including Masterfile / Local File if applicable).
42	Tax Due Diligence	Corporate Tax	Please provide a copy of the Country by Country reporting (if applicable) and notifications filed.
43	Tax Due Diligence	Corporate Tax	Has any Target been involved in any transaction with a related party where assets or liabilities (including loans) were transferred (including capital contributions or distributions) where the fair market value was higher than the transaction price. If yes, have any downward transfer pricing adjustments and/or transfer pricing mismatches been taken into account for Dutch tax purposes (i.e. resulting in a lower Dutch tax base)?
44	Tax Due Diligence	WHT	An overview of all dividend distributions by each Target during the relevant period.
45	Tax Due Diligence	WHT	A description of any withholding tax obligations, and details of any elimination of double taxation applied or any treaty clearances obtained.
46	Tax Due Diligence	WHT	Copies of dividend, interest and/or royalty withholding tax returns and dividend withholding tax declaration forms (domestic dividend withholding tax exemption).
47	Tax Due Diligence	Wage Tax	Confirmation of the number of employees of the company (in the Netherlands or abroad).
48	Tax Due Diligence	Wage Tax	Confirmation whether a collective labour agreement ("CAO") is applicable.
49	Tax Due Diligence	Wage Tax	Please provide a copy of the latest cumulative payroll overview.
50	Tax Due Diligence	Wage Tax	Please provide a copy of the general ledger regarding personnel costs, representation costs and costs of freelancers/temporary employees.
51	Tax Due Diligence	Wage Tax	Confirmation of the social security sector code applied.
52	Tax Due Diligence	Wage Tax	Please provide a copy of the employee handbook (if available) or overview of employee benefits.

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Nº.	Category	Sub-Category	Description of Request
53	Tax Due Diligence	Wage Tax	Does the company have an option plan or other incentive plan for management and/or employees? If so, please provide details of the plan(s) and documentation.
54	Tax Due Diligence	Wage Tax	Confirmation and copy of the most recent payroll tax return filed.
55	Tax Due Diligence	Wage Tax	Does the company apply tax reductions for R&D/WBSO? If so, please provide a copy of the underlying documentation and correspondence with the tax authorities.
56	Tax Due Diligence	Wage Tax	Please summarize all benefits in kind/fringe benefits provided to employees (e.g. company cars, direct insurance, loans, etc.) listing: (i) character of benefit in kind; (ii) employee receiving benefit in kind; (iii) value of benefit in kind; and (iv) taxation of benefit in kind.
57	Tax Due Diligence	Wage Tax	Has the working cost scheme been implemented? If so, have the work related expenses been reviewed in line with new legislation? Please provide a summary of the findings and the underlying calculations.
58	Tax Due Diligence	Wage Tax	Does the company pay fixed cost allowances free of taxes to employees?
59	Tax Due Diligence	Wage Tax	Please confirm whether the company has personnel working outside the Netherlands. If so, please provide additional information as well as a description of the treatment for Dutch wage tax and social security.;
60	Tax Due Diligence	Wage Tax	Does the company engage independent contractors/freelancers? If so, please indicate how many freelancers/other individuals, the amount of payments involved per year and the treatment for wage tax and social security.
61	Tax Due Diligence	Wage Tax	Please confirm whether the freelancers/non-employees submitted a statement of independence (VAR- verklaring) from the tax authorities and whether the newly introduced regulations for freelancers have been implemented (modelovereenkomst).
62	Tax Due Diligence	Wage Tax	Please provide a specification of employees making use of the 30% ruling, together with copies of the approved rulings and salary slip showing the 30% allowance.
63	Tax Due Diligence	Wage Tax	Are additional cost reimbursed / benefits provided free of taxes besides the 30% allowance?
64	Tax Due Diligence	Wage Tax	Did the company make use of hired in personnel or performed subcontracting activities and if so, please specify? Please elaborate on the procedures in place for the use of the G-account ('Geblokkeerde rekening') and detail on the agencies that the company works with.
65	Tax Due Diligence	VAT	Please provide a copy of the VAT returns filed in the last year, including European Sales Listing and the VAT working papers
66	Tax Due Diligence	VAT	Please provide a copy of the VAT reporting manual, if any.

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Nº.	Category	Sub-Category	Description of Request
67	Tax Due Diligence	VAT	Does the company own any VAT licenses (e.g. art. 23 Import VAT deferment, VAT warehouse license or else)?
68	Tax Due Diligence	VAT	Can the VAT returns be reconciled with the annual accounts? Please provide the underlying documentation;
69	Tax Due Diligence	VAT	Concerning the period starting 2013, is the company aware of any omissions in its VAT returns filed that (may) require adjustment in excess of EUR5,000 per annum?
70	Tax Due Diligence	VAT	Has the company adjusted (any) VAT returns since 2013 by the filing of supplementary VAT returns or European Sales Listings? If so, please provide copy thereof.
71	Tax Due Diligence	VAT	Has the companies' VAT accounting system changed significantly in recent years? If so, has the VAT module been reviewed?
72	Tax Due Diligence	VAT	Has the company undergone internal reviews of the VAT position? If so, what was the outcome?
73	Tax Due Diligence	VAT	If any questions arise internally regarding VAT, who are the persons to contact?
74	Tax Due Diligence	VAT	Confirmation whether the company is currently, or has been in the past five years, included in a VAT fiscal unity.
75	Tax Due Diligence	VAT	If the company/companies is/are included in a VAT fiscal unity: (a) Please list which companies are included in the VAT fiscal unity; (b) Please list which companies have been included or have been deconsolidated in the last 5 calendar years and when; and (c) Please provide all written decisions of the DTA concerning the VAT fiscal unity, confirmation of forming, change or ending of the VAT fiscal unity.
76	Tax Due Diligence	VAT	To the extent that a VAT fiscal unity applies, please confirm that the management remained the same and that the activities of the fiscal unity members and their revenue relations towards each member have not significantly changed since the formation or the latest change.
77	Tax Due Diligence	VAT	If a VAT fiscal unity is or was formed, please confirm that the companies have not invoiced Dutch VAT to other VAT group members during their inclusion in the VAT group.
78	Tax Due Diligence	VAT	Please provide a sample set of proof for 10 representative transactions regarding the intracommunity supply of goods to other EU member states (box 3b of VAT return). This may include delivery instructions, CMR documents and other transport documentation, proof of payment from abroad, etc.
79	Tax Due Diligence	VAT	Does the company periodically validate the EU VAT-id numbers provided by EU resident customers?

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Nº.	Category	Sub-Category	Description of Request
80	Tax Due Diligence	VAT	Please provide a sample set of proof for 10 representative transactions regarding the export of goods from the EU for which the company has acted as exporter. This may include the IE599 customs confirmation of exit or other customs documentation, commercial correspondence, proof of import in destination country, etc.
81	Tax Due Diligence	VAT	Please provide a representative sample set of invoices issued by the company to business customers established outside the Netherlands.
82	Tax Due Diligence	VAT	Please provide a representative sample set of invoices issued by the company to private individuals outside the Netherlands and in the EU, respectively outside the EU.
83	Tax Due Diligence	VAT	Is the company registered for VAT purposes outside the Netherlands? If so, please explain
84	Tax Due Diligence	VAT	Does the company generate VAT exempt income on recipients established within the EU, for example has the company issued interest bearing loans?
85	Tax Due Diligence	VAT	Does the company generate other income (aside from dividends) that is not reported in the Dutch VAT return? If so, please list the types of income and resident sources.
86	Tax Due Diligence	VAT	Does the company also generate income (other than dividends) for which no invoice is issued? If so, please list the types of income.
87	Tax Due Diligence	VAT	Does the company perform any activities that are out of scope for VAT – e.g. provision of services free of charge?
88	Tax Due Diligence	VAT	If the company has any subsidiaries, can it be confirmed that it performs supplies of goods or services to these subsidiaries in return for remuneration? Please disregard subsidiaries held indirectly.
89	Tax Due Diligence	VAT	Does the company recover all Dutch input VAT incurred? If not, please provide details on the limited recovery right of input VAT.
90	Tax Due Diligence	VAT	Does the company work with a pro rata and/or pre pro rata VAT recovery? If so, please details.
91	Tax Due Diligence	VAT	Can the company confirm that all input VAT reported regards transactions ordered and engaged for in the name and for account of the company (i.e. directly relate to the business of the company)?
92	Tax Due Diligence	VAT	Can the company confirm that purchase invoices mention the full name and establishment address of the company?
93	Tax Due Diligence	VAT	Can the company confirm that only Dutch VAT is claimed through the Dutch return?
94	Tax Due Diligence	VAT	Does the company lease real estate subject to VAT? If so, please provide copy of the agreement(s) relevant to the last 5 calendar years.
95	Tax Due Diligence	VAT	Has the company acquired or sold real estate in the last 10 years? If so, please provide copy of the transaction contract(s).

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Nº.	Category	Sub-Category	Description of Request
96	Tax Due Diligence	VAT	Does the company provide exclusive use of real estate or office space to others such as (group) companies, either inside or outside its premises? If so, please provide details.
97	Tax Due Diligence	VAT	Has the company received any subsidy or grants in the last 5 calendar years? If so, please provide details.
98	Tax Due Diligence	VAT	Does the company grant cars to the personnel? If so, does the company make a correction at the end of the year for private use? How is the correction calculated?
99	Tax Due Diligence	VAT	Has the company applied the so called 'BUA' corrections concerning consumptive benefits (deemed to be) enjoyed by employees below cost price?
100	Tax Due Diligence	VAT	Did the company receive any substantial price reductions / rebates? Please also include indirect rebates, e.g. rebates received from another party than the direct supplier.
101	Tax Due Diligence	RETT	Please provide a specification of the real estate currently owned by the company (including details on the current use of the real estate).
102	Tax Due Diligence	RETT	Please provide a description of past discussions/rulings with tax authorities on the RETT position of the company.

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1. INTRODUCTION

a. Forms of Legal Entity

The types of legal entities commonly used in Peru to carry out businesses are (i) *sociedad anónima* ("S.A."), (ii) *sociedad anónima cerrada* ("S.A.C."), and (iii) *sociedad de responsabilidad limitada* ("S.R.L.").

From a legal perspective, key similarities include the limited liability of shareholders (for the S.A. and S.A.C.) and partners (for the S.R.L.), the representation of ownership of the shareholders/partners in shares (for the S.A. and S.A.C.) and quotas (for the S.R.L.), and the requirement to have at least two shareholders/partners during their existence.

On the other hand, key differences between these legal entities include:

- **Board of directors:** S.A. companies are required to have a board of directors. In the case of S.A.C. companies, although they are not required to have a board of directors, their shareholders may choose to have one in the bylaws. As for S.R.L. companies, having a board of directors is not possible.
- **Preemptive rights:** In the context of share acquisitions, the law does not contemplate preemptive rights for S.A. companies, but shareholders may choose to implement them in the by-laws. As for S.A.C. companies, such rights are contemplated by law, but shareholders may choose to eliminate them in the bylaws. In the case of S.R.L. companies, however, preemptive rights are also contemplated by law, but shareholders are not allowed to eliminate them in the bylaws.
- **Share transfers:** The transfer of shares issued by an S.A. or S.A.C. can be perfected through a private document and formalised through its registration in the company's share ledger (private registry). By contrast, the transfer of quotas of an S.R.L. can only be achieved by way of a public deed executed before a notary public and formalised through its registration in the public registries.

From a tax perspective, there are no relevant differences in the tax treatment applicable to the abovementioned legal entities.

b. Taxes, Tax Rates

i Income Tax

Resident companies are subject to Corporate Income Tax ("CIT") at a 29.5% rate, over their worldwide net income. Dividend distributions carried out by these entities are levied with a 5% income tax rate when the shareholder receiving such dividend is a nonresident (entity or individual) or a resident individual. Distributions performed in favor of other resident companies, however, are exempt from such tax.

In the case of branches (and other permanent establishments) of foreign corporations incorporated in Peru, they are subject to CIT at a 29.5% rate solely over their Peruvian source net income. Furthermore, by virtue of a legal presumption, their net income at year end (after CIT) is deemed as a "dividend" and taxed with a 5% rate.

As for non-resident companies, they are also subject to CIT at a 30% withholding rate over their Peruvian source gross income. However, in certain cases established by the Peruvian Income Tax Law, the applicable rate may be lower (for instance, interest on non-related party loans and technical assistance services attract a 4.99% and a 15% withholding tax rate, respectively).



Notwithstanding the preceding comments, corporate reorganisations (e.g. mergers, spinoffs, etc.) between resident companies may be carried out under any of the following regimes for Income Tax purposes:

- **No asset revaluation (tax neutral):** Under this regime, the transfer of assets in the context of a reorganization is tax-free (i.e. the operation does not generate taxable capital gains), to the extent that such assets are transferred at book value.
- **Voluntary asset revaluation with tax effects:** Under this regime, the companies involved in the reorganisation agree to revalue their assets. As a result thereof, the difference between the assets' new value and their tax basis is levied with Income Tax as a capital gain. Note that the amount to which said assets are revalued will be their new tax basis for Income Tax purposes.
- **Voluntary assets revaluation with no tax effects:** Under this regime, the companies involved in the reorganisation agree to revalue their assets, but solely for accounting purposes. The difference between the assets' new value and their tax basis is not levied with Income Tax (as long as it is not distributed), and the amount to which said assets are revalued will not generate any step ups in their basis for Income Tax purposes.

ii VAT

In Peru, only the following operations are subject to VAT at an 18% rate:

- The sale of movable goods within the country.
- The provision or use of services in the country.
- Construction agreements.
- The first sale of real estate by its constructor.
- The import of goods.

Nevertheless, as expressly provided in the Peruvian VAT Law, the transfer of assets in the context of a corporate reorganisation (such as a merger or spin-off) is not subject to VAT.

iii Other taxes

In the case of M&A operations involving the transfer of real estate properties, the acquirer of such assets will be subject to the Real Estate Transfer Tax. This tax levies the operation at a 3% rate over the asset's transfer price (provided it is higher than the property's registered value). It is important to note that the first 10 Tax Units (PEN46,000 for FY 2022, or approximately USD12,400) of the applicable tax basis are exempt from this tax.

Furthermore, Personal Income Tax considerations may also be relevant in the context of M&A operations involving companies with employees. Resident individuals are subject to a progressive tax ranging from 8% to 30% on their annual net employment income. The applicable rate for non-resident individuals is a flat 30% rate charge on their Peruvian source annual net employment income.

For such purposes, note that the following individuals are considered resident in Peru for Income Tax purposes: (i) Peruvian nationals domiciled in the country; and (ii) foreign individuals that have remained in the country for more than 183 calendar days within any 12 month period.



c. Common divergences between income shown on tax returns and local financial statements

Resident corporations and permanent establishments determine their taxable base for CIT purposes based on their accounting profit for the year, adjusted with specific deductions and additions set forth in tax legislation, which may eventually result in temporary or permanent accounting/tax differences. Some of the most common differences relate to maximum depreciation and amortisation rates allowed by the Peruvian Income Tax Law, accelerated depreciation provisions in lease agreements, pre-operating expenses, some special expenses accrued but not yet disbursed (as in the case of non-domiciled entities and/or labor obligations), development and exploration expenses in the mining industry, among others.

2. RECENT DEVELOPMENTS

On 27 October 2021, a bill was submitted before the Peruvian Congress requesting the delegation of powers to the Executive Branch to legislate on several matters such as tax, fiscal, financial, and economic reactivation.

On 17 December 2021, the bill was debated and parts of it were approved by Congress. The legislative powers were finally conferred through Law No. 31380, published on 27 December 2021, for a period of 90 calendar days (until 28 March 2022). Under that authorisation, the Peruvian Government has approved the following relevant tax measures:

a. Measures to standardise the cost of benefiting from tax stability for all sectors

As from 31 December 2021, companies that receive foreign investments and enter into stability contracts with the Peruvian Government will be subject to CIT at the applicable rate for the fiscal year in which the stability contract is executed, plus two (2) percentage points.

b. New case of presumptive income for foreign companies that sell hydro-biological resources

As from 1 January 2022, it is presumed that foreign companies (and their branches and other permanent establishments in Peru) generate net income when they sell highly migratory hydro-biological resources, extracted within or outside Peruvian maritime territory, to Peruvian companies. Said presumptive income will amount to 9% of the gross revenues received on the sale.

c. Tax measures approved in relation to the aquaculture, forestry and wildlife sector

As from fiscal year 2022, individuals and legal entities that perform activities in the aquaculture, forestry or wildlife sectors and that generate corporate income will benefit from the same reduced income tax rates that apply to the farming/irrigation/export/agribusiness sector (i.e. 15%, 20% and 25%, as the case may be).

In addition, up to 31 December 2025, they may apply the accelerated depreciation rate of 20% on the amounts invested in infrastructure intended for: (i) crops and water supply channels for the aquaculture sector; and (ii) management and use of forestland and wildlife.



d. New methods to determine the market value upon a direct transfer of shares and other securities

As from 1 January 2023, the market value assigned to shares in transfer operations, for tax purposes, will be whichever is higher between the value agreed between the parties (i.e. the transaction value) and the shares' quotation value, if applicable.

If said quotation value is not applicable, the shares' market value will be whichever is higher between the transaction value and the market value obtained by applying the discounted cash flow method. It should be noted, however, that such method will not be applicable when (i) the transferor's participation in the company issuing such shares is less than 5%; or (ii) the accrued net income of the issuing company in the previous year is equal to or lower than 1,700 Tax Units (i.e. the Tax Unit in force for 2022 equals to PEN4,600).

Finally, if the discounted cash flow method is not applicable, the shares' market value will be whichever is higher between the transaction value and the book value per share ("BVPS").

e. New rules on the tax treatment of associative contracts ("silent partnerships")

The main aspects of the tax treatment corresponding to such contracts include the following:

- The contribution of assets to an associative contract qualifies as a taxable transfer for Income Tax purposes.
- The silent partner's (*asociado*) participation in an associative contract qualifies as a dividend for Income Tax purposes and may not be taken as a deductible cost or expense by the active partner (*asociante*).
- Active partners (*asociantes*) must perform Income Tax withholdings on the profits they distribute to their silent partners when they are (i) resident and nonresident individuals; (ii) or nonresident entities.
- Active partners (*asociantes*) must register in special subaccounts all business operations carried out under the associative contract.

f. New thresholds for the use of "payment methods" ("bancarization")

As from 1 April 2022, obligations for amounts equal to or greater than PEN2,000 or USD500 must be paid through certain payments methods, such as bank transfers, bank checks, deposits, etc. (payments that fail to comply with this requirement are deemed as non-deductible for tax purposes and do not generate tax credits).

Furthermore, payments linked to foreign trade operations may be channeled through Peruvian or foreign banking/financial entities; unless said entities are residents of non-cooperative or low/zero-tax jurisdictions (so called tax havens), in which case the obligation to use "payment methods" (bancarization) will not be considered fulfilled.



g. Taxpayers without Operational Capacity ("SSCO")

As from 1 January 2023, the Peruvian Tax Administration may assign the status of SSCO to identify taxpayers with no economic, financial, material or human resources, or whose resources are unsuitable, to carry out the operations for which they issue their invoices.

The main tax considerations surrounding the SSCO status include the following:

- Operations carried out with an SSCO do not allow for tax credit deductions or any other right/benefit derived from Value Added Tax ("VAT").
- Operations carried out with an SSCO are not deductible as a cost or expense for Income Tax purposes.

h. Compliance Profiles

Compliance Profiles are introduced as a mechanism to encourage voluntary compliance with tax, non-tax, and customs obligations collected by the Peruvian Tax Administration ("SUNAT"). Said profiles will be implemented gradually, based on at least five levels of compliance (to be determined in further regulations).

Taxpayers in any of the two lowest profiles will face several limitations and consequences, mainly related to tax return deadlines and the mandatory use of "payment methods" ("bancarization").

3. SHARE ACQUISITION

a. General Comments

The transfer of shares issued by a Peruvian company (either directly or indirectly) is a taxable event for Income Tax purposes. In that regard, the main tax implications to consider in this type of operations are outlined below, from buyer and seller perspectives.

From a buyer's perspective:

Generally, share acquisitions do not have immediate tax implications for the buyer. The target company remains in existence and any tax liabilities remain with it after the operation is completed.

Nonetheless, it should be noted that price payments must be channelled through certain payment methods provided for by applicable law (*"bancarization"*), such as bank transfers, bank checks, deposits, among others. Otherwise, the transferred shares will not have a tax basis for the buyer in future share transfer operations.

From a seller's perspective:

When the seller is a non-resident individual or company, capital gains arising from a share transfer operation are subject to a 30% income tax rate. The applicable rate is 5% when said operation is carried out through the Lima Stock Exchange (and 0% if certain additional requirements are met). For such purposes, taxable capital gains shall be determined as the difference between (i) the tax basis of such shares and (ii) their market value.



In cases where the transferred shares are not listed in the Lima Stock Exchange, the non-resident seller must undergo a special certification proceeding before the Peruvian Tax Administration ("SUNAT") so that the latter certifies the tax basis of the shares. Said certificate must be issued prior to any payment made for the share transfer operation; otherwise, the seller would be subject to income tax at a rate of 30% over the total market value of the shares.

When the seller is a resident company, capital gains are levied with the 29.5% Corporate Income Tax rate. Capital gains will also be determined as the difference between the tax basis of the shares and their market value; however, unlike the previous scenario, the seller is not required to go through a certification proceeding before the Peruvian Tax Administration ("SUNAT").

Finally, when the seller is a resident individual, capital gains are subject to a 5% income tax rate.

b. Tax Attributes

All tax attributes (such as net operating losses or tax credits) will remain in the target company following the share acquisition. Peruvian companies are entitled to offset their corporate losses accumulated in a fiscal year, by applying one of the following systems:

- System A: NOLs are carried forward against the net income obtained within the following four fiscal years.
- System B: NOLs are carried forward indefinitely against 50% of the net income obtained in the following fiscal years.

In any case, the carry back of NOLs is not permitted under Peruvian law.

All other tax attributes, such as VAT credits, income tax advance payments, CIT credits, etc., remain within the acquired company and subject to normal tax rules (not being affected by the fact that there has been a change in ownership of the target).

c. Tax Grouping

The concept of tax grouping does not exist in Peru.



d. Tax Free Reorganisations

As described in Section 1.b. above, corporate reorganisations (e.g. mergers, spinoffs, etc.) between resident companies may be carried out under any of the following regimes for Income Tax purposes:

- **No asset revaluation (tax neutral):** Under this regime, the transfer of assets in the context of a reorganisation is tax free (i.e. the operation does not generate taxable capital gains), to the extent that such assets are transferred at book value.
- **Voluntary asset revaluation with tax effects:** Under this regime, the companies involved in the reorganisation agree to revalue their assets. As a result thereof, the difference between the assets' new value and their tax basis is subject to income tax as a capital gain. Note that the amount to which the assets are revalued will be their new tax basis for income tax purposes.
- **Voluntary assets revaluation with no tax effects:** Under this regime, the companies involved in the reorganisation agree to revalue their assets, but solely for accounting purposes. The difference between the assets' new value and their tax basis is not subject to income tax (as long as it is not distributed), and the amount to which said assets are revalued will not generate any step ups in their basis for income tax purposes.

In certain cases, it is important to take into account the Peruvian General Anti-Avoidance Rule ("GAAR"), by virtue of which the Peruvian Tax Administration ("SUNAT") may disregard the tax advantages obtained through tax avoidance schemes. For instance, this may be the case of tax driven corporate reorganisations with low, or no, economic substance.

e. Purchase Agreement

There are no special provisions related to tax matters in share acquisitions subject to Peruvian law other than the typical tax representation and warranty and the general tax covenant whereby the parties agree to pay the taxes they are obliged to pursuant to applicable law.

Tax representations and warranties are often negotiated to remain in force between five years and the corresponding statute of limitations. In the case of general tax covenants, it is commonly agreed that they remain in force throughout the corresponding statute of limitations.

In general terms, the statute of limitations for tax matters is four years as from the fiscal year following the due date for filing the corresponding annual tax return. In cases where the taxpayer has not filed said tax return, the applicable statute of limitations is six years.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

There are no transfer taxes on share transfer operations.

g. Share Purchase Advantages

Unlike asset acquisitions, share transfers are not subject to VAT (18%) or municipal transfer taxes (such as the Real Estate Transfer Tax, which levies the transfer of urban and/or rural property with a 3% rate).

In addition, share transfer operations are unlikely to generate the purchaser's joint and several liability for the seller's total tax debt, as opposed to asset acquisitions that normally do (see Section 4 below for further information on the general rule for the purchaser's joint and several liability).



h. Share Purchase Disadvantages

Unlike asset acquisitions, share transfers do not generate a step up in basis regarding the target's assets.

In addition, interest associated to share acquisitions may end up being non-deductible for tax purposes if the acquiring entity is a Peruvian holding company that only receives exempt income (dividends from the acquired target).

4. ASSET ACQUISITION

a. General Comments

The main tax implications to consider in asset acquisitions are outlined below, from buyer and seller perspectives.

From a buyer's perspective:

Asset transfers are subject to VAT at an 18% rate when they involve (i) the transfer of movable property and (ii) the first transfer of real estate property performed by the constructor (note that any subsequent transfers thereof are not subject to VAT). Although technically the taxpayer for VAT purposes is the seller, the buyer must pay this tax (i.e. the purchase price paid by the buyer must include a VAT surcharge).

Where the asset transfer operation involves any real estate properties, the buyer shall pay the corresponding Real Estate Transfer Tax, at a 3% rate over the asset's purchase price (provided it is higher than the property's registered value). It is important to note that the first 10 Tax Units of the applicable tax basis is exempt from this tax (PEN46,000 for FY 2022).

Furthermore, in cases where the transferred assets reduce the seller's capacity to comply with its tax obligations (e.g. transfers involving relevant production units, lines of business or assets that are key to business operations), the buyer may be subject to the general rule on joint and several liability. Under these rules, the buyer may be considered as jointly and severally liable for the seller's total tax debt as of the transfer date. Note that the statute of limitations on this liability is two years following the transfer date, provided that the asset transfer operation is duly notified to the Peruvian Tax Administration ("SUNAT").

In addition, any price payments must be channeled through certain payment methods provided for by applicable law ("*bancarization*"), such as bank transfers, bank checks, deposits, among others. Otherwise, the transferred assets will not have a tax basis for the buyer in future asset transfer operations.

From a seller's perspective:

Provided the seller is a resident company, capital gains arising from an asset transfer operation are levied with the 29.5% corporate income tax rate. For such purposes, taxable capital gains are determined as the difference between (i) the tax basis of such assets (i.e. acquisition price paid by the seller minus applicable depreciation) and (ii) the asset's market value.

Although unusual, if the seller is a non-resident entity, capital gains arising from an asset transfer are subject to income tax at a 30% rate. Taxable capital gains are calculated in the same way as described above, however, the non-resident seller must undergo a special certification proceeding before the Peruvian Tax Administration ("SUNAT") so that the SUNAT certifies the assets' tax basis. The certificate must be issued prior to any payment being made for the asset transfer; otherwise, the seller would be subject to income tax at a rate of 30% on the total market value of the assets.



b. Purchase Price Allocation

The purchase price should be allocated among each asset acquired. The allocation is important to:

- Correctly reflect the asset's value (purchase price) in the buyer's accounting records (i.e. tax basis for depreciation purposes following the acquisition).
- Determine the Income Tax to be paid by the seller on any capital gains arising from the acquisition, if applicable (i.e. difference between the allocated purchase price, at market value, and the asset's tax basis).
- Determine the VAT to be paid by the purchaser, if applicable, depending on the nature of the asset pursuant to law.
- Determine municipal taxes that may be triggered by the acquisition operation (e.g. real estate transfer tax, which is levied on all transfers of rural and/or urban property at a 3% rate over the agreed purchase price, provided the price is not less than the registered property value).

The allocation of the purchase price is often proposed by the seller and agreed by the purchaser. For Peruvian tax purposes, price allocations must be performed at market value.

c. Tax Attributes

The target's tax attributes (such as net operating losses) do not carry over to the buyer in asset transactions.

d. Tax Free Reorganisations

In Peru, there are no tax-free regimes applicable for asset deals.

Note that the tax neutral regime described in Section 3.d. above is not applicable in these cases, given that asset transfer operations do not qualify as corporate reorganisations for Income Tax purposes.

e. Purchase Agreement

Other than the typical tax representations and warranties related to the assets and the general tax covenant whereby parties agree to pay the taxes they are obliged to pay pursuant to law, the following provisions are also commonly found in asset purchase agreements subject to Peruvian law:

- **Assumed liabilities:** A provision by which all matters related to the assets that arise before closing are a seller's liability, including taxes for periods before closing. It is typically agreed that this provision remains in force throughout the corresponding statute of limitations (i.e. four years as from the fiscal year following the due date for filing the corresponding tax return and up to six years in cases where the taxpayer fails to file the tax return).
- **Special indemnity for joint and several liability:** This provision grants the purchaser an indemnity where the relevant tax authority attempts to collect from the purchaser any tax liabilities of the seller, pursuant to the general rule of joint and several liability in the transfer of assets. By virtue of this rule, the purchaser may be deemed jointly and severally liable for the seller's total tax debt as of the acquisition date if the transferred assets reduce the seller's capacity to comply with its tax obligations (for example, in transfers involving relevant production units, lines of business or assets that are key to business operations).

It is typically agreed that this provision shall remain in force throughout the corresponding statute of limitations (i.e. two years following the transfer date, provided certain formal requirements are met before the Peruvian Tax Administration).

f. Depreciation and Amortisation

The acquisition of assets may generate step ups in the tax basis of the assets (based on the price paid by the buyer, at market value), which could allow the buyer to benefit from the additional tax amortisation or depreciation of such assets.

For such purposes, depreciation under the Peruvian Income Tax Law is subject to the following rates and methods:

i Buildings and constructions: The annual depreciation for Income Tax purposes is set at a 5% flat rate, on a straight line basis.

Nonetheless, note that as from fiscal year 2021, a special and temporary depreciation regime has entered into force, by virtue of which some buildings and constructions may be subject to a 20% flat depreciation rate, provided certain requirements are met.

ii Other assets: As for other assets (such as machinery, equipment, vehicles, among others), their tax depreciation shall match their book depreciation, without exceeding the following maximum rates set forth in the Peruvian Income Tax Law and its regulations:

Type of Asset	Maximum Depreciation Rate for Tax Purposes
Cattle, fishing nets	25%
Land transport vehicles (except for trains), ovens in general	20%
Machinery and equipment used in mining, oil and constructions activities (except for furniture, household items and office equipment)	20%
Data processing equipment	25%
Machinery and equipment acquired as from 1 January 1991	10%
Other fixed assets	10%

Nevertheless, by virtue of the special and temporary depreciation regime described in the preceding point, as from fiscal year 2021 the following assets are subject to higher maximum depreciation rates, provided they have been acquired during 2020 and 2021:

Type of Asset	Maximum Depreciation Rate for Tax Purposes
Data processing equipment	50%
Machinery and equipment	20%
Land transport vehicles (except for trains) with EURO IV, Tier II and EPA2007 technology	33.3%
Land transport vehicles (except for trains), either hybrid or electric	50%

Amortisation of trademarks, patents, manufacturing processes and other similar intangible assets, is generally not deductible for Income Tax purposes. An exception to this rule is established in the Peruvian Income Tax Law, by virtue of which the price paid for limited-life intangible assets, which may be deducted as an expense in a single fiscal year or amortised proportionally over a ten year period (at the taxpayer's discretion). Note that internally generated brands and goodwill are not considered limited-life intangible assets for tax purposes.



g. Transfer Taxes, VAT

Asset transfer operations may trigger VAT (at an 18% rate) and Real Estate Transfer Tax (at a 3% rate), as described above.

h. Asset Purchase Advantages

As opposed to share transfer operations, asset acquisitions generate step ups in basis regarding the target's assets (based on the price paid by the buyer, at market value).

Additionally, except for the general tax rule on joint and several liability described above, in asset transfers the other contingencies of the seller (civil, labor, administrative, etc.) are not transferred to the buyer.

i. Asset Purchase Disadvantages

As opposed to share transfer operations, asset acquisitions are subject to VAT (18%) and municipal transfer taxes (such as the Real Estate Transfer Tax, which levies the transfer of urban and/or rural property with a 3% rate).

Furthermore, as detailed above, in certain cases the buyer may be jointly and severally liable for the seller's tax liabilities as of the acquisition date.

5. ACQUISITION VEHICLES

a. General Comments

There are no restrictions to invest in Peru for foreign investors. The most common investment structure to enter into transactions consists in incorporating a Peruvian company (especially in asset deals, where such assets are located in Peru). For these purposes, S.A.C. companies are the most commonly used legal entities given their corporate flexibility.

As explained above, Peruvian companies (such as S.A.C. companies) are subject to Corporate Income Tax at a 29.5% rate over their worldwide annual net income. Dividends received by these companies from other Peruvian entities are exempt from Income Tax; however, dividend distributions carried out in favour of resident individuals and non-residents (entities or individuals) are subject to a 5% withholding tax.

Furthermore, it is worth noting that both the foreign investor and the Peruvian company receiving the investment may enter into Legal Stability Agreements with the Peruvian Government, provided certain requirements are met. These agreements provide guarantees regarding the stability of certain legal regimes that are in force on the date of execution (including the applicable Income Tax Regime); thus protecting both the foreign investor and its Peruvian SPV from any further legislative modifications or amendments made to such regimes while the agreement is in force.

Finally, it is important to consider that Peru has entered into bilateral treaties to avoid double taxation with the following countries: Brazil, Canada, Chile, Mexico, Portugal, South Korea, Switzerland and Japan. Peru is also a member of the Andean Community (together with Bolivia, Colombia and Ecuador), which has a multilateral tax treaty among its members.



b. Domestic Acquisition Vehicle

If a purchaser decides to create a Peruvian special purpose vehicle to enter into an M&A transaction in Peru, S.A.C. companies are the most commonly used legal entities due to their corporate flexibility. For instance, S.A.C. companies are not required to have a board of directors and the transfer of its shares may be carried out through a private document.

c. Foreign Acquisition Vehicle

There are no restrictions to invest in Peru through foreign vehicles. Such vehicles are often seen in equity deals with strategic purchasers. In the case of funds and private equity deals, the preference is to use a Peruvian special purpose vehicle as purchaser.

d. Partnerships and joint ventures

Generally, partnerships and joint ventures are not used as direct acquisition vehicles in M&A transactions. However, in cases where a joint venture is considered in the transaction from the purchaser's side, partners usually incorporate a Peruvian company (e.g. a S.A.C. company) as an acquisition vehicle and enter into a subscription agreement to fund the company, as well as a shareholders' agreement to regulate their relationship within the company.

e. Strategic vs Private Equity Buyers

This section is left intentionally blank.

6. ACQUISITION FINANCING

a. General Comments

There are no restrictions to bring funds into Peru. Such funds could be used in an M&A transaction whether by means of equity or by debt. As to the key highlights regarding tax treatment of debt, please see the section "Limitations on Interest Deductions" below.

b. Foreign Acquirer

From a legal standpoint, there are no differences if the foreign acquirer is an entity or an individual, or if it is a foreign or domestic acquirer.

c. Debt

The most commonly used structure to raise debt for an acquisition is the granting of a credit facility by a sole creditor or a syndicate of creditors.

i Limitations on Interest Deductions

Peru has enforced interest limitation rules based on a Fixed Ratio Rule, as provided by BEPS Action 4. Indeed, as from 1 January 2021, net interest exceeding 30% of the previous year's EBITDA is non-deductible for Income Tax purposes (note that the Peruvian Income Tax Law defines EBITDA as net income after offsetting losses, plus net interest, depreciation and amortisation). Interest that cannot be deducted in a given fiscal year because they exceed said limit, may be deducted as an expense in the following four fiscal years (but always subject to said 30% EBITDA limit).

Also, note that this limit applies regardless of whether the parties involved in a financing operation are related or not.

Nevertheless, said limit is not applicable to banking and insurance companies, taxpayers with an annual net income of 2,500 Tax Units (PEN 11,500,000 for FY 2022) or lower, taxpayers who execute public infrastructure projects, among others.

ii Related Party Debt

As previously mentioned, the 30% EBITDA limit on interest deductibility applies regardless of whether the parties involved in a financing operation are related or not.

Additionally, in the case of related party debt, applicable interest must be determined at market value by following transfer pricing rules.

iii Debt Pushdown

Although there are no specific tax rules regarding debt pushdowns, they may be carried out with careful attention to several anti-avoidance rules (such as the General Anti-Avoidance Rule and limitations on interest deductions). Special care needs to be taken to avoid having interest payments that end up being closely related to a capital reduction (such as in the case of a reverse merger conducted to consolidate both the asset and the related financing), as that may also jeopardise their income tax deductibility.

d. Hybrid Instruments

Generally, hybrid instruments are not structured for funding local acquisitions.

e. Other Instruments

The most commonly used structure to raise debt for an acquisition is the granting of a credit facility by either a sole creditor or a syndicate of creditors. Other mechanisms to raise debt (such as bond issuances) are not preferred, given the difficulties to close within the timeline of M&A deals, which is usually narrow.

f. Earn-outs

Earn-outs are commonly used in M&A transactions as a contingent payment due and payable post- closing. However, Peruvian legislation does not provide for a specific tax treatment for earn-outs. In most instances, earn-outs are simply characterised as a subsequent adjustment to the price of the acquired assets, but due to the lack of legislation, a case by case study of the specifics of the transaction is advisable.

7. DIVESTITURES

a. Tax Free

Asset and share transfers are generally taxed in Peru.

Moreover, Peru does not have a participation exemption regime. Capital gains obtained by Peruvian companies in the context of share/asset transfer operations are generally subject to the 29.5% Corporate Income Tax rate, whereas in the case of non-resident companies, such operations generally attract a 30% Income Tax rate (see exceptions detailed in sections 3.d. and 4.d.).

Also, note that indirect share transfers are deemed to be taxable events for Income Tax purposes. Therefore, the transfer of shares issued by a non-resident entity, which in turn owns (directly or indirectly) shares issued by a Peruvian company, is subject to Peruvian Income Tax, provided the following conditions are concurrently met:

- **50% test:** At any point during the 12 months prior to the operation, the market value of the Peruvian shares owned (directly or indirectly) by the non-resident entity is equivalent to, or higher than, 50% of the market value of all its shares.
- **10% test**: In any 12 month period, the seller and its related parties transfer (through one or multiple operations) 10% or more of the non-resident entity's share capital.

Notwithstanding the preceding comments, an indirect transfer is always deemed to have occurred when shares of a non-resident entity are transferred and the amount of the transfer price that is attributable to the Peruvian company's shares equals or exceeds 40,000 Tax Units (PEN184 million for FY 2022, or approximately USD50 million).

b. Taxable

In addition to the above, note that capital gains arising in the context of asset or share transfer operations are determined as the difference between (i) the tax basis of the corresponding shares/assets (i.e. acquisition price paid by the seller minus applicable depreciation) and (ii) the shares/assets' market value.

As indicated in Sections 3 and 4, in certain cases, the non-resident seller (individual or company) must certify the tax basis of the transferred shares/assets before the Peruvian Tax Administration, prior to any payments are made by the buyer. Otherwise, the seller would be subject to Income Tax (30%) over the shares/assets' total market value.

c. Cross Border

Cross border sales of Peruvian shares/assets are subject to the tax treatment detailed above. Nevertheless, in these operations it is important to consider the potential application of double taxation treaties entered into by Peru, which often contain provisions regarding maximum tax rates, methods to eliminate double taxation, among others.

Note that Peru has entered into bilateral treaties to avoid double taxation with the following countries: Brazil, Canada, Chile, Mexico, Portugal, South Korea, Switzerland and Japan. Peru is also a member of the Andean Community (together with Bolivia, Colombia and Ecuador), which has a multilateral tax treaty among its members.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Peruvian individuals and companies are subject to Income Tax over their worldwide income. As for non-resident individuals and companies, including their branches or permanent establishments incorporated in Peru, they are subject to Income Tax solely over their Peruvian source income.

b. CFC Regime

The Peruvian CFC Regime aims to prevent resident taxpayers from deferring Income Tax associated with passive income generated by non-resident entities under their control. A resident company may be subject to Income Tax on certain types of passive income obtained by non-resident entities (e.g. dividends, interest, royalties, among others), provided the following conditions are met:

- The Peruvian company, together with its resident related parties, own (directly or indirectly) more than 50% of the nonresident entity's share capital, profits or voting rights.
- The non-resident entity is incorporated in, or is deemed a resident of, a non-cooperative or low/zero tax jurisdiction (i.e. a so called tax haven), or a country where such passive income is subject to income tax at a rate equal to, or lower than, 75% of the applicable rate in Peru.

c. Foreign Branches and Partnerships

Foreign branches of Peruvian companies are subject to Corporate Income tax over their worldwide income (for such purposes, applicable regulations establish that the "resident" status of the Peruvian company extends to its foreign branch).

d. Cash Repatriation

There are no legal restrictions to repatriate cash and there is no need to obtain specific authorisations.

However, note that dividend distributions made by a Peruvian company in favour of its foreign parent company are subject to a 5% Income Tax rate, a withholding tax (which must be withheld by the Peruvian company).

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

In Peru, the concept of "real property-rich corporations" does not exist (although, under several double taxation treaties executed by Peru, the transfer of shares whose underlying value is mostly represented by real estate properties located in a Member State, may be taxable in such Member State as a capital gain).

Capital gains obtained from the transfer of (i) real estate property, or (ii) shares of companies whose main assets are real estate properties located in Peru, are subject to the tax treatment detailed in Sections 3 and 4 above.

Additionally, in the transfer of real estate properties, the buyer pays the corresponding Real Estate Transfer Tax, at a 3% rate over the asset's purchase price (provided it is higher than the property's registered value). It is important to note that the first 10 Tax Units of the applicable tax basis is exempt from this tax (PEN46,000 for FY 2022).

b. CbC and Other Reporting Regimes

Country by country reporting is considered a transfer pricing formal obligation, applicable to resident companies that are part of a multinational group whose accrued income in the previous fiscal year is equal to, or greater than PEN2,700,000,000 (approximately USD729,729,729).

Furthermore, other reporting regimes in the context of Peruvian transfer pricing rules include the following:

- **Local File:** Applicable to taxpayers (i) with an annual accrued income exceeding 2,300 Tax Units (i.e. PEN10,580,000 for FY 2022, or approximately USD2,859,459); and (ii) which have carried out transactions subject to transfer pricing rules for amounts between 100 Tax Units (i.e. PEN460,000 for FY 2022, or approximately USD124,324) and less than 400 Tax Units (i.e. PEN1,840,000 for FY 2022, or approximately USD497,297).
- **Master File:** Applicable to taxpayers (i) who are part of a group whose annual accrued income exceeds 20,000 Tax Units (i.e. PEN92,000,000 for FY 2022, or approximately USD24,864,864); and (ii) who have carried out transactions subject to transfer pricing rules for amounts equal to, or greater than, 400 Tax Units (i.e. PEN1,840,000 for FY 2022, or approximately USD497,297).

10. TRANSFER PRICING

Peruvian transfer pricing rules are aligned with OECD guidelines and are applicable to transactions carried out between related parties, as well as to those entered into with parties domiciled in non-cooperative or low/zero tax jurisdictions (i.e. so called tax havens). These transactions are valued on an arm's length basis and are subject to certain documentation requirements.

The Peruvian Tax Administration ("SUNAT") may adjust any overvaluation or undervaluation of such transactions for both the transferor and the acquirer (i.e. bilateral adjustment), by applying several valuation methods expressly established in the Peruvian Income Tax Law. Such adjustments may only be applied if the agreed value for the transaction generates a tax disadvantage for the Peruvian Tax Administration (e.g. if the agreed value generates a lower income tax in Peru than it would by applying transfer pricing rules).

Also, special reporting obligations may apply to resident companies that meet the conditions and requirements set forth in Section 9.b. above.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

There is no local concept of hybrid entity.

b. Use of Hybrid Instruments

There is no local concept of hybrid instruments.

c. Principal/Limited Risk Distribution or Similar Structures

In Peru, there are no specific regulations for these type of structures. Nevertheless, to the extent that Peruvian tax legislation is aligned with OECD guidelines, any consideration paid to local distributors must be appropriately set at market value (following transfer pricing rules, if applicable), and considering aspects such as the level of risk and the tasks or functions assumed by the distributor.



d. Intellectual Property

Consideration paid for the use of intellectual property in Peru (e.g. patents, trademarks, designs or models, copyrights, software, know-how, among others) is considered a royalty for Income Tax purposes.

Royalties are subject to the following Income Tax rates:

- 30% when paid to nonresident individuals or entities (via withholding).
- 5% when paid to resident individuals (via withholding, if applicable).
- 29.5% when paid to resident companies (in this case, the royalties are subject to the General Corporate Income Tax rate, applied over the company's annual net income).

Please refer to Section 3.f. for a description of the tax rules surrounding the amortisation of intangible assets.

e. Special Tax Regimes

Some of the most relevant special tax regimes in Peru to consider include the following:

- **Special Regime for the Early Recovery of VAT:** This regime allows taxpayers to obtain an early recovery of the input VAT paid on imports and/or local acquisitions of new capital goods, new intermediate goods, services and construction agreements, in the context of a project's pre-operational stage.
- **Investment Promotion Tax Regimes:** Taxpayers with investments in certain sectors (e.g. education, agriculture, agribusiness, R&D, among others) and locations (e.g. jungle, highland areas, among others) may be eligible to access the tax benefits provided for in these investment promotion regimes. Tax benefits may include lower tax rates, certain tax exemptions, accelerated depreciation regimes, higher expense deductions, etc.

12. OECD BEPS CONSIDERATIONS

Over the past years, Peru has been adapting its legislation to some of the measures proposed under the OECD BEPS action plans. In that context, Peruvian legislation sets forth a wide range of anti-abuse rules, which are in line with OECD BEPS principles (e.g. limitation on interest deduction, CFC rules, among others).

Also, Peru has joined the "Statement on a Two Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy", and has recently received an invitation from OECD to start its accession process to said organisation.

13. ACCOUNTING CONSIDERATIONS

In certain M&A transactions (especially in share acquisitions followed by a merger operation whereby the purchaser absorbs the target company), the price paid by the purchaser may be greater than the value of the target's assets that are being transferred through the merger, which in turn is considered as goodwill for Peruvian tax purposes.

In relation thereto, said goodwill shall be registered as an asset in the absorbing entity's balance sheet, but is not amortisable for Income Tax purposes.



14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

The distribution of reserves performed by a Peruvian company is considered a dividend for Income Tax purposes and is subject to a 5% rate. The Peruvian company must perform the corresponding tax withholding at the aforementioned rate. However, distributions performed in favour of other resident companies are exempt from such tax.

b. Application of Regional Rules

Other rules or obligations that are commonly considered in M&A work include the following:

- **Ultimate Beneficiary Affidavit:** Certain legal entities (such as Peruvian companies) and other vehicles (such as trusts, investment funds, etc.) are legally required to identify, obtain, update, declare, keep, and provide information regarding their ultimate beneficiaries. This information must be filed to the Peruvian Tax Administration ("SUNAT2) through a special affidavit (the "UBO Affidavit"), which is available through SUNAT's Online Operations System.

For such purposes, note that applicable legislation sets out the following criteria to identify the ultimate beneficiary of a legal entity (i.e. company):

- **Ownership criteria:** Individual who, directly or indirectly, owns 10% or more of the company's share capital.
- **Control criteria:** Individual who, directly or indirectly (or together with others as a decision-making unit) has the power, through means other than ownership, to appoint or remove the majority of the administrative, management or supervisory corporate bodies, or has decision-making power in the financial, operational, and/or commercial agreements to be adopted.

  Note that this criterion may be applicable solely if the ultimate beneficiary cannot be identified through the Ownership Criteria.
- **Highest-ranking officer criteria:** When no individual can be identified under the above criteria, the ultimate beneficiary shall be the individual occupying the highest administrative position.



The obligation to file the UBO Affidavit is currently under a gradual implementation. Initially, only legal persons considered "Main Taxpayers" (*Principales Contribuyentes*) as of 30 November 2019 were bound to do so. However, according to recent rules issued by SUNAT on this matter, the following legal persons and entities will be required to file the UBO Affidavit during fiscal years 2022 and 2023:

- Resident legal entities (i.e. Peruvian companies) whose 2021 net income exceeds 1,000 Tax Units (i.e. PEN4,400,000, or approximately USD1,200,000), must file the UBO Affidavit by June 2022.
- Resident legal entities (i.e. Peruvian companies) whose 2021 net income ranges from over 500 Tax Units (i.e. PEN2,200,000, or approximately USD600,000) to 1,000 Tax Units (i.e. PEN4,400,000, or approximately USD1,200,000), must file the UBO Affidavit by September 2022.
- Resident legal entities (i.e. Peruvian companies) whose 2022 net income exceeds 300 Tax Units (i.e. PEN1,380,000, or approximately USD373,000), must file the UBO Affidavit by June 2023.
- Other entities (such as trusts, investment funds, etc.) registered in SUNAT's Taxpayer Registry as of 31 December 2022 and which remain active in such registry until January 2023, must file the UBO Affidavit by January 2023.

- **Formal communications to SUNAT:** Any changes in the Peruvian company's shareholding structure following a share transfer operation must be communicated to the Peruvian Tax Administration ("SUNAT"), in order to update said company's Taxpayer Registry File (Ficha RUC).

Furthermore, the effective date of mergers, spin-offs and other types of corporate reorganisation, must also be communicated to the Peruvian Tax Administration ("SUNAT") within a 10 business day period following the reorganisation's entry into force. Otherwise, for tax purposes, SUNAT will consider that the reorganisation is effective as from the public deed execution date.

c. Tax Rulings and Clearances

Other than the tax certification process that nonresident sellers must undergo before the Peruvian Tax Administration ("SUNAT") to certify the tax basis of the transferred shares/assets (see Sections 3 and 4), there are no additional rulings or clearance processes relevant to share or asset acquisitions.



15. MAJOR NON-TAX CONSIDERATIONS

New anti-trust regime

On 7 January 2021, the Peruvian Congress enacted a new anti-trust regime, in force as from 14 June 2021. The new anti-trust regime requires economic agents to notify concentration operations that meet certain requirements to the National Institute for the Defense of Competition and Protection of Intellectual Property ("INDECOPI"). Under this new regime, operations that imply a change of control, meet the legal thresholds and have effects in Peru, would have to undergo an administrative procedure, which may increase closing deadlines. Additionally, there is a risk for transactions to be approved with certain conditions or even denied by INDECOPI. It must be noted that if a transaction meets the legal requirement and is not notified to INDECOPI, this would result in the invalidity of the operation and other administrative sanctions.

Moreover, applicable regulations establish that INDECOPI may act ex-officio in cases where the operation does not reach the legal thresholds, but there are "reasonable indications" to consider that it "may generate a dominant position" or affect "effective competition in the relevant market". Regulations have specified that the ex-officio action may be carried out within a maximum period of one year after the formal closure of the operation and that it occurs if there are "special circumstances" in which reasonable indications are identified that the operation can generate a dominant position or affect the effective competition in the relevant market.



16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Brazil	10/15	15	15	[1]
Canada	10/15	15	15	[2]
Chile	10/15	15	15	[3]
Japan	10	10	15	
Korea, Republic of	10	15	10/15	[4], [5]
Mexico	10/15	15	15	[4], [6]
Portugal	10/15	10/15	10/15	[2], [7], [8]
Switzerland	10/15	10/15	10/15	[2], [9], [10]

Footnotes	
1	Dividends – The lower rate applies if the recipient is a company that directly or indirectly controls at least 20% of the voting shares issued by the company performing the distribution.
2	Dividends – The lower rate applies if the recipient is a company that directly or indirectly controls at least 10% of the voting shares issued by the company performing the distribution.
3	Dividends – The lower rate applies if the recipient is a company that directly or indirectly controls at least 25% of the voting shares issued by the company performing the distribution.
4	Interest – As form 1 January 2015, a lower rate (10%) applies to interest on loans from banks and credit sales of industrial, commercial or scientific equipment.
5	Royalties – The lower rate applies to payments made for the provision of technical assistance services.
6	Dividends – As from 1 January 2015, a 10% maximum rate applies to all dividends subject to this treaty.
7	Interest – The lower rate applies to interest on loans from banks.
8	Royalties – The lower rate applies to payments made for the provision of technical assistance services in relation to the use of, or the right to us, any copyrights, goods or information that generate royalties.
9	Interest - The lower rate applies to interest on loans from banks and credit sales of industrial, commercial or scientific equipment.
10	Royalties – The lower rate applies to payments made for the provision of technical assistance and digital services.



17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

The information and documents detailed below correspond to all open fiscal years, according to the applicable statute of limitations. In general, the statute of limitations for tax matters is four years as from the fiscal year following the due date for filing the corresponding annual tax return. In cases where the taxpayer has not filed the tax return, the applicable statute of limitations is six years.

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Updated Taxpayer Registry File (*Ficha RUC)* issued by the Peruvian Tax Administration (SUNAT).
2	Tax Due Diligence	General	Corporate group structure.
3	Tax Due Diligence	General	Updated debt statements issued by SUNAT (*Reporte de Valores Emitidos Pendientes de Pago*) and any other Peruvian tax authorities to which the company pays taxes.
4	Tax Due Diligence	General	Detail and documentation related to any previous Peruvian corporate reorganisations performed within the Group (if applicable).
5	Tax Due Diligence	General	Minutes of Board of Directors where tax planning strategies have been approved or ratified.
6	Tax Due Diligence	General	Minutes of the Shareholders' Meetings and Board of Directors executed in the periods subject to review.
7	Tax Due Diligence	General	Confirm if the company has taken any high risk position concerning tax matters and involving the application of the General Anti-Avoidance Rule (GAAR).
8	Tax Due Diligence	General	Proof of submission of the Ultimate Beneficiary Affidavit to the Peruvian Tax Administration (SUNAT), if applicable.
9	Tax Due Diligence	Financial & Accounting	Audited and/or unaudited financial statements of the company, including accompanying schedules, for all tax years open to review.
10	Tax Due Diligence	Financial & Accounting	Monthly trial balances corresponding to all tax years open to review (Excel format).
11	Tax Due Diligence	Financial & Accounting	Detail of the company's main income and expense accounts for all tax years open to review.
12	Tax Due Diligence	Corporate Income Tax and VAT	Annual and monthly Corporate Income Tax returns and any amendment returns thereto (if applicable), as well as the corresponding proof of payment, for all tax years open to review.
13	Tax Due Diligence	Corporate Income Tax and VAT	Monthly VAT returns and any amendment returns thereto (if applicable), as well as the corresponding proof of payment, for all tax years open to review.
14	Tax Due Diligence	Corporate Income Tax and VAT	Annual and monthly work papers in relation to the Corporate Income Tax and VAT returns (if possible, in Excel).
15	Tax Due Diligence	Corporate Income Tax and VAT	List of all Corporate Income Tax additions and deductions, for all tax years open to review.



Nº.	Category	Sub-Category	Description of Request
16	Tax Due Diligence	Corporate Income Tax and VAT	Detail of the tax losses (date of origin and expiration) and the Annual income tax return of the fiscal year in which the company chose the corresponding loss compensation system, if applicable.
17	Tax Due Diligence	Transfer Pricing	List of related parties pursuant to the rules set forth in the Peruvian Income Tax Law and its Regulations.
18	Tax Due Diligence	Transfer Pricing	Detail of transactions and operations carried out with related parties or with entities/ individuals domiciled in non-cooperative or low/zero-tax jurisdictions (i.e. so called tax havens), for all tax years open to review.
19	Tax Due Diligence	Transfer Pricing	Main agreements entered into with related parties, if applicable.
20	Tax Due Diligence	Transfer Pricing	Copy of the corresponding transfer pricing informative returns and reports, for all tax years open to review.
21	Tax Due Diligence	Transfer Pricing	List of loans granted and received from related parties.
22	Tax Due Diligence	Withholding Income Tax – Nonresidents	Monthly withholding tax returns performed to non-residents, with the corresponding proof of payment, for all tax years open to review.
23	Tax Due Diligence	Withholding Income Tax – Nonresidents	Detail/list of the transactions carried out with non-residents, specifying if those transactions were subject to the withholding income tax and VAT, if applicable.
24	Tax Due Diligence	Withholding Income Tax – Nonresidents	Detail of the loans received from non-residents.
25	Tax Due Diligence	Withholding Income Tax – Nonresidents	Agreements entered into with non-residents related to services used, specifying the payment conditions.
26	Tax Due Diligence	Withholding Income Tax – Nonresidents	Tax residence certificates issued for the purpose of applying tax treaties, if applicable.
27	Tax Due Diligence	Temporary Net Assets Tax	Temporary Net Assets Tax returns and any amendment returns thereto (if applicable), as well as the corresponding proof of payment, for all tax years open to review.
28	Tax Due Diligence	Temporary Net Assets Tax	Detail of the additions and deductions declared in the Temporary Net Assets Tax returns.
29	Tax Due Diligence	Payroll Income Tax	List of the salary benefits or in kind granted to the employees, specifying the following: (i) remunerative or non-remunerative nature of the benefit, (ii) brief detail of the terms and conditions for the granting, (iii) payment periodicity, (iv) category of the employee eligible for the granting of the benefit, (v) mention the contractual or collective nature of the benefit.



Nº.	Category	Sub-Category	Description of Request
30	Tax Due Diligence	Payroll Income Tax	Report of the calculation of the social benefits related to extraordinary gratification for employment termination, compensation for arbitrary dismissal or other concepts granted due to employment termination. Please specify the accounting treatment given to those concepts.
31	Tax Due Diligence	Tax litigation	Summary of all closed and ongoing audit proceedings carried out by the tax authorities, together with information regarding the status of the ongoing proceedings, and copies of relevant inquiries and responses.
32	Tax Due Diligence	Tax litigation	Description of all material ongoing disputes with any tax authorities. Copies of all relevant documents and correspondence thereto.
33	Tax Due Diligence	Tax litigation	Legal opinion issued by the company's external legal counsel that includes an indication of all pending tax litigation proceedings before SUNAT, the Peruvian Tax Court or any other tax authority, as well as a projected result.

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1. INTRODUCTION

a. Forms of Legal Entity

Corporations in Poland can be formed as either a limited liability company, a joint-stock company, or a simple joint stock company.

- Limited liability company : The most common type of corporation is a limited liability corporation. It can have one or more shareholders. The minimum share capital is PLN5,000. The company is a Corporate Income Tax ("CIT") and value added tax ("VAT") payer.
- Joint stock company : A joint stock company can be founded by one or more entities (natural or legal persons). The minimum share capital is PLN100,000. The company is a CIT and VAT payer.
- Simple joint stock company : From 1 July 2021, entrepreneurs in Poland are able to operate in a new legal form, a simple joint stock company. A simple joint stock company can be founded by one or more entities (natural or legal persons). The minimum share capital is PLN1. The company is a CIT and VAT payer.

In general, there are no substantial tax differences between a limited liability company and a joint stock company. The general legal differences are presented below.

	Limited liability company	Joint-stock company	Simple joint stock company
Share capital	PLN5,000	PLN100,000	PLN1
Governing bodies	Management Board (one or more board members / daily management of the company). Shareholders Meeting (usually key decisions such as acquisition of real estate etc., appointment of board members / ordinary written form).	Management Board (one or more board members / daily management of the company). Supervisory Board (usually have the power to appoint board members). Stockholders Meeting (usually key decisions such as acquisition of real estate, etc. / form of notarial deed required).	Management Board (one or more board members / daily management of the company). Board of Directors (alternatively to Management board / one director or more / daily management of the company and supervision of company's activities). Stockholders Meeting (usually key decisions such as acquisition of real estate, etc. / ordinary written form / e-meetings possible).
Supervisory board	Optional (in principle).	Obligatory.	Optional (in principle).
Reserve capital do cover potential loss	Optional.	Obligatory (up to a third of the registered stock capital).	Optional.
Liability of the board members for liabilities of the company	Members of the management board can be held liable for the company's liabilities.	Not regulated.	Members of the governing bodies can be held liable for the company's liabilities.
Possible to register via website	Yes	No	Yes



Partnerships : The most common partnerships for business purposes are a general partnership, a limited partnership, or a limited joint-stock partnership.

- General partnership : A general partnership can be founded by at least two entities (individual or legal). It does not have legal personality but has legal and judicial capacity. There is no minimum capital requirement. The general partnership is deemed a CIT payer if its partners are not exclusively natural persons and the partnership does not disclose its taxpaying partners to the tax authorities within the statutory deadlines. Otherwise, the general partnership is a tax transparent entity for CIT purposes. The general partnership is a VAT payer.
- Limited partnership : A limited partnership can be founded by at least two entities (individual or legal). It does not have legal personality but has legal and judicial capacity. There are no minimum capital requirements. The limited partnership has a general partner with unlimited liability and a limited partner that is liable only for a specified amount indicated in the articles of association, which however can differ from the amount of capital investment made. Since 2021 limited partnerships are CIT payers. Previously the limited partnership itself was a VAT payer but the partnership itself was tax transparent for income tax purposes.
- Limited joint-stock partnership : A limited joint-stock company can be founded by at least two entities (individual or legal). It does not have legal personality but has legal and judicial capacity. The minimum share capital is PLN50,000. A limited joint-stock partnership has an active partner and a shareholder (provider of capital) that is a passive partner. The general partner has unlimited liability for the partnership's obligations while the shareholder is not liable for its obligations. A limited joint-stock partnership is subject to CIT and VAT.



b. Taxes, Tax Rates

Corporate Income Tax

The standard CIT rate in Poland is a 19% flat rate. The CIT rate for taxpayers whose revenues do not exceed EUR2 million and have the status of small taxpayers and for taxpayers starting their activity (in the first tax year) is 9% CIT (with some exceptions, e.g. if the taxpayer was created as a result of a restructuring). The 19% rate applies both to operating and passive income, however with respect to passive income withholding tax ("WHT") provision should be considered.

Polish tax residents are subject to CIT on their worldwide income and non-Polish tax residents are subject to CIT solely with respect to income obtained in the territory of Poland.

Personal Income Tax ("PIT")

PIT is calculated on a progressive scale as follows:

- Taxable base up to PLN120,000, tax is 17% minus tax reducing amount of PLN5,100
- Taxable base higher than PLN120,000, tax is PLN15,300 plus 32% of the surplus over PLN120,000
- As of 2022, the so-called "middle class tax credit" was introduced for some taxpayers to offset the negative effects of non-deductible healthcare contributions (also as of 2022). The allowance for the middle class reduces the tax base for employees and individual entrepreneurs (applying the tax scale) earning monthly from PLN5,701 to PLN11,141.
- 19%, for example, for capital gains, dividends, controlled foreign corporation ("CFC") income and derivatives.
- With respect to income exceeding PLN1 million per annum, an additional solidarity duty at the rate of 4% is calculated.

VAT

The VAT rates are as follows:

- 23%, standard VAT rate.
- 8%, reduced VAT rate applicable for example, to supplies of certain foodstuffs, medical products, restaurant and hotel services.
- 5%, reduced VAT rate applicable for example, to supplies of certain foodstuffs (e.g. bread, dairy products, meats) and certain kinds of printed books.
- 0%, applicable to the export of goods, EU intra-community supplies of goods and for example, international transport (under certain conditions).

Since 1 July 2020 all VAT rates are indicated in the new VAT rates matrix. In general, the VAT matrix unifies VAT rates within particular groups of products. The amendments in the area of VAT rates are associated with the introduction of new tax ruling like instrument called a Binding Rate Information ("BIR") (in force with 1 November 2019). Under the BIR, the Polish tax authorities establish the VAT rate for goods or services being subject of the upon the VAT taxpayer's request application of the VAT taxpayer. The BIR grants formal tax protection and tax certainty in case of the tax trying to challenge the correctness of the used VAT rate applied by the VAT taxpayer (formerly established in the information).



Real Estate Tax ("RET")

The RET imposed on buildings and plots of land is generally based on the area of the building / plot. The rates of RET are determined by the appropriate local authority. The maximum allowable rates are specified in the RET Act. RET for structures is 2% of the initial value of the structure paid annually.

Civil Law Activity Tax ("CLAT")

The CLAT rates are as follows:

- 0.5%, applicable to for example, an increase of share capital and loans.
- 1%, applicable to for example, the purchase of property rights including the purchase of shares.
- 2%, applicable to for example, the purchase of real estate and movable assets.
- In general, CLAT should be collected and paid by the acquiror, however, if the civil law transaction is being made in the form of notarial deed, CLAT should be collected by the notary (still, charged to the acquiror).

c. Common divergences between income shown on tax returns and local financial statements

Common permanent differences between financial and tax results include accounting provisions, donations exempt from income tax and non-tax-deductible costs envisaged by the CIT Law (e.g. representation costs).

Common temporary differences between financial and tax results include accrued interest, non-realised foreign exchange differences, differences between financial and tax depreciation and amortisation rates.

2. RECENT DEVELOPMENTS

The most important recent tax developments are:

a. Minimum Tax

Since 2022, minimum tax applies for Corporate Income Tax ("CIT") payers. It is levied when the proportion of taxable income to taxable revenues (both excluding capital gains) falls below 1% or a tax loss is incurred. For purposes of calculating the tax loss and profitability level, certain revenues and costs shall be disregarded, (e.g. costs, including depreciation write-offs, resulting from the acquisitions / creation / improvement of fixed assets).

The Minimum Tax rate is 10% of the sum of:

- 4% revenues (excluding capital gains);
- Financing costs from related parties exceeding 30% tax EBITDA;
- Value of deferred tax after disclosure of previously not amortised value of intangible assets to the extent it increases gross profit or decreases a loss; and
- Costs for purchased intangible services incurred towards related parties exceeding the sum of PLN3 million and 5% tax EBITDA.

The tax base can be reduced by certain deductions and special economic zone income.

Certain taxpayers are excluded from the scope of minimum tax, for example:

- Financial enterprises;
- Taxpayers in the first three years of business activity;
- Taxpayers that reported 30% decrease in revenues in comparison to the previous year;
- Taxpayers with shareholders being only natural persons and which do not hold shares, stocks or participations in partnerships that are not legal persons, rights in foundations or fund participation units; and
- Taxpayers participating in groups of at least two companies where one company holds 75% shares of other companies and the group achieved at least a proportion of 1% taxable income in taxable revenues.

b. Changes in the Principles of Collecting Withholding Tax ("WHT")

In general, certain payments (e.g. dividends, interest, royalties, payments for intangible services such as consulting, accounting, market research, legal services, advertising, management, control, data processing) made for the benefit of a foreign entity are subject to 19% / 20% WHT. The obligation to withhold tax at source is imposed for tax remitters whether they are a corporation, an individual or organisational units without legal personality (therefore it could also apply to a Polish permanent establishment).

However, if certain conditions are met the payment could benefit from the WHT exemption, a preferential rate or could be out of scope of WHT on the basis of the EU Directives or Double Taxation Treaties ("DTTs"). Amongst others, the Polish tax remitter must perform a due diligence process aimed at verification of whether all the conditions for applying WHT preference have been met.

Under the regulations binding as of 2022, for dividend / dividend like / interest / royalty payments (not intangible service fees) over PLN2 million to a non-Polish related party (in a given year to a given taxpayer), the Polish tax remitter will be obliged to collect WHT on the surplus of over PLN2 million under the domestic 19% / 20% rate ("Pay and Refund Mechanism"). The taxpayer / tax remitter (in certain cases) will be then allowed to claim for WHT overpayment. The refund procedure can take up to six months and would require the taxpayer to provide substantial documentation.

There are two exceptions in order not to apply the Pay and Refund Mechanism: either the tax remitter's board member gives representations on meeting all conditions to apply DTT/EU Directives preferences (under the fiscal penal code) or the taxpayer obtains an opinion from the tax authority on the application of the WHT exemption / lowered WHT rate resulting from DTT / EU Directives (it is valid for 36 months).

New anti-abuse regulations have been also introduced which provide for a rule that if a taxpayer without justified business reason did not qualify payments as subject to Pay and Refund Mechanism, tax authorities may include the payments into the threshold of PLN2 million anyway.

Under the new regulations, use of certificate of tax residence copies has been also allowed.

c. Tax on Shifted Profits

Tax is imposed on "shifted profits", i.e. certain costs incurred (directly or indirectly) towards related entities such as intangible service fees, (for example, advisory, marketing, management), royalties, debt financing costs, costs related to the transfer of functions, assets or risks (exit fee).

The tax on shifted profits applies if:

- The payment is made directly or indirectly to a related party whose tax actually paid is 25% lower than the hypothetical tax which would be due in the case of the application of the Polish standard CIT rate 19%; and
- The received payments constitute at least 50% of the taxable revenues of the recipient (calculated according to Polish provisions); and
- the payments are tax-deductible, deducted from the taxable income, tax base or tax in any manner or further paid by the recipient, in particular in the form of dividend; and
- The total of the above mentioned kinds of costs payable to both related and non-related entities exceeds 3% of the sum of tax-deductible costs (of the Polish taxpayer making the payment) in a given year.

The tax rate applicable to the shifted profits is 19% and the tax burden lays on the Polish company making the payment.

The tax is not applicable to payments made to EU/EEA based related company if it conducts a "significant genuine business activity".



d. Changes to Tax Deductibility of Debt Financing Costs

Since 2022, the new regulations state that the excess of debt financing costs over interest-like revenues may be deductible up to an amount of 30% of the taxpayer's tax EBITDA or safe haven of PLN3 million (whichever is higher, previously it was uncertain whether one of these thresholds should be used or the sum of both).

Additionally, starting from 2022, debt financing costs shall be excluded from the tax-deductible costs when financing was received from related entities for direct or indirect investments, in particular: acquisition or subscription of shares (stocks), acquisition of all rights and obligations in a partnership, payment of additional contributions, increase of the share capital or redemption of shares.

e. Removal of the limitations on Tax Deductibility of Intangible Services and Licence Costs

Article 15e of the CIT Act, limiting the tax deductibility of intangible service fees and royalties incurred towards related parties and tax haven residents, has been repealed. The rationale behind it has however been, included in new, stricter instruments like a minimum tax (section 2.a. above) and tax on shifted profits (section 2.c. above).

f. Changes to Taxation of Reorganisations of Taxpayers

The taxation of share for share swaps, mergers and demergers have been modified in 2022, including new definitions of revenues and stricter conditions for achieving tax neutrality. According to the new provision; generally speaking, only the first reorganisation is tax neutral, meaning that if the shares in a merged or demerged company or shares involved in a share-for-share swap have been acquired by the shareholder as a result of a previous merger, demerger or share for share swap then the revenue resulting from this subsequent action is subject to taxation.

g. Loosening Rules Regarding Tax Capital Group ("TCG") Regime

The minimum average share capital requirement of the companies forming a TCG has been lowered from PLN500,000 to PLN250,000. Also, the requirement to maintain a certain profitability ratio for the functioning of a TCG has been repealed. Certain reorganisations of TCG participants and the establishment of new companies within the TCG are now permitted to some extent. The rules regarding the utilisation of tax losses of the TCG and its participants have been loosened.

h. Polish Holding Company

A new quasi participation exemption regime has been introduced. Under some conditions, a Polish Holding Company ("PHC") can benefit from a tax exemption of 95% of the received dividends and 100% exemption of the revenues from the sale of shares in subsidiaries to unrelated entities.

A PHC is a limited liability company or joint stock company which owns at least 10% of shares of another limited liability company or joint stock company or foreign subsidiary for an uninterrupted period of at least one year. Additionally, the PHC must conduct actual business activity.

The PHC's shareholder (direct or indirect) cannot be managed from / registered / seated at a "tax haven" or a country with which Poland has not signed a DTT / agreement on the exchange of tax information.

In order to qualify for PHC regime, the PHC's subsidiary cannot be a real estate rich entity and cannot hold more than 5% of shares in other companies. Neither the PHC nor its Polish subsidiaries can participate in the TCG regime and are excluded from some tax exemptions (special economic zones and Polish investment zone schemes, EU Directive based dividend exemptions).

i. Changes in Depreciation Rules of Buildings and Premises

The tax depreciation performed by real estate companies cannot exceed the depreciation made for financial accounting purposes. This applies to non-residential buildings and premises and other assets from the first group of fixed asset classification.

j. Tax Reliefs

In 2022 new tax reliefs have been introduced:

- Consolidation relief : additional tax relief of enumerated costs connected to the acquisition of the majority rights in a subsidiary being company for the purchasing taxpayer (i.e. taxes, legal fees, valuations). Relief is capped at PLN250,000.
- IPO relief : additional tax relief of enumerated costs incurred directly on making an initial public offering of shares with the intention of applying for admission to trading on a regulated market, e.g. preparation of prospectus, notarial and fiscal fees, necessary announcements, legal, tax and financial service fees. The amount of the relief depends on the type of the cost, but it generally amounts to either 50% or 150% of its value.
- Expansion relief : additional tax relief of enumerated costs incurred by taxpayers to enter new markets (in order to increase their sale revenues); the deduction is capped at PLN1 million provided that the taxpayer increases sale revenues in the next year or generates revenues from the sale of the new products which were not offered so far or were not offered in a given country.
- Other : robotisation and prototype tax reliefs, add-ons to the research and development relief.

k. Hybrid Mismatches

Since 2021, ATAD2 based provisions concerning hybrid mismatches measures also apply in Poland. The provisions are aimed at counteracting discrepancies in the qualifications of hybrid structures used by entities acting in an international context to apply tax optimisation. The divergence in the qualifications of hybrid structures occurs when the tax law of countries differently classify types of income (financial instruments, e.g. being the basis for making profits from debt or equity financing taxed as income from debts, share in profits or financial derivates) or entities, (e.g. issue of tax residence or permanent establishments). This, in effect, may lead to one of the two hybrid mismatch outcomes:

- a double deduction, (i.e. a situation in which payments are double counted as tax costs in more than one jurisdiction); or
- a deduction without inclusion, (i.e. a situation in which tax costs are settled in one jurisdiction with no revenue recognised by the other party to the transaction in another jurisdiction).

In general, the provisions indicate which payments cannot be included in the tax-deductible costs or require the assessment of income from certain payments instead of tax-deductible costs.

l. Effective Place of Management

A definition of the place of management for purposes of determining the tax residence has been introduced. It states that the taxpayer has effective management in Poland if its business is conducted in Poland in an organised and ongoing manner, based in particular on agreement, court judgement, decision, document regulating the establishment or functioning of that entity, proxies and relations between related parties in light of transfer pricing regulations.

m. COVID-19 Measures: Introduction of the "Anti-crisis Shield"

Due to the COVID-19 crisis, on 31 March 2020 an act referred to as the "Anti-crisis Shield" was published in the official Journal of Poland. Most of the provisions provided by the act already entered into force as of 31 March 2020.

The "Anti-crisis Shield" was then updated numerous times, currently reaching its ninth iteration. The whole aid package ("Anti-crisis shield" Act, as well related acts and resolutions) addresses five main pillars including different areas of the economy. The value of the package is estimated at PLN312 billion (EUR65 billion), i.e. almost 15% of the Polish GDP (c.a. PLN67 billion covered from the state budget, remaining amount covers providing additional liquidity to the market in the form of, for example, state backed guarantees for medium and large business and support funds provided by Polish Development Fund).

It should be noted that certain measures may be discussed from the perspective of state aid and as such may be subject to certain limitations. Tax and legal measures resulting from all Anti-Crisis Shields cover in particular:

- Unconditional exemption of all taxable revenues being subject to building-related revenue tax (special tax on owned and rented/leased out non-residential buildings) due since 1 January 2021 until the end of the month in which the pandemic state caused by COVID-19 is revoked.
- Potential tax exemptions from the real estate tax for entrepreneurs whose financial liquidity has worsened due to COVID-19, if introduced by certain local government bodies .
- No prolongation fee for applications for postponement / splitting into instalments of tax payments or tax arrears or postponement / splitting into instalments of liabilities resulting from social security contributions due for the period starting 01 January 2020 until 30 days after the revocation of the epidemic state caused by COVID-19 or a state of epidemic risk.
- If certain conditions are met possibility to make a one off deduction of 2020 tax loss, up to PLN5,000,000 through adjustment of 2019.
- Certain tax benefits such as one off depreciation of fixed / intangible assets or amended rules of R&D relief for taxpayers incurring expenses aimed at countering COVID-19 effects.
- Possibility to treat contractual penalties as tax deductible if they result from the obstacles caused by COVID-19.
- Suspension of the deadlines for domestic DAC6 reporting running 31 March 2020 up to 30 days after cancellation of the epidemic state.
- Extension for three months of the deadline for issuing an individual tax ruling for applications submitted but not resolved before the entry into force of the law and also for the applications submitted after the entry into force of the law.
- Changes in regulations of the Commercial Companies Code enabling the possibility of decisions making by the board of directors and supervisory board in remote mode.

- During the state of epidemic and two months after, for WHT purposes: (i) the possibility to use the copy of the certificate of residency of the foreign taxpayer, if the data provided in the certificate does not raise doubts (ii) the possibility to use the certificate of residency of the foreign tax payer for 2019 and 2020 (statement of the tax payer that the data provided in the certificate remain unchanged is required) (iii) the extension of validity of certain certificates of residency.
- Introduction of temporary protection for a specific group of the Polish entrepreneurs including public companies, against takeovers by entities not being a member of the EU, EEA or OECD. The protection covers entities whose revenue from sale of goods and service provision exceeded the equivalent of EUR10 million in any of the two financial years preceding the notification (as of 30 April 2022, the provisions will be no longer in force) .

n. Non-Deduction of Healthcare Contributions From Personal Income Tax ("PIT")

From the beginning of 2022, it is not possible to deduct healthcare contributions from the PIT (previously possible to deduct 7.75% out of the due 9%).

Moreover, the healthcare contributions began to be due from many additional legal titles that were previously not subject to it or that were was payable in a fixed amount, regardless of the amount of income (in particular board members and individual entrepreneurs).

These changes have contributed to a reduction in the cost effectiveness of many remuneration structures.

o. R&D Deduction Increase in Personal Income Tax ("PIT")

Starting from 2022, the possibility of deducting research and development relief was increased from 150% or 100% of employee costs to 200% of employee costs.

p. National System of Electronic Invoices

With effect from 1 January 2022 the National System of Electronic Invoices (Polish – "Krajowy System e-Faktur", hereinafter: "KSeF") has been introduced. During the first stage of the implementation, taxpayers may use KSeF on a voluntary basis parallel with traditional paper and electronic invoices (from 2023 KSeF most likely will become obligatory for all VAT taxpayers).

KSeF is a system that enables the taxpayers to issue, receive, keep and share so-called structured invoices via a special environment prepared by the Ministry of Finance. In other words: it is an advanced digital environment which assigns a unique identification number to the uploaded document and verifies whether the data contained therein is in line with the structured invoice template. After that, the invoice is ready for download from the system by a certified purchaser.



3. SHARE ACQUISITION

a. General Comments

Share deals are a common acquisition structure in Poland. The acquisition may be also conducted via merger of the companies.

The latter may be more beneficial from the tax point of view (under relevant circumstances it can be conducted as tax neutral) but is used mainly in intra group transactions.

For clarity, please note that the tax consequences of a deal may be different for the sale of the shares in a company and the sale of a partnership interest (depending on the tax regime applied to the partnership).

b. Tax Attributes

In general, a tax loss may be fully carried forward for five years. A tax loss resulting from one source of income may only be deducted from income from the same source. In general, the amount deducted in one year cannot exceed 50% of the total loss. However, if the tax loss does not exceed PLN5 million it could be deducted once in a given year.

Change of control does not affect the right to utilise tax losses of the acquired company under a share deal. Certain restrictions on utilisation of losses exist in respect to other forms of acquisitions. In particular losses of entities disappearing under merger, spin-off, liquidation or division are lost for tax purposes. In some cases, also the acquiring company is not allowed to harvest its own tax losses after certain types of acquisitions (i.e. mergers, acquisitions of going concerns by way of in-kind contribution and cash contributions used to acquire going concerns). The limitation applies in cases where the profile of business activity of the acquiring company changes after the acquisition or some changes in its ownership structure occur.

c. Tax Grouping

Polish Corporate Income Tax ("CIT") Law allows a group consisting of at least two capital companies with capital relationships to be viewed as a single CIT payer, a so called ("TCG"). The CIT provisions include a number of requirements that have to be fulfilled to establish the TCG (and during its functioning), e.g. it should consist solely of the Polish corporations, the parent entity should hold directly at least 75% of the shares in subsidiaries and the entities do not have any outstanding tax liabilities. In general, the main reason behind the establishment of the TCG is a consolidation of tax results of its members.

The consolidation of the tax result can be also achieved in a structure involving a holding company having profits (shares) in a partnership running a business activity (in practice only general partnership assuming its tax transparency).



d. Tax Free Reorganisations

Under the Polish CIT law, in kind contributions of a going concern, mergers, divisions, spin-offs and exchanges of shares may be performed free of tax based on the domestic provisions implementing Merger Directive (90/434/EEC). The possibility for tax neutral reorganisation covers also cross border mergers of capital companies.

The domestic provisions provide for specific conditions for neutrality of mergers (the operation is CIT neutral provided that the surviving company holds at least 10% of the shares of the company disappearing through the merger or does not hold any shares in the latter). Spin-offs and divisions are neutral provided that both the assets carved out and staying in the divided company constitute organised parts of an enterprise. In both cases it is necessary that the acquiring company continues the valuation of the acquired assets for tax purposes. In the case of the shareholder of the acquired / divided company, in most cases only the first reorganisation of the shares can be tax neutral.

Due to specific anti-abuse regulations, tax neutrality of mergers, spin-offs or exchange of shares only apply provided that business justifications for these operations are assured. Moreover, please note that Polish transfer pricing regulations allow the tax authorities to examine the arm's length conditions of remunerations in relation to restructuring between related entities (including an exit charge or a lack of it thereof). It should be highlighted, that there is no specific form to be submitted in order to benefit from the tax neutrality of reorganisation, however a defence file indicating the business justification of the reorganisation should be prepared and archived in case on potential future tax audit.

e. Purchase Agreement

Poland follows EU and international standards. Shares in Polish target companies are often purchased through a Polish or foreign SPV. From a tax perspective no debt pushdown of the acquisition debt is possible (i.e. related interest would treated as non-deductible).

Share purchase agreements typically include warranties and indemnities to cover tax liabilities and expenses related to events or periods that occurred before the closing of the transaction, as tax history and potential tax liabilities of the purchased company "survive" the transaction. No special tax rules regarding warranties for share purchase agreements exist.

It is a standard practice for the buyer to perform a tax due diligence of the target company and potentially obtain coverage from an insurer on W&I and/or tax indemnities. In case of real estate deals specific additional clauses should be considered e.g. related to capital gain tax of the seller where the obligation to remit tax lies on the target.

f. Transfer Taxes on Share Transfers (Including Mechanisms for Disclosure and Collection)

Acquisition of shares in a Polish company is subject to Civil Law Activities Tax ("CLAT") at 1% (on FMV of the shares) on the side of the buyer. Acquisition of shares in a foreign company by a Polish entity will be also subject to 1% CLAT if the sale and purchase agreement ("SPA") is concluded in Poland.

CLAT should be paid by the purchaser and the CLAT return should be submitted to the tax office within 14 days from the transaction.

g. Applicability of "Purchase Accounting" to a Direct or Indirect Acquisition of Shares

Purchase accounting is a default approach under Polish Accounting Regulations. Pooling of interest accounting is an allowed alternative for business combinations under common control.

In general, the acquired company should close its books. However, if the merger is performed according to the pooling of interest method and under the merger no new company is established, the books may not be closed. In case of mergers as a result of which there is no loss of control over them by their current shareholders, the pooling of interest method may be applied.

As a result, in the acquired company the tax year does not end, books are not closed, and the annual CIT return is not filed at the moment of the merger. It also means that revenues and tax-deductible costs of the given year of both companies can be settled jointly.

h. Share Purchase Advantages

Under purchase accounting, assets and liabilities of the acquired company are valued at fair value as of the merger date in the accounting records of the merged entity. As a result of merger, general succession rules apply, which mean full continuation of tax settlements, including initial value of tax assets and liabilities.

In case of share deals, it is recommended that the target company obtains a certificate issued by the tax authorities confirming that the target company has no outstanding tax liabilities. Such certificate, however, does not provide any formal protection but is an indication that all taxes declared by the target company have been paid. There is no legal possibility to separate the liability of the target company from its tax liabilities arising prior to acquisition.

Since 2022, a quasi-participation exemption regime has been launched in Poland. For more information please see point 2.h. above.

i. Share Purchase Disadvantages

In case of the mergers settled with the purchase accounting method, disadvantages include the additional costs of an asset valuation and identification of undisclosed assets. The mergers also result in an obligatory audit of the financial statements for the period when the merger occurred without any exemptions for small entities.

4. ASSET ACQUISITION

a. General Comments

Despite the possibility of structuring as a share deal, transactions may be structured as: (i) a going concern deal or (ii) an asset deal. Such transactions are conducted in particular in the real estate industry.

Going concern (the organised part of an enterprise) is a combination of both tangible and intangible items (including liabilities) which, in organisational and financial terms, are separated within an existing enterprise, are aimed to carry out specific business activities and which could form an independent enterprise carrying out these activities.

b. Purchase Price Allocation

The purchase price should be allocated to the assets being the subject of the transaction (in particular to fixed and intangible assets) for the proper allocation of the values of the assets to the fixed and intangible asset register for Corporate Income Tax ("CIT") purposes and for Real Estate Tax ("RET") purposes.

c. Tax Attributes

In going concern transactions, there is a possibility to cut-off the responsibility of the purchaser (with respect to potential tax arrears of the seller), provided that special certificates are issued by the tax authorities shortly prior to the acquisition. The certificate could be issued on the request of seller or on the request of purchaser (with a consent of the seller). In general, tax authorities have a seven day deadline to issue such a certificate, however in practice the above period could be extended. If the purchaser holds such certificates, it would be responsible for the tax arrears only up to the amounts revealed in the certificates.

In asset deal transactions, the purchaser is not responsible for historical tax risks of the seller.

d. Tax Free Reorganisations

See point 3.d. above.

e. Purchase Agreement

A purchase agreement should specify the form of the acquisition, i.e whether it is an asset deal or a going concern deal.

Price for particular assets (category of assets) should be presented in the purchase agreement for proper application of CLAT rates (in the case of a going concern deal).

f. Depreciation and Amortisation

Goodwill is amortised only if it has arisen as a result of an acquisition of the going concern through purchase, leasing enterprise under financial lease agreement (under additional conditions) or contribution in kind of an enterprise under the specific provisions on commercialisation and privatisation. Goodwill revealed upon acquisition of shares in the company or contribution in kind of company's enterprise is not depreciable.

If goodwill were to be crystalised, the total value of fixed and intangible assets is the market price. If goodwill does not crystalise, as a result of the purchase of the going concern, the total value of fixed and intangible assets to be depreciated will be a difference between the going concern's purchase price and value of assets other than fixed and intangible assets.

In the case of an asset deal, assets should be introduced into the book of the purchaser at the acquisition value. The taxpayer should recognise initial tax value of the assets for depreciation purposes and Real Estate Tax ("RET") purposes equal to the acquisition price of the given asset.

g. Transfer Taxes, VAT

Transactions involving a going concern are not subject to VAT, but they are subject to CLAT (1% or 2% depending on the kind of transferred assets).

Transactions involving assets, which are not forming a going concern, are generally subject to VAT (standard rate, 23%). As long as the buyer runs a VATable activity, VAT charged upon acquisition should be effectively neutral, however it could cause some cash flow concerns. Input VAT incurred upon acquisition may be utilised via deduction from output VAT or direct refund (the standard refund period is 60 days). Under certain circumstances VAT exemption may be applied, where also VAT taxation option is possible.

In general, if the transaction is VAT exempt it could be subject to 1% or 2% CLAT, which could cause a material tax leakage (CLAT paid cannot be recovered, however it could constitute tax deductible costs for CIT purposes).

h. Asset Purchase Advantages

In the case of a going concern there is a possibility to cut off the responsibility of the purchaser with respect to potential tax arrears of the seller, provided that special certificates are issued by the tax authorities shortly (within 30 days) prior to the acquisition. If the purchaser holds such certificates, it would be responsible for the tax arrears only up to the amounts revealed in the certificates.

In case of purchase of the assets, the purchaser is not responsible for historical tax liabilities.

i. Asset Purchase Disadvantages

No tax losses are transferable under asset transactions. Additionally, it is recommended that the tax treatment (VAT and CLAT) of an asset transaction is secured via tax ruling and purchase documentation from the context of the potential reclassification asset deal vs. going concern deal.



5. ACQUISITION VEHICLES

a. General Comments

The common structure for acquisitions in Poland was the purchase of the companies by SPVs where subsequently the debt pushdown was conducted. Due to the changes in the Polish CIT Law in 2018 denying interest on the debt pushdown to be a tax cost, such structures are not currently recommended from a tax perspective.

b. Domestic Acquisition Vehicle

See above.

c. Foreign Acquisition Vehicle

The most common jurisdictions in Poland for foreign holding are currently the Netherlands and Luxembourg.

If a foreign acquisition vehicle is utilised, it is very important from a tax perspective that the foreign company has an appropriate business substance and the structure is not artificial. Otherwise, adverse tax consequences may arise, for example with respect to WHT treatment.

d. Partnerships and Joint Ventures

Only general partnerships, if certain conditions are met, are tax transparent in Poland, where income tax is taxed at the level of the partners of the partnership. The purchase or creation of the partnership in Poland results in a Polish permanent establishment for its foreign partners.

In Poland, JVs may be corporate (establishing the company) and contractual (concluding the civil law agreement). For corporate JVs both corporate entities and partnerships may be used.

Contractual JVs can be affected through conclusion of civil law agreements, (e.g. co-operation agreements). Contractual JVs are often used where a single project (and not an ongoing business activity) is concerned, (e.g. single investments in the construction sector). Please note that Polish law does not recognise the concept of a deemed partnership.

e. Strategic vs Private Equity Buyers

There are no particular differences between strategic and private equity buyers in terms of their taxation.

Irrespective of the classification into strategic and private equity buyers, there are special taxation regimes for so called Alternative Investment Companies (in Polish: "Alternatywne Spółki Inwestycyjne") and closed ended investment funds as well as a CIT exemption for certain open ended investment funds, specialised open ended investment funds and EU-/EEC-based mutual investment institutions, however, all of them have very limited practical relevance.

6. ACQUISITION FINANCING

a. General Comments

For intragroup loans generally there should be no administrative burden to flag. For the tax treatment please refer to point 6.c. below.

b. Equity

The most common jurisdictions for holding equity in Polish entities are the Netherlands (especially in case of purchase of real estate companies due to the lack of real estate clause in the double tax treaty between Poland and the Netherlands, this may however change soon due to very advanced works aimed at the introduction of a real estate clause) and Luxembourg (in particular due to the flexibility of Luxembourg regulations).

Purely from tax perspective, there are no specific guidelines on the amount/proportion of equity that corporate taxpayers should have. However, the Polish tax administration examines (and sometimes in case of excessive debt financing challenges) the financing structure of the taxpayers (i.e. based on the anti-abuse regulations if the financing structure is deemed to be set up to obtain unjustified tax benefits).

Equity injections are generally not tax-deductible. In some cases, "interest" on profits allocated to share premium / reserve capital and so called additional payments (which from a legal point of view differ from increases of the share capital) can be deducted for tax purposes. This is so called Notional Interest Deduction mechanism described in more details in the section 6.e. below.

c. Debt

i Limitations on Use of Debt

Generally, the amount of the financing should be at the market level, in another words the value of the loan should not be higher than the credit facility that the company would be able to receive from the bank. The other issue is the ratio of the group loan vs equity, there should not be high discrepancies between their values, however the Polish Tax Law does not indicate any allowed threshold of debt to equity ratio (which was used in the past for thin capitalisation restrictions).

ii Limitations on Interest Deductions

As of 2022, interest is tax deductible up to PLN3 million or 30% tax EBITDA whichever is higher. Restrictions also apply to third-party loans and bank financing.

Interest on debt pushdown is not tax deductible.

The costs of debt financing are also excluded from the tax costs when financing has been received from related entities and directly or indirectly financed equity transactions, in particular: acquisition or subscription of shares (stocks), acquisition of all rights and obligations in partnership that is not legal person, payment of additional contributions, increase of the share capital acquisition of own shares in order to redeem them.

Corporate Income Tax ("CIT") law provides that interest on own capital invested by the taxpayer in a source of his revenue does not constitute a tax-deductible cost. This limitation covers loans granted to partnerships by their direct partners, proportionally to their participation (interest could constitute tax deductible costs for other direct partners of the subsidiary proportionally to their participation). However, it should be highlighted that such limitation only applies to borrowers being a partnership, thus the limitation does not apply to corporations.

iii Related Party Debt

From the perspective of thin capitalisation rules, currently there are no distinctions between tax treatment of related party debt and unrelated party debt.

As mentioned in point (ii) above, the costs of debt financing are excluded from the tax costs when financing has been received from related entities and directly or indirectly financed equity transactions.

iv Debt Pushdown

Interest on debt pushdown is not tax deductible. Therefore, such structuring is ineffective from a tax point of view.

d. Hybrid Instruments

In Poland, there are no typical hybrid instruments which may be used for tax purposes.

Poland has transposed the amendments provided by the EU Parent Subsidiary Directive into its domestic legislation. This refers in particular to the anti-hybrid rule with respect to dividends obtained by a Polish company if it was deducted for tax purposes by its EU subsidiary as well as the anti-abuse rule with respect to dividend distributions.

As of 2021, there is also a general anti-hybrid mismatch regulation in place. For more information please see point 2.k. above.

e. Other Instruments

The Notional Interest Deduction mechanism allows for a deduction for tax purposes of "virtual interest" on profits allocated to share premium / reserve capital and additional payments (cash injections) provided to the company up to PLN250,000 per year (up to three years).

The Polish tax authorities currently tend to verify the substance requirements in case of foreign entities and target the artificial tax avoidance schemes. Based on the General Anti-Abuse Rule ("GAAR"), the Polish tax authorities are entitled to recharacterise the transaction based on the "substance over form" principle.

f. Earn-outs

These are contractual provisions stating that the seller of a business is to obtain additional compensation in the future if the business achieves certain financial goals, usually a percentage of sales or earnings is often used in transactions.

Earn-outs should be verified from tax perspective (moment of tax recognition, CLAT treatment). In particular, it should be considered whether the earn- outs are subject to CLAT. There are some arguments to claim, that if the initial price has been determined with respect to arm's length rules, the payment of earn-out should not be subject to CLAT (such approach seems to be also confirmed by tax authorities in the latest tax rulings).



7. DIVESTITURES

a. Tax Free

Please refer to point 3.d.

b. Taxable

If the conditions for tax neutrality of the transactions (point 3.d.) are not met (including lack of business justification), the transactions will be subject to tax.

c. Cross Border

Please refer to point 3.d.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Polish tax residents are subject to income tax in Poland on their worldwide income. Income derived by the Polish tax residents abroad is generally subject to tax in Poland generally based on a foreign tax credit method unless relevant double tax treaty provides otherwise.

Polish non-residents are subject to income tax in Poland on the Polish sourced income which is in particular income from activities conducted in Poland, e.g. through branch or partnership, income from real estate located in Poland and its disposal, securities / derivatives publicly listed in Poland and their disposal, sale (direct or indirect) of shares in a company with at least 50% of assets being real estates located in Poland or sale of shares in the company meeting a special definition of a real estate company.

Also, withholding tax is levied also on the passive income, (i.e. dividends, interest and royalties of non-residents as well as the fees for intangible services including advising, accounting, market research, legal services, advertising, management and control, data processing, employees recruitment and personnel obtaining services, guarantees and suretyships, and performances of similar nature).

b. CFC Regime

Effective from 1 January 2015, certain income or gains derived by foreign subsidiaries of Polish taxpayers that fit the definition of a CFC are subject to tax in Poland. A CFC's income is subject to tax in Poland at 19% at the level of the Polish shareholder.

From 2019, the definition of foreign entities which could be affected by the CFC provisions has been extended and also include: trusts, foundations, capital groups or particular companies forming capital groups which conduct CFC qualified business activity. Additionally, the new regulations have extended the CFC list of qualified links between a taxpayer and foreign entity to include expected and future rights to profits and exercising actual control.

Since 2022, the catalogue of entities constituting a CFC has been further extended as well as the list of passive income sources taken into account when assessing whether an entity has CFC status.



c. Foreign Branches and Partnerships

A foreign company may set up a branch in Poland. A branch is a part of foreign company, but it does not have its own legal personality. A branch may only conduct activities that are within the scope of the business activities of the foreign company (head office).

A foreign entity may also set up a partnership in Poland.

Both a branch and a partnership will constitute Polish permanent establishments for foreign entities (unless the partnership is already a Polish CIT taxpayer by its legal form), they will be subject to Polish income tax and if it applies, the Polish fixed establishment for VAT purposes. The foreign taxpayer having a branch or a partnership in Poland is subject to standard CIT rate on the income obtained in the territory of Poland.

d. Cash Repatriation

Cash repatriation may be conducted through payment of a dividend, payment of remuneration for redemption proceeds or granting of loans.

Dividends may be subject to WHT in Poland unless WHT exemption applies (the Pay and Refund Mechanism and the related newly introduced anti-avoidance provision should be considered here as well for more please see section 2.b.). There is no WHT exemption applicable to the payment of redemption proceeds. In the case of loans, tax deductibility of interest should be verified as well as WHT treatment.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

A number of Polish Double Tax Treaties ("DTTs") provide for a rule leading to taxation of income realised on alienation of shares in real estate companies in Poland (the so called "real-estate clause", e.g. the DTT with Luxembourg).

Under these provisions, real estate companies should be generally referred to as entities the value of which (or the value of their shares being alienated) is directly or indirectly derived mainly (some treaties provide for 50% ratio) from immovable property.

Also, the Polish CIT Law provides for a domestic real estate clause which refers to two types of vehicles:

- Entities whose value of assets consist of at least 50% of (directly or indirectly held) real estate located in Poland; and
- "Real estate companies" – these are generally entities whose: (i) balance sheet value of real estate located in Poland (or rights to such real estate) directly or indirectly constitutes at least 50% of the balance sheet value of entity's assets; (ii) the balance sheet value of such real estate exceeds an equivalent of PLN10 million and (iii) tax revenues, i.e. resulting from the lease of Polish real estate (or other contracts of a similar nature) and from the disposal of real estate constitute at least 60% of total tax revenues in a tax year (in case of newly established entities fair market values instead of book values shall be used when assessing conditions (i) and (ii) and condition (iii) does not apply).

In the case of disposal of interests in "real estate companies", the company itself acts as a remitter of tax on behalf of the transferor. Some additional reporting obligations are also imposed on the company.

In general on the basis of Polish tax law there are no look back rules once the real estate is disposed (the tax cost value of disposed assets should be determined as at the last day of the month preceding the month in which the revenue was obtained), however the GAAR and mandatory disclosure rules ("MDR") provisions should be taken into account. On the other hand, it should be highlighted, that rules may differ based on particular DTTs. What is more, according to the multilateral instrument ("MLI") convention the real estate clause should apply if the 50% value threshold is met at any time during the 365 days preceding the alienation.

b. CbC and Other Reporting Regimes

The obligation to file a CbC report generally applies to entities operating in groups which:

- Prepare consolidated financial statements;
- Conduct cross border operations; and
- Which earned consolidated net turnover for the previous financial year exceeding PLN3.25 million or EUR750 million.

As a rule, the CbC report is provided by the ultimate parent company in the group (in Poland – if it has its registered office or seat of management here).

The CbC report must be filed within 12 months after group's accounting year end (for which annual consolidated financial statement has been prepared). A notification for CbC reporting must be made to the tax authorities within three months after the group's accounting year end (for which annual consolidated financial statement has been prepared).

Exit Tax

Exit tax is imposed on both corporate entities and individuals on the transfer of assets abroad within the same taxpayer / change of residency of taxpayers being Polish tax residents. The CIT rate is 19%, PIT rates are 19% or 3% (in special cases) levied on so called unrealised profits calculated as the difference between the fair market value of the transferred assets and their tax value.

Transfer of certain assets such as: (i) assets intended for professional use by employees, related directly to the work performed, not being fixed or current assets within the meaning of accounting provisions, or (ii) assets donated in benefit of public benefit organisation (some additional conditions have to be met), could be exit tax exempt. In general, real estate should not be a subject to exit tax, due to the fact, that the Polish tax authorities do not lose the right to tax income from the disposal of such asset.

10. TRANSFER PRICING

a. Documentation Requirements

Local file - thresholds

The current transfer pricing regulations oblige entities to prepare a local file including benchmarking analysis if the value of a controlled transaction exceeds the thresholds amounting to PLN10 million (in respect of tangible assets, financial transactions) or PLN2 million (in respect of intangible assets, services, use/ provision of tangible and intangible assets, attribution of income to a foreign permanent establishment ("PE") and other transactions).

In the case of transactions carried out by the taxpayer with entities (related and unrelated) based in a so called tax haven the documentation threshold obliging the taxpayer to prepare a local file is PLN100,000 ("direct tax haven transactions").

Furthermore, Polish companies conducting purchase transactions exceeding annually PLN500,000 (also with unrelated suppliers based in Poland) are required to prepare a transfer pricing local file describing these transactions if the beneficial owner of the receivables is based in a country or territory applying harmful tax competition ("indirect tax haven transactions"). It is presumed that the beneficial owner is from a tax haven, if the supplier / counterparty makes settlements with an entity having its registered office or management in a tax haven and the value of these settlements exceeds PLN500,000 in the tax / fiscal year. The Polish company is obliged to exercise due diligence while determining the above mentioned circumstances.

Domestic controlled transactions made between entities that (i) do not incur tax losses, (ii) do not have CIT exempt status and (iii) do not benefit from the Special Economic Zone regime are generally exempted from documentation requirements. Moreover, a safe harbour regime may be applied with regard to low value-added services and certain loans (including possible exemptions from the obligation to prepare a local file if certain conditions are met).

A benchmarking or compliance analysis (which from a formal point of view are part of the local file) does not have to be prepared for:

- Controlled transactions concluded by related entities that are micro or small entrepreneurs;
- Transactions conducted with an unrelated party (direct and indirect tax haven transactions).

The local file documentation for the tax year should be prepared by the end of the tenth month after the end of the tax year.

Master file

Entities required to prepare local file and belonging to the groups (i) which consolidated revenues exceeded PLN200 million in the previous year and (ii) for which consolidated financial statement is prepared, should also prepare a master file documentation. There is a possibility to use the master file prepared by another group entity and an English version is allowed. Related entities (i) whose financial statements are consolidated using the full or proportionate method and (ii) which are required to prepare local file documentation, attach a master file to this documentation if they belong to a group of related entities:

- For which the consolidated financial statements are prepared,
- Whose consolidated revenues in the previous financial year exceeded the amount of PLN200 million or its equivalent.

Group master file documentation should be prepared by the end of the twelfth month after the end of the tax year.



b. Reporting Requirements

Entities obliged to prepare local transfer pricing documentation or which are engaged in domestic controlled transactions exempted from documentation requirements, are required to file in an electronic form to the tax authorities, including detailed information on transactions with related entities (TPR-C form). The scope of required information is quite extensive and includes, the results of benchmarking analyses and of controlled transactions. The tax authorities use the transfer pricing reporting to more efficiently select taxpayers for tax audits/review.

Moreover, entities obliged to prepare a local file have to submit a statement that the local file was prepared and the transfer prices in the controlled transactions included in the local file have been set in line with the arm's length principle. The information on the transfer pricing (TPR-C form) / TP statement should be submitted by the end of the eleventh month after the end of the tax year.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

In Poland generally there are no hybrid entities.

b. Use of Hybrid Instruments

In Poland generally there are no hybrid instruments.

c. Principal/Limited Risk Distribution or Similar Structures

In general, Polish tax authorities acknowledge typical functional profiles presented in OECD Guidelines such as principal, limited risk distributors or similar structures, (e.g. tollers).

d. Intellectual property (licensing, transfers etc.)

The existing IP Box regime provides for a 5% preferential (CIT/PIT) rate for qualified income obtained from certain intellectual property rights (mainly registered ones, e.g. patent rights) and rights to computer programs, which do not require registration.

Payments made in connection with the licencing of intellectual property should be verified from a WHT perspective. Tax on shifted profits (section 2.c. above) and minimum tax (section 2.a. above) considerations should be also taken into account.

Currently there is not any special adverse tax regime in case of a transfer of intangibles outside of Poland, although generally the subsequent cost of use of intangibles will be limited, based on the CIT regulations, tax deductibility of payments / amortisation write-offs for intangibles previously owned, is limited to the value of income generated from its sale. Additionally, transfer pricing / GAAR rules should be verified.

e. Special tax regimes

Generally, there is no special tax regime in Poland.

12. OECD BEPS CONSIDERATIONS

Generally, Poland supports OECD BEPS actions. In respect of OECD BEPS Action 6 the Polish Ministry of Finance is renegotiating some Double Tax Treaties ("DTTs"). In particular, Poland's efforts are targeted at eliminating from DTTs tax sparing credit clauses and introducing artificial arrangement clauses, real estate clauses as well as beneficial ownership clauses. Among the DTTs which are subject to negotiation / renegotiation or are planned to be renegotiated are the DTTs with Brazil, Philippines, France, Kuwait, Morocco, Russia, Spain, the Netherlands and Thailand. It is assumed that further adjustments of Polish DTTs with other countries could be made as part of the implementation of a multilateral instrument (Action 15) described below.

As regards OECD BEPS Action 15, Poland is an active member of the OECD Group Developing a Multilateral Instrument to Modify Bilateral Tax Treaties. Poland signed the convention on the ceremony which took place in June 2017.

Poland implemented a number of changes to the Polish tax scheme based on the Anti-Tax Avoidance Directive ("ATAD") regarding, for example, the introduction of tax baskets, thin capitalisation, CFC regulations and exit tax and ATAD2 regarding legislature on hybrid mismatches; as well as the DAC6 Directive regarding mandatory disclosure rules.

13. ACCOUNTING CONSIDERATIONS

a. Combinations

There are few differences between Polish Accounting Regulations and IFRS. Most common ones relate to:

- Amortisation of goodwill, which is obligatory under Polish Accounting Regulations, in contrary to the obligatory goodwill impairment test under IFRS; and
- Combinations under common control defined in Polish Accounting Standards and excluded from the scope of IFRS3.

Time consuming reporting obligations apply for business combinations, for example an audit of the merger plan and an obligatory audit of the merged entity annual financial statements.

b. Divestitures

Divestitures are not regulated in detail in Polish Accounting Regulations, merger accounting rules have to be applied as appropriate.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Cash can be distributed as remuneration for redemption proceeds (as a repayment of capital previously invested) or as a loan. Additionally, the cash can be distributed also as remuneration for services.

b. Substance Requirements for Recipients

Under the general rule, the company will be regarded as a tax resident in Poland if it has its seat or place of management in Poland. Since 2022, a definition of the effective place of management has been introduced into Polish tax law. It states that taxpayer has effective management in Poland if its business is conducted in Poland in an organised and ongoing manner, based in particular on an agreement, court judgement, decision, document regulating establishment or functioning of that entity, proxies and relations between related parties in light of transfer pricing regulations. The introduction of this new definition coincides also with a growing tendency among the tax authorities to examine the substance of international structures of which Polish entities are a part. To some extent, CFC provisions regarding genuine business activity requirements can serve as a point of reference. Additionally, in June 2017 the Ministry of Finance published a document describing when a foreign holding structure may be treated as an aggressive optimisation and where it listed a circumstances proving that the foreign holding ("SPV") does not have a place of management in its jurisdiction which are among others: (i) directors of the SPV are at the same time management board members of the Polish company, (ii) directors of the SPV reside and perform their duties in Poland and their visits to the country of the SPV is limited only to sign documents or take resolutions, (iii) there are no specific tasks assigned to these directors, (iv) directors of the SPV do not have a special competence and knowledge to perform their duties, (v) there is no documentation proving performance of their duties, (vi) there is no office of the SPV, emails, telephone numbers, (vii) the SPV does not have any employees (besides administration). It may be expected that the tax authorities, when analysing the residency of the holding companies, will also take into account the above conditions.

c. Application of Regional Rules

Poland has implemented EU directives including the Parent Subsidiary Directive, the Interest and Royalties Directive and the Merger Directive. Poland has also implemented the savings directive relating to exchange of information between tax administrations. Recently Poland has implemented a number of tax changes based on the ATAD Directive (thin capitalisation restrictions, exit tax, etc.), the ATAD2 Directive, regarding legislature on hybrid mismatches; as well as the DAC6 Directive, regarding mandatory disclosure rules.

d. Tax Rulings and Clearances

The taxpayers may apply to the tax authority for a binding tax ruling. The tax ruling should be issued by the tax authorities within three months.

If the tax ruling is properly applied (in particular, it properly reflects reality), the taxpayer should be protected from the obligation to pay a tax liability if the tax treatment which is the subject of the tax ruling is challenged (if the tax effects of the given event / transaction covered by the tax ruling took place after the ruling was obtained). The taxpayer should also be protected from an obligation to pay penalty interest and from initiation of penal fiscal proceedings. There is no other more informal procedure to secure the tax position of taxpayer.

As of 1 January 2019, there is an automatic cancellation of certain individual tax rulings if the tax administration can reasonably assume that the events / activities described in the motion could fall under GAAR rules. Moreover, also from 1 January 2019 taxpayers are not allowed to apply for the ruling with regard to the GAAR provisions, provisions on running actual business activities and economic reasons of (a chain of) transactions.

Moreover, a taxpayer may obtain an opinion from the tax authority on the application of the WHT exemption / lowered WHT rate resulting from DTT / EU Directives (it is valid for 36 months). The opinion is to be issued within six months, however, the tax authorities may in individual cases extend this deadline.

e. Mandatory Disclosure Rules ("MDR")

Since 1 January 2019 Mandatory Disclosure Rules ("MDR") are in force in the Polish tax system. MDR impose an obligation to report domestic and cross border tax arrangements to the Polish tax authorities. The obligation to report tax arrangements falls on the intermediaries / relevant taxpayers / assisting entities. The reporting responsibilities cover not only aggressive tax structures, but also ordinary activities leading to obtaining lawful tax benefits.

The tax arrangement is to be considered an activity or set of activities that meet the following conditions:

- There is a general hallmark, for example, carrying out actions based on the standardised documentation, arrangements resulting in change in the income classification or taxation rules, circular flow of money because of entities not fulfilling material functions or activities cancelling each other, and it meets the main benefit test;
- There is a specific hallmark, for example: (i) the same income / asset benefits from the methods of avoiding double taxation in more than one country, (ii) transfer of hard to value intangibles, (iii) a non-transparent ownership structure or a beneficial owner hard/impossible to be identified, (iv) an intragroup transfer of functions/risks/assets, while the projected EBIT of the transferor during a three-year period would be less than 50% of the annual EBIT if the transfer had not been made;
- There is another specific hallmark, a Polish income tax remitter would be obliged to collect WHT exceeding PLN5 million if the lower tax rate / WHT exemption does not apply.

Meeting the main benefit test is a situation where the entity or person acting reasonably and pursuing legitimate goals other than obtaining a tax advantage could reasonably choose a different course of action and the planned benefit is the main, or one of the main benefits, that the entity expects to achieve from certain actions.

Each structure should be analysed from an MDR perspective.

15. MAJOR NON-TAX CONSIDERATIONS

This section is left intentionally blank.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Albania	5 / 10	10	5	[1]
Armenia	10	5	10	
Australia	15	10	10	
Austria	5 / 15	5	5	[2]
Azerbaijan	10	10	10	
Bangladesh	10 / 15	10	10	[2]
Belarus	10 / 15	10	0	[4]
Belgium	0 / 10	5	5	[5]
Bosnia and Herzegovina	5 / 15	10	10	[3]
Bulgaria	10	10	5	
Canada	5 / 15	0 / 10	5 / 10	[2] [6] [7]
Chile	5 / 15	5 / 15	5 / 10	[8] [9] [10]
China	10	10	7 / 10	[11]
Croatia	5 / 15	10	10	[3] [39]
Cyprus	0 / 5	5	5	[12]
Czech Republic	5	5	10	
Denmark	0 / 5 / 15	5	5	[13]
Egypt	12	12	12	
Estonia	5 / 15	10	10	[3]
Ethiopia	10	10	10	
Finland	5 / 15	5	5	[3]
France	5 / 15	0	0 / 10	[14] [15]
Georgia	5/10	5/8	5/8	[38]
Germany	5 / 15	5	5	[2]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Greece	-	10	10	[16]
Hungary	10	10	10	
Iceland	5 / 15	10	10	[3]
India	10	10	15	
Indonesia	10 / 15	10	15	[17]
Iran	7	10	10	
Ireland	0 / 15	10	0 / 10	[18] [19]
Israel	5 / 10	5	5 / 10	[20] [11]
Italy	10	10	10	
Japan	10	10	0 / 10	[21]
Jordan	10	10	10	
Kazakhstan	10 / 15	10	10	[22]
Korea (ROK)	5 / 10	10	5	[2]
Kuwait	0 / 5	0 / 5	15	[23] [24]
Kyrgyzstan	10	10	10	
Latvia	5 / 15	10	10	[3]
Lebanon	5	5	5	
Lithuania	5 / 15	10	10	[3]
Luxembourg	0 / 15	5	5	[12]
Malaysia	0	15	15	[25]
Malta	0 / 10	4 / 5	5	[12] [40]
Mexico	5 / 15	0 / 10 / 15	10	[18] [26]
Moldova	5 / 15	10	10	[3]
Mongolia	10	10	5	
Montenegro	5 / 15	10	10	[3]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Morocco	7 / 15	10	10	[3]
Netherlands	5 / 15	5	5	[2]
New Zealand	15	10	10	
North Macedonia	5 / 15	10	10	[3]
Norway	0 / 15	5	5	[12]
Pakistan	15	-	15 / 20	[27] [28]
Philippines	10 / 15	10	15	[3]
Portugal	10 / 15	10	10	[29]
Qatar	5	5	5	
Romania	5 / 15	10	10	[18]
Russia	10	10	10	
Saudi Arabia	5	0 / 5	10	[30]
Serbia	5 / 15	10	10	[18]
Singapore	5 / 10	5	2 / 5	[12] [11]
Slovakia	0 / 5	5	5	[12]
Slovenia	5 / 15	10	10	[18]
South Africa	5 / 15	10	10	[18]
Spain	5 / 15	0	0 / 10	[18] [31]
Sri Lanka	10	10	10	
Sweden	5 / 15	0	5	[3]
Switzerland	0 / 15	0 / 5	0 / 5	[32] [33] [34]
Syria	10	10	18	
Taiwan	10	10	3 / 10	[11]
Tajikistan	5 / 15	10	10	[3]
Thailand	20	10	0 / 5 / 15	[35] [36]
Tunisia	5 / 10	12	12	[3]
Turkey	10 / 15	10	10	[3]
Ukraine	5 / 15	10	10	[3]
United Arab Emirates	5	5	5	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
United Kingdom	0 / 10	5	5	[12]
United States	5 / 15	0	10	[2]
Uzbekistan	5 / 15	10	10	[8]
Vietnam	10 / 15	10	10 / 15	[3] [37]
Zimbabwe	10 / 15	10	10	[3]

Footnotes:	
1	Dividends - In order to benefit from the lower tax rate a minimum share of 25% is required. After the ratification of the MLI by the parties to the DTT, the condition of holding shares in a subsidiary for a period of at least 365 days has been added (effective from 1 January 2021).
2	Dividends - In order to benefit from the lower tax rate a minimum share of 10% is required.
3	Dividends - In order to benefit from the lower tax rate a minimum share of 25% is required.
4	Dividends - In order to benefit from the lower tax rate a minimum share of more than 30% is required.
5	Dividends - Dividend payments are tax exempt if the person entitled to dividend is - (I) a company established in the other contracting country, which holds directly, for an uninterrupted 24-month period, at least 10% of the shares (stock) in the capital of the company paying the dividends, (II) a pension fund established in the other contracting country, provided that such shares or other rights on which dividends are paid, held for the purpose of - (A) administering pension systems or providing pension benefits; or (B) generating income on behalf of one or more persons whose activity consists in administering or providing pension benefits; and provided that it is also - (A) in case of Belgium, an entity regulated by the Office of Financial Services and Markets or the National Bank of Belgium or has been registered with the Belgian Tax Administration; or (B) in case of Poland, an entity established under Polish law that is supervised or registered by the Polish Financial Supervision Authority.
6	Interest - The lower rate applies to interest paid with respect to debt arising from the sale of any equipment, goods or services, except, i.e. situations in which sales or debt occurred between related parties.
7	Royalties - The lower rate applies to royalties arising from copyright (excluding films) as well as the right to use a patent or from work experience in an industrial, commercial or scientific field (excluding rental or franchise fees).
8	Dividends - In order to benefit from the lower tax rate a minimum share of 20% is required.
9	Interest - Tax Treaty indicates 15% rate for all types of interest. However, under the most favoured nation clause, the rate is reduced to 5% for interest (a) paid to a banking or insurance company or (b) derived from bonds or securities that are traded on the securities market (the rate of such interest is currently 5% under the Chile-Spain Treaty).
10	Royalties - The lower rate applies to royalties for the use or right to use an industrial, commercial or scientific device. The general rate resulting from the Treaty is 15%. However, under the most favoured nation clause, the rate may be reduced to 10% (currently 10% under the Chile-Spain Treaty).
11	Royalties - The lower rate applies to royalties for the use or right to use an industrial, commercial and scientific device.
12	Dividends - In order to benefit from the lower tax rate a minimum share of 10% is required and held uninterruptedly for a period of 24 months.

Footnotes:	
13	Dividends - In order to benefit from the 0% tax rate a minimum share of 25% is required and held for one year. The 5% rate applies to payments to pension funds.
14	Dividends - In order to benefit from the lower tax rate a minimum share of 10% for a period of at least 365 days is required.
15	Royalties - The 0% rate applies to receivables from copyrights arising from literary, scientific or artistic works.
16	Dividends - The national rate applies; there is no preferential rate under the Treaty.
17	Dividends - In order to benefit from the lower tax rate a minimum share of 20% is required. After the ratification of the MLI by the parties to the DTT, the condition of holding shares in a subsidiary for a period of at least 365 days has been added (entry into effect depending on completion of internal procedures in Indonesia).
18	Dividends - In order to benefit from the lower tax rate a minimum share of 25% for a period of at least 365 days is required.
19	Royalties - The lower rate applies to fees for technical services.
20	Dividends - In order to benefit from the lower tax rate a minimum share of 15% for a period of at least 365 days is required.
21	Royalties - The 10% rate applies to royalties for industrial technologies. A rate of 0% applies to copyright royalties.
22	Dividends - In order to benefit from the lower tax rate a minimum share of 20% is required. After the ratification of the MLI by the parties to the DTT, the condition of holding shares in a subsidiary for a period of at least 365 days has been added (effective from 1 January 2021).
23	Dividends - The lower rate applies if the beneficiary is a government of another country or a company in which at least 25% of the capital is owned by the government.
24	Interest - The 0% rate applies to interest paid to companies that are at least 25% state-owned.
25	Royalties - Royalties related to the use or right to use films for cinemas, works for television, radio are taxed in accordance with the legislation of the country in which they are produced.
26	Interest - The 10% rate applies to interest that is owned by a bank or insurance company or that is derived from bonds or debentures. The 0% rate applies, among others if the beneficiary of the interest is the pension fund.
27	Dividends - Ownership of at least 1/3 of the capital is required to benefit from the 15% tax rate.
28	Royalties - The lower rate applies to receivables for know-how agreements and information on industrial, commercial and scientific experience.
29	Dividends - In order to benefit from the lower tax rate a minimum share of 25% for a period of at least two years is required.
30	Interest - The 0% rate applies to interest paid to a legal person that is controlled or owned by the State.
31	Royalties - A rate of 0% applies to the copyright royalties in the field of films for cinemas and television (condition - transfer of this film under cultural arrangements between countries). It applies to copyright and similar rights related to the creation or reproduction of a literary, musical or artistic work (excluding films).
32	Dividends - 0% rate for (I) a company (not being a partnership) with at least 10% of shares for an uninterrupted period of 24 months, (II) a pension fund.
33	Interest - The lower rate applies if the recipient is a related company (not being a partnership).



Footnotes:	
34	Royalties - The lower rate applies if the recipient is a related company (not being a partnership).
35	Dividends - In order to benefit from the 20% tax rate a minimum share of 25% is required.
36	Royalties - The 0% rate applies to film and tape royalties paid to the state or a state-owned company, the 5% rate applies to royalties for the transfer of ownership, use or the right to use a literary, artistic or scientific work excluding films for cinemas and tapes for television or radio.
37	Royalties - The lower rate applies to royalties for the use or right to use a patent, design or model, plan, secret, or information on acquired industrial or scientific experience.
38	5% rate introduced to the DTT signed on 7 July 2021 (new DTT has not come into force yet).
39	Changes as a result of the announcement of Ministry of Foreign Affairs from 21 July 2021 on the correction of the mistakes (act on 22 October 2021). The following changes were introduced: the conditions for applying the 5% rate on dividends (beneficial ownership condition was added) and conditions for applying 10% rate to interest (beneficial ownership condition was added).
40	5% rate on interest was changed as a result of the signing of the act from 14 October 2021 on the ratification of the protocol between Poland and Malta on changing double tax treaty from 7 January 1994 amended by the protocol signed in Warsaw on 6 April 2011 (the act came into force 14 days after its signing).

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Tax due diligence should generally speaking refer to the periods open for a tax review (notwithstanding in practise shorter periods such as two or three years often occur). In Poland, a statutory limitation period lapses in five years starting from the end of the calendar year in which a given tax should have been paid. Effectively, the periods which are reviewed under full due diligence are as follows:

- CIT : the last six years;
- VAT : the last five years plus one last reporting period from the sixth year (this can be either a month or a quarter depending on the chosen settlement method of the taxpayer);
- PIT : in the case of the corporate entities hiring employees, the last five years plus one last reporting period from the sixth year (usually December);
- Tax on Civil Law Transactions : the last five years;
- Real estate tax : the last five years.

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Financial statements of Target.
2	Tax Due Diligence	General	Trial balances of Target.
3	Tax Due Diligence	General	Tax registration documentation.
4	Tax Due Diligence	General	Tax audit book and full documentation (protocols, decisions) regarding tax audits, as well as any other correspondence with the tax authorities. Information on ongoing proceedings with tax authorities.
5	Tax Due Diligence	General	Current certificates from the appropriate tax authorities confirming that Target has no outstanding tax and social security liabilities.
6	Tax Due Diligence	General	Correspondence with the tax authorities including individual tax rulings received with respective applications.
7	Tax Due Diligence	General	Tax reports, opinions, etc. received by Target from tax advisers, if any.
8	Tax Due Diligence	General	Information if Target conducts any operations outside Poland (e.g. through branch, representation office, delegated employees).
9	Tax Due Diligence	General	Information on tax exemptions, donations, subsidies granted for Target, their purpose and tax treatment.
10	Tax Due Diligence	General	Information about non-standard / restructuring transactions performed (i.e. merger, transformations, transfer of assets / functions, in-kind contribution, etc.), their tax treatment and copies of the associated legal documentation.

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Nº.	Category	Sub-Category	Description of Request
11	Tax Due Diligence	General	Information on optimisation schemes applied by Target and the amount of savings, if any.
12	Tax Due Diligence	Corporate Income Tax ("CIT")	Annual Corporate Income Tax ("CIT") returns with relevant attachments.
13	Tax Due Diligence	Corporate Income Tax ("CIT")	Detailed CIT calculation (presenting in particular additional tax deductible costs and non-taxable revenues and division of revenues on capital gains and other sources).
14	Tax Due Diligence	Corporate Income Tax ("CIT")	Information on tax losses carried forward.
15	Tax Due Diligence	Corporate Income Tax ("CIT")	Information on the moment of recognition of taxable revenues and tax deductible costs (in particular with respect to long-term projects) and any changes in approach in this regard. Differences between tax and accounting treatment - main positions.
16	Tax Due Diligence	Corporate Income Tax ("CIT")	Information on the moment of recognition of corrections.
17	Tax Due Diligence	Corporate Income Tax ("CIT")	Information on the transactions with related parties (together with respective agreements and values of transactions).
18	Tax Due Diligence	Corporate Income Tax ("CIT")	Transfer pricing documentation (if any).
19	Tax Due Diligence	Corporate Income Tax ("CIT")	Information on any cross border payments made by Target (royalties, interest, intangible services, etc).
20	Tax Due Diligence	Corporate Income Tax ("CIT")	IFT-2R and CIT-10Z declarations submitted.
21	Tax Due Diligence	Corporate Income Tax ("CIT")	Certificates of tax residency of the cross border payments recipients.
22	Tax Due Diligence	Corporate Income Tax ("CIT")	Information on the procedure of documenting the performance of due diligence in case of payments subject to WHT made by the Target, especially in case of application of WHT exemption for dividends.
23	Tax Due Diligence	Corporate Income Tax ("CIT")	Information on material penalties paid by Target and their tax treatment.
24	Tax Due Diligence	Corporate Income Tax ("CIT")	Calculation for the purposes of limitation of intangible services costs (article 15e of the CIT Act).

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Nº.	Category	Sub-Category	Description of Request
25	Tax Due Diligence	Corporate Income Tax ("CIT")	Application of thin capitalisation / EBITDA based interest deduction restrictions. Calculation for the purposes of limitation of costs of debt financing (article 15c of the CIT Act).
26	Tax Due Diligence	Corporate Income Tax ("CIT")	Information on interest paid / capitalised and its tax treatment.
27	Tax Due Diligence	Corporate Income Tax ("CIT")	Tax treatment of intangible services (management, advisory, marketing, legal, market research, etc.) and their source documentation.
28	Tax Due Diligence	Corporate Income Tax ("CIT")	Proof documentation of rendering intangible services, especially reports and indication of particular people who performed the services.
29	Tax Due Diligence	Corporate Income Tax ("CIT")	Information on the benefits received or granted free of charge (e.g. guarantees, free of charge services, free of charge use of trademark or received from the group companies with relation to a bank loan collateral, management services).
30	Tax Due Diligence	Corporate Income Tax ("CIT")	Fixed and intangible asset register for tax purposes.
31	Tax Due Diligence	Corporate Income Tax ("CIT")	Tax treatment methodology regarding fit-outs, renovations, modernisations, investments (including capitalisation of expenses to the initial value), liquidation.
32	Tax Due Diligence	Corporate Income Tax ("CIT")	Information whether the Target's management board members receive remuneration (along with relevant documentation).
33	Tax Due Diligence	Corporate Income Tax ("CIT")	Tax treatment methodology regarding company cars, especially regarding the recognition of tax costs.
34	Tax Due Diligence	Value Added Tax ("VAT")	VAT declarations.
35	Tax Due Diligence	Value Added Tax ("VAT")	VAT registers for chosen three months of each year.
36	Tax Due Diligence	Value Added Tax ("VAT")	Information on: 1) standard and non-standard VAT transactions along with moment of tax point recognition, 2) VAT rates applied 3) documentation for the application of 0% 4) transaction outside of VAT 5) VAT exempt transactions.

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Nº.	Category	Sub-Category	Description of Request
37	Tax Due Diligence	Value Added Tax ("VAT")	Information on granted/denied VAT refunds.
38	Tax Due Diligence	Value Added Tax ("VAT")	Policy protecting Target from VAT frauds.
39	Tax Due Diligence	Personal Income Tax ("PIT")	PIT declarations.
40	Tax Due Diligence	Personal Income Tax ("PIT")	Information on the remuneration model applied (i.e employment, civil law contracts, self-employment) and tax treatment (including PIT, CIT and VAT).
41	Tax Due Diligence	Personal Income Tax ("PIT")	Additional benefits for the employees (including motivation plans) and their tax treatment (including PIT, CIT and VAT).
42	Tax Due Diligence	Tax on Civil Law Transactions ("TCLT")	List of transaction subject to TCLT with respective declarations and transactions exempt from TCLT.
43	Tax Due Diligence	Real Estate Tax ("RET")	RET declarations
44	Tax Due Diligence	Real Estate Tax ("RET")	RET calculations.

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1. INTRODUCTION

a. Forms of Legal Entity

Portuguese corporate legislation provides for several types of legal entities. The most common types of companies, are as follows:

- **A Limited Liability Company ("LLC")** ("Sociedade por quotas" or "Lda") is a commercial company formed by one or several members and the capital of an LLC is represented by and divided by "quotas". The issuance of shares (i.e. paper certificates) representing the"quotas" is specifically prohibited and the "quotas" can only be transferred with the LLC's permission. There is no minimum capital requirement for an LLC (but each quota cannot have a nominal value below EUR1) and its members are free to establish the agreed capital in the articles of association.
- **A Joint Stock Company ("SA")** ("Sociedade anónima" or "SA") is a commercial company incorporated, which needs to have at least five shareholders, but an exception is provided where another company may incorporate an SA as the sole shareholder of the SA. An SA's capital is divided by shares and the shares can be represented by paper certificates issued to the shareholders or as book entries (i.e. shares where no paper certificates are issued). The shareholders' liability is limited to the value of the shares subscribed and the minimum amount of capital of a SA is EUR50,000. Also, the nominal value of each share cannot be lower than EUR 0.01.

Each of these types of companies have the same tax treatment in Portugal and are subject to Corporate Income Tax ("CIT") on general terms.

b. Taxes, Tax Rates

The most relevant taxes and their respective rates commonly relevant in M&A transactions are those summarised in the following table:

Tax name	Taxable person	Subject	Tax base	Tax rate

Corporate Income Tax ("CIT")	Companies and entities (whether or not with legal personality); Permanent Establishments ("PE") of Foreign entities.
	(i.e. vehicles which are tax resident in Portugal).
		Activity of an agricultural, industrial or commercial nature.	Taxable income, i.e. accounting profit and other net wealth variations not recognized in P&L adjusted as per the relevant tax laws, loss carry forwards and certain tax incentives.	• General rule: 21%;
				• A reduced rate of 17% applies to small or medium-sized companies for the taxable base up to EUR25,000 and general rates for the exceeding taxable base.
				• Municipal Surtax: up to 1.5%;
				• State Surtax:
				  • 3%, applicable on taxable profits in excess of EUR1.5 million up to EUR7.5 million;
				  • 5%, applicable on taxable profits in excess of EUR7.5 million up to EUR35 million, and,
				  • 9%, applicable on taxable profits in excess of EUR35 million.

Value Added Tax ("VAT")	Individuals and entities (with or without legal personality) that carry on business activities.	Supply of goods and services.	Price / value received for the supply of goods and services (may be adjusted according VAT rules).	Portuguese mainland: • 23% standard VAT rate • 13% intermediate VAT rate • 6% reduced VAT rate. Madeira islands: • 22% standard VAT rate • 12% intermediate VAT rate • 5% reduced VAT rate. Azores Islands: • 16% standard VAT rate • 9% intermediate VAT rate • 4% reduced VAT rate.

Tax name	Taxable person	Subject	Tax base	Tax rate
Stamp Duty ("SD")[1]	The lender, the borrower or certain third parties depending on facts and circumstances.	Use of credit and the interest charged thereto.	Principal.	⁘ Credit with a term lower than 1 year, 0.04%, for each month or fraction thereof; ⁘ Credit with a term of greater than 1 year and lower than 5 years, 0.5 %; ⁘ Credit with a term greater than 5 years, 0.6%; ⁘ Revolving credit facility or any other form of credit with an undetermined or undeterminable term, 0.04% applicable on the average amount utilised monthly, determined by adding up the balance due for each day of a specific month, divided by 30.
SD	The lender, the borrower or certain third parties depending on facts and circumstances.	Guarantees.	Amount guaranteed.	⁘ Term shorter than 1 year, 0.04% for each month or fraction of a month; ⁘ Term equal to or greater than 1 year but shorter than 5 years, 0.5%; ⁘ Term greater than 5 years and guarantees with no term, 0.6%.
SD	The lender, the borrower or certain third parties depending on facts and circumstances.	Interest and fees charged by credit institutions, financial companies and other financial institutions.	Amount payable	⁘ 4%

c. Common divergences between income shown on tax returns and local financial statements

Taxable income is based on the accounting profit and other net wealth variations not recognised in the P&L adjusted as per the relevant CIT provisions. In general, the most common divergences are as follows:

- Limited relevant of fair value adjustments.
- Types of non-deductible expenses (e.g. fines and other penalties, undocumented and/or illegal expenses, some contributions for the banking sector, etc.);
- Limitation on depreciation/amortisation of assets (and other items, such as goodwill) for tax purposes and on provisions;
- Tax exemptions on dividends and capital gains if certain conditions are fulfilled;
- Losses carried forward;
- Transfer pricing rules and Interest deductibility limitation rules; and

1 Stamp duty is levied on contracts, acts, papers, documents, titles, books, and other facts occurred or deemed occurred within Portuguese territory listed in the General Stamp Duty Schedule and which are not subject or exempt from VAT, including but not limited to the use of credit and the interest charged thereto, guarantees and commissions charged thereto, as well as other financial services. It is also levied on other contracts that may be relevant in the context of M&A transactions, such as certain transfers of a business or the net asset value of certain collective undertakings.



- Computation of capital gains for tax purposes (e.g. official monetary devaluation index coefficients);

2. RECENT DEVELOPMENTS

The Portuguese Parliament did not approve the budget bill for 2022 leading to the anticipation of the electoral calendar to the legislative branch. A new bill should be presented in Parliament and it is likely that it may come into effect in the second half of 2022. Nevertheless, we highlight some measures that have been introduced in the last years into the Portuguese tax legislation and that may have an impact on an M&A transaction, as follows:

- *Amendments to indirect transfer of property rules:* The Portuguese budget law for 2021 introduced relevant tax measures that affect the indirect transfer of Portuguese situs immovable property.

  Until 31 December 2020 only the acquisition of quotas in a property-rich LLC owning immovable property would be liable to Real Estate Transfer Tax ("RETT") when a shareholder acquired quotas representing at least 75% of the share capital of the company.

  The new rule establishes, that from 2021, there are new conditions for the application of RETT to the transfer of quotas in an LLC and also expanded its scope to encompass the acquisition of shares issued by real estate-rich SAs. Pursuant to the new wording, the acquisition of quotas and shares, respectively in LLCs and SAs representing an interest equal or greater than 75% of the share capital of the Company is subject to RETT at a 6.5% rate. Under the new rule the following conditions should be cumulatively met:

  - The balance sheet value or the tax registry value (whichever is higher) of the real estate assets of the company is, directly or indirectly, equal to or greater than 50%;
  - Immovable property directly utilised in an activity of an agricultural, industrial or commercial nature, other than purchase/resale of assets are excluded from the ratio; and
  - As result of the acquisition, one of the shareholders holds or consolidates an interest in the share capital of the company equal to or greater than 75%.

  These new conditions were not extended to the transfer of real estate investment funds.

  In addition, several tax measures with a potential impact on ongoing or future real estate investments were introduced notably new aggravated RETT and Municipal Property Tax ("MPT") rates applicable to entities controlled through blacklisted jurisdictions. Indeed, if an entity is considered controlled, directly or indirectly, by an entity domiciled in a Portuguese blacklisted jurisdiction, the following rules may increase the tax burden, namely:

  - Application of 10% aggravated one-off transfer tax rate on the acquisition of Portuguese real estate property or shares in real estate rich companies;
  - RETT exemptions should not apply;
  - Application of 7.5% aggravated annual MPT; and
  - Loss of annual municipal real estate exemptions currently being applicable;

- *Qualification of income received by a UCI:* Portuguese tax law provides for a special regime applicable to UCIs (as referred to in section 11.e.), where rental income, capital income and capital gains described in the PIT code are exempt of CIT. The tax authorities published a tax ruling, sanctioned by order of the Secretary of State for Tax Affairs ("SEAF") of 9 March 2020, confirming that rental income and income related to the sale of assets (even if it involves construction works and development or related with assets exploited for obtaining rental income) should be classified as exempt income at the level of the UCI.

- *Clarification of the rules applicable to SIGI*: SIGIs ("Sociedades de Investimento e Gestão Imobiliária") are a type of Real Estate Investment Trust ("REIT") .The law expressly extended the special regime for UCIs to SIGIs (see in section 11.e. below for further details regarding special regime for UCIs). Note that the special regime for SIGIs has a particularity, in cases where there is income from an onerous transfer of rights in rem in immovable property, the CIT exemption will only be applicable if the immovable property has been held for lease for at least 3 years.

  Also, in cases where the special regime ceases to apply (e.g. an entity can no longer be qualified as SIGI), the taxable income determined from the date on which the regime ceases to apply up to the end of the year on which that event occurred should be taxed under the terms of the standard CIT regime. Likewise, any capital income or capital gains from the shares/units in a SIGI should also be taxed under the terms of the standard CIT regime.

- *New amendments and updates* to the transfer pricing rules: Recently, Portugal has published new amendments to the transfer pricing regime, reviewing the Advanced Pricing Agreements, and introduced new rules considering the new guidelines issued by the OECD.

  The main new features regarding the procedures to conclude Advance Pricing Agreements ("APA") were: i) clarification and description of the phases of the APA procedure (two phases: preliminary phase and proposal phase); ii) standardisation of the maximum term of APA to four years; iii) inclusion of the possibility of the APA to apply to previous FYs, as far as the relevant facts and circumstances of those FYs are identical or similar and if, at the closing of the agreement, no more than two years have elapsed after the deadline for delivery; iii) setting, for the preliminary evaluation request, of a deadline of three months before the end of the deadline for delivery the agreement proposal, which should be made 6 months before the beginning of the first FY included in the agreement; iv) introduction of the possibility of extinction of the evaluation proposal procedure of the APA in some cases; and, v) reduction of 25% of the fee due to conclude the agreement by micro, small and medium companies.

  In addition, Portugal also introduced new rules for transfer pricing regarding the regulation of transfer pricing in transactions established between a taxpayer subject to PIT or CIT and any other entity. Among others, we highlight the following rules:

  - Detailed definition of the application of transfer pricing methods and comparability analysis processes, in line with the OECD Guidelines;
  - Amendment of the threshold that grants exemption from preparing transfer pricing documentation, adopting a double criterion: (i) taxpayers with annual revenues lower than EUR10 million are exempt from preparing the documentation (EUR3 million in the previous version) during the fiscal year to which the obligation refers (instead of the previous fiscal year); and (ii) exemption of reporting the controlled transactions in an amount of less than EUR100,000 (per transaction, per counterparty) and, as a whole, of EUR500,000;
  - Introduction of the two-tier documentation model, Master File and Local File, and considering the documentation obligation fulfilled when the process includes all relevant elements and introduction of the concept of "Simplified File" to be adopted by micro, small and medium companies, obliged to prepare the transfer pricing documentation;
  - Transposition from the OECD Guidelines of the three year validity rule for benchmark analysis, without prejudice of the annual update of the financial data of the final set companies; and



- Introduction of certain requirements and procedures to be adopted to open Mutual Agreement Procedures.

- *Termination of the Double Tax Treaties between Portugal and Finland and Sweden*, which ceased to apply as of 1 January 2019 and 1 January 2022, respectively.
- *Amendment of the domestic PE concept*: The domestic PE concept was amended by the Budget Law for 2021 and is now aligned with OECD (BEPS Action 7) and the UN. The main aspects updated were: (i) anti-fragmentation rules for the combination of preparatory or auxiliary activities; (ii) the extension of the agency clause (and restriction of the independent agency clause); and (iii) the introduction of the concept of "closely related enterprise".
- *Portugal Deposits MLI Ratification Instrument*: On 28 February 2020, Portugal deposited its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (Multilateral Instrument or MLI) with the OECD. Therefore, the MLI came into force for Portugal on 1 June 2020. The MLI was signed by Portugal on 7 June 2017.

  Note that Portugal identified 79 tax treaties to be covered (and modified) by the MLI and, among other amendments, the MLI implemented the minimum standards (i.e., the mandatory rules) to counter treaty abuse and to improve dispute resolution mechanisms as recommended in the OECD BEPS Actions 6 and 14.

3. SHARE ACQUISITION

a. General Comments

A share deal is a transaction whereby a seller transfers shares or quotas of a company which owns a business or specific assets, (generally) for cash consideration. The transaction may concern an existing company or a newly incorporated company in which the relevant business is transferred as a pre-step.

As we note in further detail below, as a general rule, a share deal does not directly affect the underlying assets of the target company, with certain exceptions.

From a buyer's perspective:

In general, in a share deal the acquired entity (target) remains in existence and any of its historical or contingent liabilities remain with it after the completion of the transaction. There are some restrictions rules in what regards to tax attributes as referred in more detail in section 3.b. below.

In addition, acquisitions of shares generally do not have immediate tax implications for the buyer, unless the buyer acquires a participation of more than 75% of shares/quotas of a company that is mainly composed by real estate assets not connected to an economic activity located in Portugal (which is not the buy and sale of real estate). In this case, the acquisition of shares is subject to RETT at a rate of 6.5% (see section 3.f. below for more details).

From a seller's perspective:

As a rule, capital gains derived by resident entities with the disposal of shares of Portuguese entities are subject to CIT at the general rates in Portugal. Also, capital gains derived by non-resident entities with the disposal of shares of Portuguese entities are subject to CIT in Portugal at a 25% tax rate. Nevertheless, there is a specific participation exemption regime or domestic exemption regime available, depending on whether the seller is resident or non-resident in Portugal, respectively (see section 7. for more details).



b. Tax Attributes

As a rule, the target is entitled to carry over its tax attributes (such as tax losses or tax credits). However, the Portuguese CIT Code includes a limitation rule according to which tax losses carried forward will be forfeited upon a change in direct ownership of at least 50% of shareholding or voting rights. Nevertheless, this limitation rule does not apply to the following situations of change of ownership: (i) internal reorganisations whereby the shareholding of the company is changed from direct to indirect ownership or from direct to indirect or (ii) reorganisations undertaken under the tax neutrality regime.

Also, it is possible to carry forward excess interest deductions and unutilised interest deductibility credits for five taxable years. However, the carry forward rule ceases to apply when, at the end of the taxable period in which the expense is deducted or the limits are increased, a change of more than 50% in the shareholding or majority of voting rights has occurred, by reference to the date when such expenses were incurred or the interest deductibility credit was not utilised. Certain exceptions apply to this rule such as in the exceptional situations described above.

Outside the aforementioned safe harbours, a specific request to the Minister of Finance should be required to preserve these tax attributes in cases where there is a recognised economic interest.

c. Tax Grouping

General considerations

Portuguese entities are taxed on a standalone basis. However, upon election Portuguese companies may apply a tax grouping regime for CIT purposes (so called "RETGS"), but not for VAT or TT purposes, if certain requirements are fulfilled, in particular if there is a Portuguese dominant company which holds, directly or indirectly, at least 75% of the subsidiaries' share capital and such interest represents more than 50% of the voting rights.

In addition, a non-resident company may also be the dominant company of a "Horizontal tax grouping", provided that it has legal personality, is subject and not exempt to a tax similar to Portuguese CIT and is not resident in a country, territory or region subject to a more favourable tax regime. In such case, a representative company in Portugal must be appointed.

Tax grouping regime

The RETGS regime allows the companies of a tax group to be taxed according to the arithmetic sum of the individual taxable basis (therefore enabling tax losses assessed by a group company to be offset against taxable profits assessed in the same fiscal year by other group companies). Note that tax losses generated individually (assessed before entering the group) by each company may only be deducted against individual profits of the corresponding company up to a limit of 70% of the taxable income individually generated. There is a special regime for the interest deductibility limitation rules at group level.

The payment of CIT under the RETGS should be made by the dominant company with the other group companies remaining jointly and severally liable for the payment of that tax. The dominant company will, afterwards, have the right of recourse for the part of the tax that respect to each of the companies of the Group. In M&A deals, the SPA should provide for a reasonable allocation of tax risks considering this cross liability rule.



Tax compliance obligations of the tax group

As for the procedure for election for the tax group regime, the election should be filed with the PTA by the end of the third month of the fiscal year in which the regime is intended to apply. Also, any changes occurred in the composition of the group (e.g. new acquisitions or sales), its waiver or cessation of application must be communicated electronically to the PTA through the appropriate official form, within the following deadlines:

- In the case of changes in the composition of the group: (i) by the end of the third month of the taxation period in which the inclusion of new companies that meet the legally required requirements must be made; or (ii) by the end of the third month of the taxation period following the one in which companies leave the group due to the sale of participation or non-compliance with other conditions, or other changes in the composition of the group caused by mergers or divisions;
- Waiver, by the end of the third month of the taxation period in which it is intended that the waiver produces its effects;
- Termination by the end of the third month of the taxation period following that in which the conditions for the application of the regime are no longer applicable.

Note that a waiver or termination notice of the RETGS becomes effective with respect to: (i) the end of the taxation period before the period during which the waiver notice if filed; or (ii) the end of the taxation period before the period, which the causes for termination are verified.

d. Tax Free Reorganisations

Portugal has implemented the provisions of the EU Merger Directive in its domestic system to some qualifying corporate restructurings, such as mergers (merger by incorporation, merger by concentration, upstream merger), demergers (demerger, partial demerger, demerger-dissolution), contribution in kind and exchange of shares. Note that the Portuguese Legislator extended the tax neutrality regime to other restructuring operations that are not covered in the Merger Directive, such as side-stream mergers, downstream mergers, among others.

Therefore, Portuguese companies can reorganise their Portuguese activities in a tax neutral manner provided certain conditions are complied with, i.e., capital gains taxation is deferred and the acquiring entities receive a carryover basis in the assets acquired. This is configured like the standard regime for restructuring transactions and there are some tax compliance obligations when transactions eligible for the regime are carried out.

The main caveat to consider for tax neutral restructurings under the Portuguese tax regime based on the EU Merger Directive is the specific anti-abuse provision that requires the transaction to be carried out under valid economic purposes and not with the sole purpose of obtaining a tax advantage.

This regime provides for a tax neutral treatment for restructuring transactions, by providing that:

- Capital gains or losses realised on the transferred assets are not included in the CIT taxable base of the transferor party;
- The acquiring entities receive a carryover basis in the assets acquired.

The rules governing the qualification of a transaction for purposes of the mentioned regime are complex, and its applicability should be carefully analysed on a case by case basis.



e. Purchase Agreement

Share purchase agreements typically comprise representations, warranties and an indemnity clause to cover taxes and connected expenses relating to periods on or before the effective date or in relation to events which occurred on or before closing. There are no special provisions that should be considered to protect against tax exposures specific to the jurisdiction.

In recent years, insurance covering damages resulting from breaches of warranties and indemnities and therefore shifting risks to the insurer (W&I insurance) has become more common in Portuguese M&A market.

The general statute of limitation period in Portugal is four years. Thus, a review of all tax obligations of the last four tax periods opened to a tax audit is required. However, in some cases the expiration period may be longer, such as in RETT (which is eight years) or if the taxable events are connected with country, territory or region subject to a more favourable tax regime (twelve year period apply).

In the case of immovable property, the Portuguese Tax Authorities have a privilege over the assets for purposes of guaranteeing the current and past tax liabilities through the constitution of a pledge or legal mortgage on the real estate asset.

In addition, as a general rule, the Portuguese Tax Authorities have a general privileged security interest to guarantee claims for indirect taxes and also for direct taxes in the year on the date of the judicial attachment (or similar) and in the two previous years.

Note that the statute of limitations period has been extended during the period of time in which the state of alarm was in force. The impact of the extension of administrative procedures due to the COVID-19-related measures should be taken into consideration to compute the statute of limitation period.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

As a general rule there are no transfer taxes on the transfer of shares.

However, RETT is levied on the acquisition of quotas or shares of certain types of companies (including, but not limited to the limited liability companies and joint stock companies) owning real estate assets in Portugal, provided that certain conditions are cumulatively fulfilled as follows: (i) the assets of the acquired company is derived, in more than 50%, from Portuguese situs real estate property, (ii) the property is not directly used in an activity of an agricultural, industrial or commercial nature or is used in the purchase and sale of real estate; and (iii) through the acquisition any of the shareholders will concentrate, at least, 75% of the share-capital of the acquired company.

The acquirer of the aforementioned shares is subject to a 6.5% rate applicable on the Tax Property Value ("VPT") or the balance sheet value (whichever is higher) corresponding to the majority quota or shares, or by the total value of these assets.

In addition, the acquisition of at least 75% of the units in the capital of a closed-ended REIF is regarded as a deemed acquisition of real estate, and therefore, subject to RETT at the same rate.

An aggravated rate of 10% applies to the case of the acquisition of immovable property, both directly and through an assimilated transaction, by entities which are controlled, dominated (or deemed controlled or dominated), directly or indirectly by entities domiciled in a country, territory or region subject to a more favourable tax regime.

g. Share Purchase Advantages

The main typical advantages of the share deal are the following: (i) At the level of the purchaser the share deal does not trigger, in principle, indirect taxes (transfer of shares is not subject to VAT, SD or RETT); (ii) From a seller's perspective, the main advantage of a share deal is that the capital gain deriving from the disposal of shares is in principle fully exempt for both resident and non-resident entities; (iii) In addition, in some cases the target company may preserve its tax attributes, such as tax losses.

h. Share Purchase Disadvantages

In share deals the acquired entity (target) remains in existence and any of its historical or contingent liabilities remain with it after the conclusion of the transaction. The basis in the target's underlying assets carries over and is not stepped up. Consequently, it is not possible for the buyer to benefit from the additional tax amortisation or depreciation of underlying assets, if any. Nor can they benefit from the additional price paid that should be attributable to the goodwill of the business carried out by the entity whose shares the buyer acquires.

In Real estate deals it is common for the Purchaser to request a latent capital gain discount.

4. ASSET ACQUISITION

a. General Comments

From a buyer's perspective:

In asset deals, the acquiring entity is usually a Portuguese entity. If the acquiring entity is a non-resident entity, the potential risk that the activities that it will perform in Portugal determine the existence of a PE should be carefully reviewed.

In such cases, the basis in the acquired assets can be stepped up based on the price paid by the purchaser. Consequently, the buyer can benefit from the additional tax amortisation or depreciation of underlying assets. It can also benefit from the additional price paid that should be attributable to the goodwill of the business carried and depreciated for tax purposes (at a 5% rate).

However, the sale of assets is generally subject to indirect taxation, such as VAT, RETT and SD. Moreover, the buyer should take into account that, in the case of immovable property, the Portuguese Tax Authorities will keep a privilege over the assets for purposes of guaranteeing the current and past tax liabilities.

From a seller's perspective:

The sale of assets generally produces a taxable capital gain for the Portuguese selling company according to the general regime, which might be difficult to mitigate.

b. Purchase Price Allocation

In a taxable transfer of assets the purchase price paid should be allocated to each asset and the resulting value will be regarded as its tax basis. Such allocation is often a contentious issue for parties to the transaction, as the buyer and seller's interests in this respect may differ. The tax basis of the assets acquired should be stepped up to represent the assets' fair market value and will normally be used as the basis to amortise and depreciate the asset for tax purposes but also for the computation of any capital gain or loss at the level of the Seller.



c. Tax Attributes

Tax attributes, such as tax loss carry forwards are not transferred in an asset deal and remain at the level of the seller.

d. Tax Free Reorganisations

The Transfer of a Going Concern ("TOGC") under the terms of a "trespasse" (i.e., assignment of contractual position of a commercial establishment) is subject to CIT at the standard rates.

However, in some cases a TOGC may be reorganised under the terms of a tax neutrality regime. For instance, it is possible to perform a contribution in kind through the contribution of the going concern to a company in exchange for company's shares assuming that all conditions for application of the tax neutrality regime are met.

Nevertheless, as said before in order to benefit from the tax neutrality regime, it is necessary to take into account the specific anti-abuse provision and the scope of the tax neutrality regime (e.g. considering that the neutrality regime requires the continuity of ownership by the same owner of the TOGC, a contribution in kind followed by the sale of the shares could either be considered outside the scope of the tax neutrality regime or could be considered abusive for tax purposes, see section 3.d. above).

e. Purchase Agreement

In an asset deal, the purchaser directly acquires certain assets from the company running the business through an asset purchase agreement. Its main advantage is that there is generally no automatic transfer of liabilities, apart from certain exceptions. It is common to include general representations and warranties related to tax compliance obligations namely related with real estate taxes. In specific cases, it is common to include:

- Tax representation / warranty clauses and/or indemnity clauses related to historical tax risks;
- The Agreement should also include the price allocated to each of the acquired assets in order to determine the tax basis for their future deprecation or amortisation and determine the resulting goodwill, if any.

f. Depreciation and Amortisation

In an asset deal, the tax basis of the assets acquired should be stepped up to represent the assets' fair market value according to the price allocation of the Purchase agreement. This step up may increase the amount of the future tax depreciation or amortisation deductions corresponding to the assets acquired.

Subject to financial accounting rules, an excess of the sum of each individual asset fair market value may in certain circumstances be registered autonomously as goodwill. As a general rule, goodwill is not amortised for tax purposes. However, there is a tax incentive applicable to the amortisation of intangible assets, for a period of 20 years, which includes, inter alia, goodwill resulting from business combination transactions. Goodwill originated in related parties' transactions has been excluded from the scope of this incentive. ´Portuguese tax law does not provide a definition of "business combination". Hence, the concept provided in accounting rules should be followed. This regime is not applicable to the following situations: (i) intangible assets acquired in a merger, demerger or contribution in kind qualifying for non-recognition (tax neutrality); (ii) intangible assets acquired by entities that are resident of a blacklisted country, region or territory, as listed under Portuguese Tax legislation; and (iii) intangible assets acquired in related parties' transactions.

g. Transfer Taxes, VAT

A transfer of assets is considered a supply of goods for VAT purposes. A Transfer of a Going Concern ("TOGC"), however, is excluded from the scope of VAT but may be subject to SD at a rate of 5%. Some court and administrative case law has established that the 5% SD only applies when together with the transfer of the assets, there is also a transfer of the contractual position of a lease agreement where the activity is operating (this is a debatable issue).

The acquisition of Portuguese situs immovable property is generally subject to RETT on the highest of sales' value or the cadastral value. For residential buildings, a progressive rate ranging from 1% to 7.5% apply (depending on the features and value of property). For commercial buildings and plots of land, a 6.5% rate applies. In addition, the acquisition of immovable property is subject to SD at a rate of 0.8%.

h. Asset Purchase Advantages

From a buyer's perspective, an asset deal would give rise to a step up in the assets' tax basis and could create amortisable goodwill. In addition, it has the advantage of leaving behind with the seller most of these historical tax contingencies of the business.

Mostly in real estate deals, the parties avoid asset deals for indirect taxes, but also as a seller might prefer to avoid the double layer of taxes (at the level of the company selling the assets and its shareholders if they are not exempt) that could result from an asset deal.

However, circumstances that might make the seller lean towards an asset deal include the existence of a pending offsetting of tax losses (although the potential limitations to offset them should be taken into consideration), or, from an economic perspective, when the seller can factor into the sale price the buyer's potential savings in connection with the step up in tax basis of the assets transferred, among other considerations.

i. Asset Purchase Disadvantages

On an asset deal, the purchaser may have higher tax costs, since:

- The acquisition of assets is generally not exempt from VAT (unless the assets are not subject to VAT, such as real estate, or qualify as a going concern). This has to be carefully considered if the input VAT is not fully deductible for the buyer (e.g. in the event of a VAT exempt turnover).
- The transfer of a going concern may be subject to SD.
- In case of real estate assets, generally RETT and SD is due.
- Tax attributes will not be transferred to the buyer.
- Asset purchases may also give rise to relevant non-tax issues. For instance from a corporate law perspective an asset purchase may sometimes not be advisable where licenses, agreements and contracts might not be transferred (or renegotiated) without incurring additional costs or resulting in a cumbersome administrative procedure.

From a seller's perspective, capital gains derived from the sales of assets are subject to standard CIT at the level of the seller and the participation regime cannot be applied.



5. ACQUISITION VEHICLES

a. General Comments

As a general rule, there are no restrictions to invest in Portugal for foreign investors. The selection of the proper acquisition vehicle depends on various factors. For tax reasons and in order to limit liability exposure, special purpose vehicles are frequently used for acquisitions.

b. Domestic Acquisition Vehicle

The most common types of companies in Portugal are the Limited Liability Companies ("LLC") and Joint Stock Corporations ("SA") as referred to in section 1.a. in more detail.

The choice of an LLC or an SA is neutral from a tax standpoint.

Domestic acquisition vehicles are often tax efficient where the acquisition of a Portuguese target is financed with a substantial amount of debt. In such case the domestic acquisition vehicle enables the pooling of the target corporation's operating profits with the interest expenses of the acquisition vehicle via, for example, the implementation of an RETGS (i.e. a tax grouping).

c. Foreign Acquisition Vehicle

There are no restrictions to invest in Portugal through a foreign vehicle. Any foreign individual or legal entity may freely be a shareholder of a Portuguese company provided that they apply for a tax identification number ("NIF").

In our experience, in the framework of share deals, acquirers tend to invest in Portugal through an EU holding entity. The substance and structure of the foreign holding as well as the business reasons to invest though the said jurisdiction should be duly reviewed. Otherwise, the foreign investor may suffer withholding taxes on Portuguese source income as exemptions / tax treaties may not apply. Conversely, assets deals are generally made through the incorporation of Portuguese companies.

Assets or shares can also be acquired through a branch of a foreign entity. Although branches are taxed in a similar way to resident companies, they have the advantage of not attracting withholding taxes on remittance of profits abroad, since Portugal does not have profit remittance taxes.



d. Partnerships and joint ventures

Portuguese law does not provide for entities comparable with common law partnerships as all entities have a legal personality. Notwithstanding this point, some entities give more emphasis to the relationship between the members than others, (i.e. "sociedades de pessoas"). In the "sociedades de pessoas" the owners have "social rights" or "quotas" and the capital is not divided into shares. For the purposes of this guide, "sociedades de pessoas" are designated as partnerships and three types of partnerships may be formed in Portugal:

- A General Partnership ("GP"), ("Sociedade em nome coletivo"), is a legal entity formed by two or more partners in which the partners are not only liable for their capital contribution to the GP, but are also jointly and severally liable with the other partners for the GP's debt. The partner's interest in a GP can only be transferred with the express consent of all partners of the GP and a new partner may be admitted into the GP only if all partners unanimously agree to it. There is no minimum capital requirement for a GP. A GP is taxed just like other commercial companies.
- A Limited Partnership ("LP"), ("Sociedade em comandita simples") is a legal entity formed by one or more general partners with unlimited liability and one or more limited partners with limited liability. The partners of an LP may be natural persons, LLCs or SAs. Unless otherwise provided in the Articles of Association, the transfer of a general partner's interest in an LP only becomes effective after all the partners agree to the transfer. The provisions relating to the transfer of "quotas" of an LLC are also applicable to the transfer of limited partner's interest in a LP. There is no minimum capital requirement for an LP. An LP is taxed just like other commercial companies as a tax opaque entity.
- Civil Partnership ("CP"), ("Sociedade civil") is formed under an agreement by which two or more persons undertake to contribute goods or services to conduct an economic activity for profit purpose. A CP may either be taxed just like other commercial companies or be deemed to be a transparent entity for tax purposes (see below).

Despite the above, it is worth noting that tax transparency in Portugal does not rely on the legal nature of the entity but instead on the nature of the activity. In general, an entity that undertakes a commercial, industrial or agricultural activity will normally be treated as opaque. Certain closely held (or deemed closely-held) entities may be subject to a tax transparency scheme. That should be the case of entities qualifying as "professional activities' entities" as well as of entities qualifying as "Companies for the mere Administration (and fruition) of goods, provided that certain conditions are fulfilled.

An entity subject to the tax transparency scheme is required to determine its taxable income in accordance with the same rules that apply to non-transparent entities, which are subject to CIT, however for the transparent entity the taxable income is instead attributed to and taxed at shareholder level.

e. Strategic vs Private Equity Buyers

No specific tax rules apply to private equity investments.

The option to invest through a company structure or other vehicle structure depends on the type of investment as well as the investors' preferences. The use of limited liability companies tends to be the preferred choice of acquisition vehicle.

However, there are specific regulated vehicles that are often used by private equity investor or institutional investors that have certain tax advantages such as Venture Capital funds/corporations, REIFs/REICs for real estate investment (see section 11.e below).



6. ACQUISITION FINANCING

a. General Comments

There are no restrictions to bring funds into Portugal, but there are certain restrictions on deductibility of interest according to a general rule of thumb, transfer pricing and Portuguese interest barrier rules as mentioned in further detail below.

Portuguese entities may be fully debt leveraged or obtain the funds with a mix of equity and debt.

In terms of equity, it may be used share capital, with or without share premium, as well as Supplementary capital contributions ("prestações acessórias" that follow the regime of "prestações suplementares"). Supplementary capital contributions may be stated in the by-laws and, in general, can only be refunded to the shareholders who made them upon shareholders resolution and provided the equity of the company does not become lower than the sum between the share capital and the legal reserve (5% of the annual profit until reaching 20% of the share capital amount).

The reimbursement of equity should not trigger adverse tax implications in Portugal as these contributions may not bear interest. Portuguese tax law provides for a notional interest deduction on subscribed share capital contributions with limited scope. The notional interest deduction corresponds to a CIT deductible deemed interest expense in the year of the capital contribution and the following five fiscal years computed through the application of a 7% rate over the share capital contribution not exceeding EUR2 million.

Regarding debt, it may be considered a direct shareholders loan, a loan from another group entity, or external debt (from a financial institution). Other debt instruments (such as bonds and commercial paper) may also be considered (as being tax efficient, since such instruments are not subject to SD and a WHT exemption should apply on the interest due and paid to a non-resident qualifying lender).

b. Foreign Acquirer

There are no specific restrictions or limitations for foreign acquirers to Fund Portuguese investments.

The CIT Code establishes a withholding tax exemption applicable to outbound dividends provided that certain conditions are fulfilled, including: that the beneficiary entity (i) resident in a country (other than Member State of European Union and similar) with which Portugal has executed a DTT that is in force, provided that the same foresees the possibility of exchange of information and (ii) must be subject and not exempt from any of the income taxes referred to in the EU Parent Subsidiary Directive, or is subject and not exempt from a tax of a similar nature with a rate that cannot be lower than 60% of the Portuguese CIT rate (i.e. currently such tax rate cannot be lower than 12.6%).

However, the WHT exemption for outbound dividends is not applicable if the foreign shareholder has not complied with the reporting obligations foreseen in the Central Register of Beneficial Ownership to register the ultimate beneficial owner.

Note that this WHT exemption does not apply where any of the beneficial owners reported under that regime have residence or domicile in country, territory or region subject to a more favourable tax regime, unless the taxpayer proves that the company receiving such income is not part of an arrangement, or several arrangements which are not genuine, put in place which has as its primary purpose, or as one of its primary purposes, the obtainment of a tax advantage which defeats the object and purpose of eliminating the double taxation of dividends.



Please note that according to recent case law of the Court of Justice of the European Union (the so called Danish Cases), an entity that is not legally and economically entitled to dispose of these payments, that is considered a mere conduit, based on all relevant contractual arrangements and relationships, actually passes the economic benefit of such payments to a different entity and / or that lacks economic substance (namely when such other entity would not be entitled to these benefits), should, in principle, not fulfil the conditions to be considered the beneficial owner of these payments.

c. Debt

The use of intragroup or external debt to fund equity deals is common in Portugal. Indeed, there are no specific limitations on the use of debt or thin capitalisation rules, and there is a flexibility in the mix of equity and debt to be used, although this should always be reviewed according to transfer pricing standards.

It is also worth noting that there are some rules that limit the deductibility of interest payments as explained below in further detail.

In addition, the following events are subject to SD:

- The use of credit, in the form of funds (including credit assignments, factoring, and treasury operations which represent a financing in whatever form to the assignee, or debtor is subject to SD, based on its respective value and applicable rate for these purposes, the prorogation of the contractual term should be always considered a new financing.
- Guarantees, regardless of their nature and form, including (personal guarantees, mortgages, pledges, security deposits, bank guarantees are subject to SD, on their respective value at the applicable rates, depending on the relevant term, unless such guarantees are substantially ancillary to other contracts subject to SD and offered simultaneously with the guaranteed obligation (albeit in a different, contract instrument or title).
- Interest and fees charged by credit institutions, financial companies or financial institutions.

The rates and some conditions are referred to in section 1.b. in more detail. Note that a number of exemptions and exclusions may apply. Considering the relatively high cost of SD on raising capital, this is often a very crucial point in structuring a Portuguese deal.

i Limitations on Interest Deductions

Portuguese tax law sets forth interest deductibility limitation rules. Interest expenses are, in general, tax deductible, provided that they are incurred or borne to "obtain or ensure" the receipt of income liable to CIT. Deductibility of interest expenses is therefore subject to a "correlation test" according to which expenses should only be deductible to the extent they can be considered linked to the income liable to tax, (i.e. that they were incurred to obtain or ensure the receipt of income liable to tax).

Nevertheless, interest barrier rules have been enacted and should apply irrespective of the debt being intragroup or external financing. According to the Portuguese interest barrier rules, the deductibility of net financing expenses (i.e. the difference between interest paid and interest received) will be limited to the higher of the following: (i) EUR1 million; or (ii) 30% of EBITDA as determined by accounting rules and adjusted for tax purposes. Excess interest and unused limits may be carried forward for five years.

In the context of the RETGS, the dominant company may elect to apply the interest deductibility limitation rule at group level in the following terms: (i) EUR1 million; or, when higher, 30% of the consolidated EBITDA corrected for tax purposes corresponding to the algebraic sum of the tax EBIDTA assessed for each of the companies of the group.



Note the net financing costs of group companies relating to the taxation periods prior to the application of the regime and not yet deducted can only be considered, up to the limit corresponding to the company to which they respect, calculated individually. Also, the portion of the limit not used by group companies in tax periods prior to the application of the regime may only be added under the terms of that number to the maximum deductible amount of the net financing expenses of the company to which they relate, calculated individually. Furthermore, the net financing costs of group companies, as well as the unused portion of the limit relating to the taxation periods in which the regime applies, can only be used by the group.

ii Related Party Debt

In respect to intragroup loans, such transactions or operations should respect transfer pricing rules. Whenever transfer pricing rules do not apply, interest expenses paid in the context of shareholder financing are only tax deductible to the extent the interest rate applied does not exceed a rate determined by Ministerial Order.

In cases where transfer pricing rules are not complied with, the portion of interest in excess of amounts considered arm's length, may be considered non-deductible and WHT exemptions may also not apply.

iii Debt Pushdown

Typical debt pushdown strategies may be used, including establishing an RETGS, a downstream merger of channelling funds via debt financing, notably shareholder loans.

It is important that these strategies be carefully reviewed and considered to ensure, on the one hand, that all the legal requirements for each solution are complied with and, on the other hand, that any solution adopted has substance, as otherwise, the tax authorities could attempt to challenge the deductibility of interest on the basis of the existing anti-avoidance rules.

d. Hybrid Instruments

Portugal transposed the ATAD 2 (Directive (EU) 2017/952 of 29 May 2017) regarding hybrid mismatches and has set forth rules aimed at tackling hybrid instruments. In this sense, any hybrid instrument used in funding local acquisitions may be neutralised by these anti-hybrid mismatches rules. However, these rules require two tests in order to be applied, as follows (i) if the entities at hand are associated enterprises or the instrument is deemed as a structure agreement and if so, (ii) if there is a hybrid instrument or entity (see section 11.b. below).

e. Other Instruments

Income from qualifying bonds issued by Portuguese resident companies derived by certain non-resident beneficial owners may be exempt of capital gain taxation, accrued interest and interest upon maturity, provided that the conditions established in Decree-law no. 193/2005, of 7 November 2005.

Proper structuring is required as the bonds must be integrated in a domestic Central Securities Depository ("CSD") or in an International Central Securities Depository ("ICSD") to benefit from the exemptions. Qualifying beneficial owners exclude entities or individuals resident, for tax purposes, in a blacklisted jurisdiction that has not entered into a double tax treaty ("DTT") or Exchange of Information ("EoI") Agreement with Portugal.



f. Earn-outs

The negotiation of earn-out clauses are common in private equity deals.

Portuguese tax legislation does not have specific provisions addressing the taxation of earn-outs nor the recognition of instalment sales. Therefore, the taxation of this income component (in the case of companies and individuals) is mainly dependent on the accounting treatment (i.e. the timing in which the income is recognised for accounting purposes). Generally, earn-outs should be included as part of the sales price for income tax purposes and therefore, should be used for the computation of an eventual capital gain or loss. Where the earn-out consideration is contingent and unascertainable at the date of the disposal it may be taxed at a later date, when received (in which case a substitute tax return may be considered).

In addition, earn-outs in respect of individual recipients may be requalified as employment income (and not as a capital gain) for personal income tax ("PIT") purposes. Note that employment income is registered on a cash basis and capital gains are registered on a financial/economic benefit basis.

7. DIVESTITURES

a. Tax Free

Capital gains obtained by Portuguese resident entities arising from the transfer of assets (including shares) are subject to the general rate of 21% (plus surtaxes).

However, the sale of shares and other equity instruments connected to the shares (e.g. supplementary capital contribution) may be exempt according to the participation exemption regime if some requirements are met, in particular, if the shareholder held directly, or directly and indirectly, an interest equal to or greater than 10% in the share capital or voting rights of the entity for a minimum consecutive period of one year.

The participation exemption does not apply, inter alia, if the company whose shares are disposed qualifies as a real estate rich company (i.e. the value of real estate located in Portugal represents, directly or indirectly, more than 50% of the company's assets, unless the real estate is allocated to an agricultural, industrial or commercial activity which does not consist of real estate buy and sell). In addition, the participation exemption does not apply when the entity is resident or domiciled in a country, territory or region subject to a clearly more favourable tax regime.

b. Taxable

The tax treatment of the sale of an asset by a corporate resident taxpayer will depend on the specific accounting registration of that asset.

An asset held for resale/trading will most likely be accounted for as inventory, any gain or loss will be accounted for currently in P&L account (e.g. no depreciation applies). Assets accounted for as investment property or fixed tangible asset should be granted capital gain treatment.

Capital gains are computed as the difference between the value for which they are disposed of (realisation value) and their acquisition value (basis), corrected for monetary devaluation according to official coefficients. Acquisition value it should be reduced by the accumulated depreciation/amortisation and impairment losses.



The Portuguese Code provides for a rollover relief mechanism regime for assets accounted for as fixed tangible assets, intangible assets and non-consumable biological assets. Under this regime, 50% of the positive difference between capital gains and capital losses can be excluded from taxation to the extent that the total amount of the sale's proceeds is reinvested in the acquisition, manufacture or construction of tangible fixed assets, intangible assets or non-consumable biological assets and used for the activity of the acquiring company (i.e. only assets and not shares). Such reinvestment must be done in the year prior to the disposal or before the end of the second year after the disposal following year (i.e. N-1, N, N+1 and N+2). In order for the reinvestment regime to apply, the assets in which the proceeds are reinvested: (i) may not have been acquired from a related party for transfer pricing purposes; and (ii) must be held for a one year period. Any potential capital gain obtained by a Portuguese entity can be offset against tax losses and should be taxed at the general rates.

c. Cross Border

Taxable gains obtained by non-residents corporate investors are taxed at a flat 25% CIT rate.

A domestic exemption is available for capital gains realised by non-resident entities without a PE in Portugal from the onerous transfer of shares in Portuguese resident companies. The domestic exemption for capital gains obtained by foreign entities with no PE in Portugal is not applicable (among other conditions) if:

- More than 50% of the assets of the Portuguese company whose shares are disposed of are composed of immovable property located in Portugal or in case of holding companies the main assets of its affiliated companies are composed of real estate.
- In any of the 365 days prior to the disposal of the shares in a non-resident company, the value of such shares is derived, in more than 50%, from immovable property (or other rights in rem) located in Portugal, with the exception of immovable property used in an activity of an agricultural, industrial or commercial nature which is not the purchase and sale of immovable property.
- The non-resident entity is resident or domiciled in a country, territory or region subject to a clearly more favourable tax regime.

In addition, certain tax treaties still provide capital gain taxation protection from the source State even after the MLI entered into force.



8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Portuguese CIT is, in general, levied on Portuguese resident entities' worldwide income. EU source dividend distributions have been exempt from CIT, based on the transposition of the Parent Subsidiary Directive. However, with the 2014 CIT reform, certain measures were introduced that widened the use of the exemption method. The participation exemption applicable to dividends was extended to non-EU dividends under certain conditions; a new exemption for capital gains was created in line with the requisites that apply to the dividend participation exemption and a new optional exemption applies to the profits attributed to foreign situs PEs of Portuguese resident companies.

Income obtained by non-resident entities and individuals is levied based on the territorial tax regime, (i.e. only Portuguese sourced income will be taxable).

b. CFC Regime

Portuguese tax law enacted controlled foreign corporation ("CFC") rules applicable to individual persons and corporations subject to Portuguese resident taxation. These rules, which were recently adapted to transpose the provisions of ATAD I (Directive (EU) 2016/1164 of 12 July 2016), provide, under certain circumstances, for the attribution of profits of a CFC in respect of a qualifying interest to a taxpayer qualifying as a Relevant Taxpayer.

This regime applies to any shareholder resident, for tax purposes in Portugal, that holds, directly or indirectly, including through a nominee, fiduciary, or an intermediary, an interest representing, at least, 25% of the capital, vote, rights to income or assets of a CFC.

According to the Portuguese law, a CFC is a non-resident corporate entity that is subject to a "clearly more favourable tax regime" and this concept is defined as: (i) the territory where the entity is a resident for tax purpose is listed in the list of countries, territories, and regions with a clearly more favourable tax regime; or; (ii) the income tax effectively paid is lower than 50% of the hypothetical income tax due, under the rules of the CIT code.

Therefore, under CFC rules, any Portuguese entity that holds an interest in a CFC will automatically include in its taxable income, for the period that integrates the CFC financial year ("FY"), a portion of the CFC's income or profits corresponding to a direct and indirect qualifying interest, such income being computed according to the rules prescribed in the CIT code. No inclusion is due on the part of the interest which is only constructively held.

However, CFCs rules should not apply when income arising from the following categories derived by a CFC does not exceed 25% of the CFC's global income in any given period: (i) royalties or similar; (ii) dividends and income from the disposal of shares; (iii) income from financial leasing; (iv) income from banking activities; (v) income from invoicing companies that earn sales and services income from goods and services purchased from and sold to associated enterprises and add no or little economic value; (vi) interest and other investment income.

Subsequent distributions from the CFC or the realisation of capital gains from the disposal of the CFC's shares should not be taxable to the extent of the previously taxed CFC income.

The CFC rule establishes an exclusion that applies to EU /EEA (except Liechtenstein) CFCs, provided that the taxpayer demonstrates that the formation and functioning of the CFC corresponds to valid economic reasons and that the CFC undertakes an activity of an agricultural, commercial or industrial nature or that consists in the supply of services, resorting to personnel, equipment, assets and premises.



c. Foreign Branches and Partnerships

- Foreign Branches

Portuguese companies are liable to tax on their worldwide income including also activities of a foreign PE. According to Portuguese law, the concept of foreign PE is the one that results from the provisions of a tax treaty in force by Portugal or, in its absence, from the application of the domestic concept of PE provided for in CIT code. Note that the domestic concept of PE has recently adopted the last updates from OECD (and UN).

As a rule, the double tax treaties and domestic legislation in force generally provide for a direct tax credit equal to the lower of the following amounts: (i) the foreign tax paid; or (ii) the CIT due on that income (as computed before the tax relief), excluding all costs or losses directly or indirectly borne to obtain the income.

As mentioned above, it is possible to opt for the application of the exemption method in which case the income and losses attributable to a PE located outside Portugal would be excluded from taxation in Portugal, provided that some requirements are met.

This regime has some limitations that should be taken into consideration in case this regime ceases to apply. In particular, any losses attributable to the PE will not be offset up to the amount of the profits attributable to the foreign PE that has been exempt (were not include in the tax base) from CIT at the level of the Portuguese entity.

- Foreign Partnerships

Portuguese law does not provide for clear foreign entity classification rules. Most foreign partnerships as well as other tax transparent entities should default to being treated as opaque. In a ruling, the Portuguese Tax Authorities have considered that foreign entities that present similar features to entities subject to the domestic transparency regime could be considered transparent for Portuguese tax purposes.

d. Cash Repatriation

There are no legal restrictions to repatriate cash and there is no need to obtain an authorisation for cash repatriation.

The tax consequences of cash repatriations depend on the type of investment of the Portuguese resident taxpayer. If the taxpayer invests through a foreign PE under the tax credit method, the cash repatriation does not trigger Portuguese tax consequences since the income is already taxed or exempted (as the case may be).

In case of an investment of a Portuguese tax resident taxpayer in a foreign corporation the dividends received by the Portuguese corporate taxpayer are subject to Portuguese CIT at the standard rate of 21%, plus municipal surcharge (if applicable) and state surcharge (if applicable).



Nevertheless, under the Portuguese participation exemption regime, profits and reserves distributed by qualified entities should not be taxed in Portugal at the level of the recipient company, if the following requirements are cumulatively fulfilled:

- The Portuguese recipient holds, directly, or directly and indirectly, at least 10% of the share-capital or voting rights in the distributing entity;
- The shares are held for a consecutive period of at least 12 months prior to the distribution date. Please note that in respect to dividends, this criterion may be complied prospectively;
- The Portuguese recipient entity is not tax transparent;
- The distributing entity is subject and not exempt from: (i) Portuguese CIT; or (ii) a tax referred in article 2 of the PSD; or (iii) a tax of a similar or identical nature to the Portuguese CIT, provided that, in this last case, the applicable legal rate is not lower than 60% of the Portuguese standard CIT rate (current Portuguese CIT is 21%, thus 12.6%); and
- The distributing entity is not tax resident or domiciled in a tax haven.

Certain anti-abuse provisions apply for the application of this exemption, namely to guarantee that the entity paying the dividends is subject to tax and that the dividend is not deductible cost at the level of the foreign entity.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Portuguese tax legislation provides some special rules addressed to the sale of real property or real estate rich companies as follows:

- RETT

RETT is levied on the transfer of property rights and other rights in rem over immovable property as well as other transactions which the law assimilates to the transfer of immovable property as they may produce similar economic results.

As a rule, the onerous acquisition of property (and other events assimilated to onerous acquisition) should be subject to RETT over the highest of the sales value allocated to the asset and its VPT. For residential buildings, a rate ranging from 1% to 7.5% apply depending on the features and value of the property). For commercial buildings and plots of land, a 6.5% rate applies.

Among the list of assimilated transactions is:

(i) the acquisition of quotas or shares of certain types of companies (including, but not limited to, the Portuguese equivalents to LLCs and SAs) owning real estate assets in Portugal, provided that certain conditions are fulfilled as described in section 3.f, which is subject to RETT rate of 6.5%; and

(ii) the acquisition of at least 75% of the units in the capital of a close-end REIF is regarded as a deemed acquisition of real estate, and therefore, subject to RETT at the same rate.



The Budget Law for 2021 introduced new aggravated tax rates (10% RETT and 7.5% MPT/AMPT) applicable to:

(i) the acquisition / ownership of immovable property by residents in a blacklisted jurisdiction; and

(ii) the acquisition / ownership by an entity controlled, directly or indirectly, within the terms prescribed in the Portuguese Company's Code, by an entity domiciled in a blacklisted jurisdiction.

In these cases, no RETT reductions or exemptions should apply.

- SD

The transfer of Portuguese-situs immovable property is subject to SD at a 0.8% rate.

- CIT Indirect transfers of Portuguese-situs immovable property

As mentioned above Portuguese domestic legislation has enacted on the indirect transfer of Portuguese situs immovable property which is directly or indirectly held via both domestic or foreign entities.

b. CbC and Other Reporting Regimes

Portugal has aligned its domestic law to EU Directives and OECD guidelines. The Portuguese law implemented the EU Directive on country by country reporting that extends administrative cooperation in tax matters to country by country (CbC) reporting. Multinational ("MNE") groups with a consolidated revenue exceeding EUR750 million are required to prepare a CbC report and file it with the Portuguese Tax Authorities within 12 months of the last day of their reporting fiscal year.

An MNE group should only be required to file a CbC report in the jurisdiction of its Ultimate Parent Entity ("UPE"). However, in some cases a constituent entity (i.e an entity that is part of the MNE group, but it is not the UPE) has to file the CbC report in its local jurisdiction (also known as 'local filing') but only if one or more of the following conditions have been met:

- If the UPE of the MNE Group is not obligated to file a CbC report in its jurisdiction of tax residence;
- There is an international agreement allowing automatic exchange of information between the jurisdictions of the UPE and the constituent entity but there is no competent authority agreement in effect providing for the automatic exchange of CbC Reports (i.e the exchange relationship has not yet been activated); and
- There has been a systemic failure by the residence jurisdiction of the UPE to exchange CbC Reports that has been notified to the constituent entity by the local tax authority.

Form 54 (Modelo 54) is the form through which entities obliged to submit this information ("Country-by-Country Report") must fulfil this obligation in Portugal.

Portugal also entered into the CRS and FACTA agreements, concerning automatic exchange of information relating to financial accounts.

Furthermore, Portugal has transposed the so-called DAC 6 Directive regarding disclosure of information about aggressive tax planning arrangements in relation to reportable cross border arrangements, which means that any M&A transaction that gives rise to an arrangement covered by the Directive shall be disclosed. Note that Portuguese law also extended the disclosure obligation to the arrangements that take place entirely in Portugal. Form 58 (Modelo 58) is the form that should be used for "disclosure obligation report against aggressive tax planning Return".

10. TRANSFER PRICING

Portuguese transfer pricing rules (rules on related party transactions) are in line with OECD transfer pricing guidelines, whereby related party transactions should be valued on an arm's length basis, i.e., transactions between associated companies should be subject to the terms and conditions identical to those which would normally be accepted and agreed upon between independent entities in comparable transactions.

In order to determine the terms and conditions in these transactions, the taxpayer shall adopt one of the following transfer pricing methods: (i) acceptable methods, such as comparable uncontrolled price, resale minus, cost plus, transactional profit split method, transactional net margin method; or (ii) other method, technical or economic acceptable asset assessment model, in case the acceptable methods cannot be used given the specificity of the transaction, or the lack or little information and reliable comparable data.

Recently, Portugal has published new amendments to the transfer pricing regime (see section 2. for further detail). Among others, we briefly highlight the following rules:

- Detailed definition of the application of transfer pricing methods and comparability analysis processes, in line with the OECD Guidelines;
- Amendment of the threshold that grants exemption from preparing transfer pricing documentation, adopting a double criterion: (i) taxpayers with annual revenues lower than EUR10 million are exempt from preparing the documentation (EUR3 million in the previous version) during the fiscal year to which the obligation refers (instead of the previous fiscal year); and (ii) exemption of reporting the controlled transactions in an amount of less than EUR100,000 (per transaction, per counterparty) and, as a whole, of EUR500,000;
- Introduction of the two tier documentation model, Master File and Local File, and considering the documentation obligation fulfilled when the process includes all relevant elements and introduction of the concept of "Simplified File" to be adopted by micro, small and medium companies, obliged to prepare the transfer pricing documentation;
- Confirmation of the need of translation into Portuguese of documents to be presented to PTA, that are written in foreign language, without prejudice of exemption;

Note that there are other tax compliance obligations to take into consideration, such as the report of transfer pricing information in the Company Simplified Information/Annual Statement. Also, in some cases, the ultimate parent entity of a multinational group of companies may be required to file the Country-by-Country Reporting form, where turnover in the preceding tax year is equal to, or higher than, EUR 750,000,000.



11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

Portugal transposed the ATAD 2. As a result, it has also transposed the concept of a hybrid entity, which is defined as any entity or arrangement that is regarded as a taxable entity under the laws of one jurisdiction and whose income or expenditure is treated as income or expenditure of one or more other persons under the laws of another jurisdiction. The implications will depend on the rules applicable to the case: for instance, under the terms of the reverse hybrid mismatches rules, a hybrid entity may be regarded as a resident of Portugal and taxed on its income to the extent that that income is not taxed under the laws of any other jurisdiction.

The Portuguese Tax Authorities have not issued any tax position or guidance on this matter. Nevertheless, the Portuguese Tax Authorities tend to follow the OECD guidelines, so it is understood that these recommendations (specifically, Action 2) should be important sources for interpreting these rules.

b. Use of Hybrid Instruments

Portugal transposed the ATAD 2 regarding the hybrid mismatches, and, as a result, also transposed the concept of a hybrid instrument. This concept corresponds to any financial instrument that gives rise to a mismatch outcome (e.g. a deduction without inclusion outcome). The concept of financial instrument means any instrument to the extent that it gives rise to a financing or equity return that is taxed under the rules for taxing debt, equity or derivatives under the laws of either the payee or payer jurisdictions and includes a hybrid transfer.

Any instrument that fulfils the concept above may be deemed as a hybrid instrument and, therefore, the anti-hybrid mismatches rules may apply, which means Portugal may deny a deduction of that payment, or, where the deduction is not denied in the payer jurisdiction, the amount of the payment that would give rise to a mismatch outcome may be included in income of the Portuguese resident (beneficiary).

c. Principal/Limited Risk Distribution or Similar Structures

Portugal generally follows the OECD approach with regard to arm's length standards of intercompany distribution structures. Thus, transfer prices for distribution services can generally be calculated by means of the standard methods (comparable uncontrolled price method, resale price method and cost plus method).



d. Intellectual Property

The Portuguese patent box regime has a different approach depending if the taxpayer is an Intellectual Property purchaser or an Intellectual Property creator as follows:

- **From an Intellectual Property purchaser's perspective**: under the regime, qualified Intellectual Property may be amortised over 20 years based on a straight line method.

(i) Qualified Intellectual Property:

Intellectual Property has to be related with industrial intangible property, such as patents, trademarks, licenses, production processes, models or other similar rights.

In addition, the following cumulative conditions should be also met: (i) the Intellectual Property is recognised as such in the accounts of the company, as per the Portuguese GAAP; (ii) the Intellectual Property is acquired for a consideration; and (iii) the Intellectual Property elements do not have a limited life.

However, the regime does not apply to Intellectual Property that: (i) is acquired from entities resident in a blacklisted jurisdiction; (ii) is acquired as a consequence of a merger, demerger or contribution in kind that benefited from the tax neutrality regime; or (iii) is acquired from a related party.

(ii) Qualifying income:

Tax amortisation of 5% (over a 20 year period) of the acquisition cost of the Intellectual Property is allowed.

- **From Intellectual Property creator's perspective:** this regime applies to qualified Intellectual Property and foresees that only 50% the qualifying income, as it results from the computation rules is taxed at the general rates.

(i) Qualified Intellectual Property:

Intellectual Property rights covered by the patent box regime exclusively include patents and industrial designs or models;

In addition, the following should be cumulatively verified: (i) Intellectual Property is effectively used for activities carried out by the licensee; (ii) if licensee is a related company, the Intellectual Property cannot be used to create deductible expenses for the taxpayer (licensor); (iii) licensee is not domiciled in a country, territory or region with a more favourable tax regime (blacklisted jurisdiction); and (iv) there are expenses incurred in order to perform eligible R&D activities connected with the qualified Intellectual Property that generates the qualifying income. Such expenses, as well as the qualifying income, shall be segregated through accounting records, which shall be organised in such a way that the Intellectual Property income and related expenses are clearly distinguishable from the remaining income and expenses.



(ii) Qualifying income:

Qualifying income will be a result of the application of three tiers of computation rules.

- 1st tier of computation: the taxable basis of the qualifying income is the positive net amount resulting from the qualifying income and the expenses incurred in order to perform the R&D activities during the relevant fiscal year;
- 2nd tier of computation: the 1st tier taxable basis computation shall be adjusted by the negative net amount resulting from the qualifying income and the expenses incurred in order to perform the R&D activities during the previous fiscal years; and
- 3rd tier of computation: nonetheless, the final deduction from the taxable basis of the qualifying income may not exceed the amount computed under a specific formula, described below.

In line with the above, the deduction from the taxable income shall not exceed the amount resulting from the following formula:

TB = QE/OE x OI x 50%

Where:

TB: Tax benefit (deduction from the taxable income)

QE: Qualifying expenditures incurred to develop an IP asset

QE must have been incurred by the taxpayer;

QE must be directly connected to the IP asset; and

QE shall be related with R&D actives incurred by the taxpayers or by non-related parties for TP purposes.

A 30% "up-lift" is permitted on the QE but the total QE (with up-lift included) may not exceed the OE.

OE: Overall expenditures incurred to develop IP asset

OE include all qualifying expenditures, acquisition costs, and expenditures for outsourcing that do not count as qualifying expenditures.

OI: Overall income from IP asset resulting as per 1st tier and 2nd tier computation rules.

e. Special Tax Regimes

In Portugal there are several special tax regimes that investors often elect into. We describe below some of the most important regimes.

- Tax Grouping ("RETGS")

Portuguese law foresees a tax grouping regime (so called "RETGS") for some groups of companies. According to this regime, Portuguese companies may apply a tax grouping regime for CIT purposes, if certain requirements are fulfilled, in particular if there is a Portuguese dominant company which holds, directly or indirectly, at least 75% of the subsidiaries' share capital and such interest represents more than 50% of the voting rights.

In addition, a non-resident company may also be the dominant company of a "Horizontal tax grouping", provided that it has legal personality, is subject and not exempt to a tax similar to Portuguese CIT and is not resident in a country, territory or region subject to a more favourable tax regime. In such case, a representative company in Portugal must be appointed.

In a nutshell, this regime allows the companies of a tax group to be taxed according to the arithmetic sum of the individual taxable basis (therefore enabling tax losses assessed by a group company to be offset against taxable profits assessed in the same fiscal year by other group companies). See section 3.c. for further detail.

- Special Regime for venture capital funds ("VCFs")

Portugal has a special tax regime applicable to venture capital funds ("Fundo de Capital de Risco" or "FCR") as well as to their investors, that follows the principle of exit taxation. Under this regime, any income or gains obtained by VCFs that have been established and operate according to Portuguese law are exempt from CIT.

In certain cases, income paid or made available to Portuguese entities, either arising from distributions or redemption of units, is subject to withholding tax at a rate 10% (which is merely a payment on account of its final CIT liability). However, there is no WHT if these entities benefit from an exemption for capital income.

For non-resident entities without a PE in Portugal, income arising from distributions and capital gains from the redemption or sale of units may be exempt from taxation in Portugal. However, this exemption regime is not applicable and the income is taxed at 10% rate if (i) the non-resident investor is domiciled in a country, territory or region subject to a more favourable tax regime, or (ii) if it is directly or indirectly held, in more than 25% of its capital, by a Portuguese tax resident entity.

- Special Regime for Undertakings for Collective Investment ("UCIs")

UCIs are subject to CIT on taxable income under the general regime (see section 1.b. above). However, UCIs may benefit from a special tax regime provided that they take the following type: (i) securities investment funds ("SIFs"); (ii) real estate investment funds ("REIFs"); (iii) securities investment companies ("SICs"); and (iv) real estate investment companies ("REICs").

Under the terms of this regime, investment income, rental income and some capital gains obtained by eligible UCIs are exempt from CIT, with the exception of income distributed or due by an entity resident in country, territory or region subject to a more favourable tax regime, or resulting from the transfer of a participation held in such an entity. In addition, this special regime allows UCIs to be exempt from municipal and state surcharges.

Taxation at the level of the investor will differ depending on the investor being a Portuguese resident or a non-resident entity or individual. Special rules under the terms of this regime are only applicable to (i) income arising from UCIs distributions, (ii) gains arising from redemption of units against the capital of the UCIs and (iii) capital gains arising from the sale and purchase of units or shares in the capital of the UCIs.

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See below a summary of the regime applicable to investing entities:

- Investors residents in Portugal (including non-resident investors with units or shares attributable to a PE in Portugal) are subject to WHT at 25% (but this WHT has a nature of a payment on account of its final CIT liability).
- Income paid by SIFs and SICs or gains arising from the redemption of units or shares in the capital of such funds or companies to non-resident entities without PE in Portugal are exempt from taxation in Portugal. Otherwise, such income or gains are taxed at a 25% WHT.
- Capital gains arising from the sale and purchase of the units or shares of the SIFs and SICs are taxed at 25% WHT. However, it may be possible to apply domestic exemption for capital gains obtained by non-resident entities provided that certain conditions are met.
- Income paid by REIFs and REICs or gains arising from the redemption of the units or shares in the capital of such funds or companies, to non-resident entities are taxed in Portugal at a WHT of 10%. Otherwise, such income or gain is taxed at a WHT of 25%.
- Capital gains arising from the sale and purchase of the units or shares of REIFs and REICs, are qualified as gains from immovable property and taxed at the final rate of 10%.

Note that UCIs that applies this special regime are subject to SD, which is levied quarterly on the UCIs' net asset value, at a rate of 0.0125% or, for UCIs investing in money market instruments or deposits, at a rate of 0.0025% (see section 1.b. above).

- Research & Development regime

Portugal provides some tax incentives for Corporate Research & Development ("R&D"), so called SIFIDEII, which provides a current year tax deduction for R&D costs.

Under SIFIDE II a tax credit corresponding to the amount of expenses incurred with R&D activities is available limited to the following:

(i) 32.5% of expenses borne during a tax year; and

(ii) 50% of the surplus of expenses borne in the tax year over the average of the two previous tax years, capped at EUR1.5 million.

Where the credit may not be fully offset in a taxable year, a carry forward is available for the following eight years with certain limitations.

At a first glance it seems that it should be the taxpayer itself incurring on the relevant expenses. However, there is an exception expressly mentioned in the law under which expenses for the acquisition of a participation in the share capital of certified R&D institutions and contributions to public or private investment funds to finance companies dedicated in particular to R&D are also eligible for benefiting from this regime. The Funds should finance entities that are recognised/certified by ANI ("R&D entities").

Note that SIFIDE II is not limited to particular industries and eligible activities may take place within or outside Portugal, provided that the cost is incurred by the Portuguese entity claiming the benefit.



- Tax Regime for Investment Support ("RFAI")

Under this regime, investing companies may benefit from a tax credit against tax due (maximum 50% of tax assessed), corresponding to 25% of investments below EUR 15 million or 10% of investments above EUR15 million.

Exemptions of RETT, MPT (both depending on authorization of the corresponding municipality) and SD on the acquisition of real estate may also be available. In the case of start-ups, a full of the CIT may apply in the year of beginning of activity and the two following periods of taxation.

- Share Capital Remuneration ("RCCS")

This regime foresees a deduction from the taxable profit corresponding to 7% of the contributions, up to EUR2 million, upon the incorporation of an entity or capital increases, applicable to cash contributions and conversion of credits, or the use of profits of the same taxable period.

The deduction to the taxable profit will be made in the tax period where the entries are made and in the following five tax periods.

The limitation to the net financing expenses of the taxpayers that use this benefit will be the higher value between EUR1 million and 25% of the result before depreciations, amortizations, net financing expenses and taxes (30% in case of taxpayers not yet benefiting from this regime).

12. OECD BEPS CONSIDERATIONS

Portugal has implemented the OECD BEPS recommendation into its domestic legislation. Some domestic rules have been updated in the domestic law considering the solutions recommended by the BEPS (OECD), such as the introduction of a broader definition of PE. Note that part of this development was also due to EU law (e.g. ATADs, etc.), which following the international trends, has issued some Directives that have been transposed into Portuguese law (e.g. hybrid mismatches rules).

In addition, Portugal signed the multilateral instrument ("MLI") according to BEPS Action 15 on 7 June 2017, and the Parliament approved it and President ratified it on 14 November 2019. The MLI entered into force on 1 June 2020 and introduced some amendments in several tax treaties signed by Portugal.

Furthermore, tax treaties signed after 2017 have been drafted with the new wording and solutions of the OECD Model Convention 2017 (and UN Model Convention).

It should be noted that the Portuguese tax authorities and courts generally follow the OECD Model Commentary in the interpretation of tax treaties.

13. ACCOUNTING CONSIDERATIONS

In general the tax accounting is based on the financial statements. Where the tax law applies a different valuation or contains provisions regarding a limitation in tax deductibility, (e.g. time limitation or non-deductibility), the tax accounts and the taxable profit of a company might vary from the financial profit.

Commonly, an expense would need to be directly related to the business of the company to be recognised for tax purposes, as non-related expenses should be in general non-deductible. Furthermore, certain expenses are deemed to be non-deductible for tax purposes, even though incurred with regard to the business, as the tax law considers the deduction as inappropriate, (e.g. expenses due to penalties and fines).

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

In general terms, dividends can be distributed if the following aspects are respected:

- Legal reserves should be covered (there is a minimum legal reserve that cannot be distributed to the shareholders): a minimum of a 20th part of the net profits of each year of the company is destined for the legal reserve until it represents 20% of the share capital;
- The legal reserve may only be used: (i) to cover the portion of losses in the balance sheet that cannot be covered by the use of other reserves; (ii) to cover the portion of losses from the previous year that cannot be covered by net profits from the present year or by the use of other reserves; and (iii) to increase share capital.

In addition, there are some limitations to the distribution of dividends to the shareholders:

- If the equity capital, including the year net income, as shown in the approved accounts, is less than the sum of the share capital and the reserves or becomes less than this sum as a result of the distribution;
- If they are necessary to cover accumulated losses or to form or reconstitute reserves required by law or by the articles of association; or
- If the incorporation costs or research and development costs are not completely paid, unless the amount of free reserves and retained earnings is at least equal to those costs not paid.

b. Application of Regional Rules

As a member of the European Union, Portugal is subject and has implemented into its internal law all EU Directives in tax matters (e.g. EU Parent-Subsidiary Directive, EU Merger Directive, ATAD, ATAD 2, the EU Directives on administrative cooperation in tax matters, so-called "DAC" 1 to 6, etc.).

c. Tax Rulings and Clearances

Portuguese taxpayers can request a binding ruling to gain certainty on the tax treatment of a particular transaction. Portuguese tax provides for two types of binding rulings:

- A non-urgent ruling, which has no associated costs but the tax authorities have an indicative timeframe of 150 days to decide and the non-decision within the deadline does not trigger any consequences.
- An urgent ruling, in which the urgency must be justified and accepted by the Portuguese tax authorities. The costs may range between EUR2,550 and EUR25,500 depending on the complexity of the issue and it must be decided within 75 days. However, if no decision is issued within the deadline established, the tax framework proposed by the taxpayer should be tacitly accepted.

15. MAJOR NON-TAX CONSIDERATIONS

This section is left intentionally blank.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Algeria	10 / 15	15	10	[1], [2]
Andorra	5 / 15	10	5	[3]
Angola	8 / 15	10	8	[A], [2], [4], [5]
Austria	15	10	5 / 10	[6]
Barbados	5 / 15	10	5	[7], [2]
Belgium	15	15	10	-----
Brazil	10 / 15	15	15	[1]
Bulgaria	10 / 15	10	10	[1], [2]
Canada	10 / 15	10	10	[1], [2]
Cape Verde	10	10	10	[2]
Chile	10 / 15	5 / 10 / 15	5 / 10	[7], [9], [10]
China	10	10	10	[2],
Colombia	10	10	10	-----
Croatia	5 / 10	10	10	[11]
Cuba	5 / 10	10	5	[2], [7], [12]
Cyprus	10	10	10	-----
Czech Republic	10 / 15	10	10	[1], [2]
Denmark	10	10	10	[2]
East Timor	5 / 10	10	10	[7]
Estonia	10	10	10	[2]
Ethiopia	5 / 10	10	5	[2], [7]
Finland	-	-	-	[B]
France	15	10 / 12	5	[13]
Georgia	5 / 10	10	5	[2], [7]
Germany	15	10 / 15	10	[14]
Greece	15	15	10	-----

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Guinea-Bissau	10	10	10	-----
Hong Kong	5 / 10	10	5	[2], [11]
Hungary	10 / 15	10	10	[1], [2]
Iceland	10 / 15	10	10	[2], [16]
India	10 / 15	10	10	[1], [2]
Indonesia	10	10	10	[2]
Ireland	15	15	10	[2]
Israel	5 / 10 / 15	10	10	[2], [17]
Italy	15	15	12	[2]
Ivory Coast	10	10	5	[2]
Japan	5 / 10	5 / 10	5	[3], [18]
Kenya	7,5 / 10	10	10	[A], [2], [19]
Kingdom of Bahrain	10 / 15	10	5	[7]
Korea, Republic of	10 / 15	15	10	[1], [2]
Kuwait	5 / 10	10	10	[11]
Latvia	10	10	10	[2]
Lithuania	10	10	10	[2]
Luxembourg	15	10 / 15	10	[20]
Macau	10	10	10	[2]
Malta	10 / 15	10	10	[1], [2]
Mexico	10	10	10	[2]
Moldova	5 / 10	10	8	[7]
Montenegro	5 / 10	10	5 / 10	[21], [2], [15]
Morocco	10 / 15	12	10	[1]
Mozambique	10	10	10	[2]
Netherlands	10	10	10	[2]
Norway	5 / 15	10	10	[22]
Panama	10 / 15	10	10	[1], [2]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Pakistan	10 / 15	10	10	[1], [2]
Peru	10 / 15	10 / 15	10 / 15	[11], [23], [24]
Poland	10 / 15	10	10	[1], [2]
Qatar	5 / 10	10	10	[2], [11], [25]
Romania	10 / 15	10	10	[1], [2]
Russia	10 / 15	10	10	[1], [2]
San Marino	10 / 15	10	10	[7]
Sao Tome and Principe	10 / 15	10	10 / 15	[2], [7], [26]
Saudi Arabia	5 / 10	10	8	[2], [25],
Senegal	5 / 10	10	8 / 10	[7], [2], [27]
Singapore	10	10	10	[2], [12]
Slovakia	15 / 10	10	10	[1]
Slovenia	5 / 15	10	5	[2], [7]
South Africa	10 / 15	10	10	[1], [2]
Spain	10 / 15	15	5	[7]
Sultanate of Oman	5 / 10 / 15	10	8	[2], [28]
Sweden	-	-	-	[C]
Switzerland	5 / 15	10	5	[2], [7], [29]
Tunisia	15	15	10	-----
Turkey	5 / 15	10 / 15	10	[2], [16], [34]
Ukraine	10 / 15	10	10	[1], [2]
United Arab Emirates	5 / 15	10	5	[2], [11]
United Kingdom	10 / 15	10	5	[7]
United States	5 / 15	10	10	[1], [2], [30]
Uruguay	5 / 10	10	10	[7]
Venezuela	10	10	10 / 12	[2], [31]
Vietnam	5 / 10 / 15	10	10 / 7,5	[2], [32], [33]



Footnotes	
A	Follows the wording (or some aspects) of OECD Model Convention 2017.
B	No DTT in force between Finland and Portugal as of 1 January 2019.
C	No DTT in force between Sweden and Portugal as of 1 January 2022.
1	Dividends - The lower rate applies if the BO is a company, which holds directly at least 25% of the capital of the company paying the dividends for an uninterrupted period of at least 2 years prior to the decision to distribute the dividends.
2	Interest - An exemption applies in relation to interest paid by or received by the Public Administration mention in the rule (usually, Governments, political or administrative subdivision or local Authorities, undertakings controlled by the mention Public Administration, the national Central Banks, etc.). Note: Each DTT contains its specific way to structure the interest exemption connected to the Public Administration.
3	Dividends - The lower rate applies if the BO is a company, which holds directly at least 10% of the capital of the company paying the dividends for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends.
4	Dividends - The lower rate applies if the BO is a company which holds directly at least 25% of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or demerger reorganisation, of the company that holds the shares or that pays the dividend).
5	The dividend definition includes income distributed by “real estate investment funds” or “real estate investment companies”.
6	Royalties - The lower rate applies to recipients with a direct shareholding of at least 50% in the Portuguese company.
7	Dividends - The lower rate applies to companies (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
9	Interest - The lower rate will apply to interest derived from bonds or securities that are regularly and substantially traded on a recognised securities market. The intermediate rate will apply to interest derived from (i) loans granted by banks and insurance companies; and (ii) a sale on credit paid by the purchaser of machinery and equipment to a BO that is the seller of the machinery and equipment.
10	Royalties - The lower% rate applies to royalties for the use of, or the right to use, any industrial, commercial or scientific equipment.
11	Dividends - The lower rate applies to corporate recipients, which are the Beneficial Owners of the dividends, with a direct shareholding of minimum 10% in the Portuguese company.
12	Dividends - An exemption applies in relation to dividends paid to the Public Administration.
13	Interest - The 10% rate is applicable to interest on bonds issued in France after 1 January 1965.
14	Interest - Reduced rate will apply if the interest is paid on a loan of whatever kind granted by a bank. In the case of interest arising in Portugal, the provision of this subparagraph shall only apply if the operation for which loan is given, is considered to be of an economic or social interest for the country of the Portuguese government, which condition is always considered to be fulfilled if it is comprised in development plans approved by this government. An exemption applies in relation to interest paid to the national Central Banks.



Footnotes	
15	The 5 % rate applies to any copyright of literary, artistic or scientific work, including cinematographic films and recordings on tape or other media used for radio or television broadcasting or other means of reproduction or transmission or computer Software. The 10% rate applies to any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
16	Dividends - The lower rate applies if the BO is a company, which holds directly at least 25% of the capital of the company paying the dividends for an uninterrupted period of at least 2 years prior to the decision to distribute the dividends. In alternative, the lower rate also applies if the BO holds directly at least 25% of the capital of the company that has existed for less than two years, during the lifetime of the company.
17	Dividends - The lower rate applies to corporate recipients, which are the Beneficial Owners of the dividends, with a direct shareholding of minimum 25% in the Portuguese company. The intermediate rate applies if the BO is a company which holds directly at least 25% of the capital of the company paying the dividends where that latter company is a resident of Israel and the dividends are paid out of profits which are subject to tax in Israel at a rate which is lower than the normal rate of Israeli company tax.
18	Interest – The lower rate will apply if the interest is beneficially owned by a bank established and regulated as such under the laws of the other Contracting State. Protocol amended this provision stated that if Portugal concludes a DTT with another state on the exemption at source for interest beneficially owned by a bank which is a resident of that other state, the reduced rate above should be replaced and the interest should only be taxed in the Contracting State where the bank is resident.
19	Dividends - The lower rate applies if the BO is a company which holds directly at least 10% of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or demerger reorganisation, of the company that holds the shares or that pays the dividend).
20	Interest - Reduced rate will apply if the interest is paid by a company to a resident financial establishment of the other Contracting State.
21	Dividends - The lower rate applies if the BO is a company holds directly or indirectly at least 5% of the capital of the company paying the dividends.
22	Dividends - The lower rate applies if the BO is a company, which holds directly at least 10% of the capital (i) of the company paying the dividends for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends, or (ii) or if the company paying the dividends has existed for less than 12 months, during the lifetime of the company. The lower rate is also applicable to the Beneficial Owners are the Public Administration.
23	Interest – The lower rate will apply to the interest on any loan granted by a bank.
24	Royalties - The lower rate will apply to any payment of royalties received as consideration for the furnishing of technical assistance in connection with the use of, or the right to use, any copyright, goods or information.



Footnotes	
25	Dividends - The lower rate applies if the BO is a company, which holds directly at least 10% of the capital of the company paying the dividends. The intermediate rate applies to corporate recipients, which are the Beneficial Owners of the dividends, with a direct shareholding of minimum 10% in the Portuguese company.
26	Royalties - The 10% rate applies to royalties and the 15% applies to the technical fees (payments in consideration for any services of a managerial, technical or consultancy nature).
27	Royalties - The 10% rate applies to royalties and the 8% applies to the technical fees (payments in consideration for any services of a managerial, technical or consultancy nature).
28	Dividends - The lower rate applies if the BO is the Public Administration; The intermediate rate applies to corporate recipients, which are the Beneficial Owners of the dividends, with a direct shareholding of minimum 10% in the Portuguese company.
29	Dividends - An exemption applies in relation to dividends paid to the national Central Banks. The lower rate applies if: i) the company holds directly at least 25% of the capital of the company paying the dividends for a period of at least 2 years; ii) both companies are subject to and not exempt from of taxes covered by the DTT; iii) none of the company is a resident of that third state; and, iv) both the companies adopt the form of a limited liability company.
30	Royalties - If the royalties are received as consideration for the use of, or the right to use, containers in international traffic, the royalties shall be taxable only in the contracting state of which the recipient is a resident.
31	Royalties - The 12% rate applies to royalties and the 10% applies to the fees for technical assistance (payments received as a consideration for technical assistance in connection with the use or the right to use any copyright, goods or information).
32	Dividends - The lower rate applies to corporate recipients, which are the Beneficial Owners of the dividends, with a direct shareholding of minimum 70% in the Portuguese company. The intermediate rate applies to corporate recipients, which are the Beneficial Owners of the dividends, with a direct shareholding of minimum 25% in the Portuguese company.
33	Royalties - The 10% rate applies to royalties and the 7.5% applies to the technical fees (payments in consideration for any services of a managerial, technical or consultancy nature).
34	Interest – The lower rate will apply to the interest on a loan made for a period of more than two years.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

As a general rule, the limitation period for tax authorities to issue assessments is four years from the relevant taxable event (in some cases the limitation period begins to run from the end of the relevant tax period, such as in CIT, PIT), except in the following cases:

- RETT and SD on gratuitous transfers or transfers for consideration of real estate, eight years.
- If an error is detected in a taxpayer's return or if the taxable income is determined using indirect methods, three years.
- If the taxpayer reports any deduction or tax credit, the limitation period is the term during which the relevant right can be exercised.
- If a criminal procedure is initiated and the assessment depends on the facts under investigation, the limitation period for assessments is extended until one year after the end of the criminal proceedings.
- If the facts are related to a blacklisted jurisdiction and were not declared to the tax authorities, or if the facts are related to deposit or securities accounts held in financial institutions outside the EU or in subsidiaries of resident financial institutions located outside the EU, the existence and identification of which was not indicated by the taxpayer in the PIT return of the respective year, 12 years.

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	Financial Statements	Balance sheet and income statement for the years under review by the tax authorities
2	Tax Due Diligence	Financial Statements	Trial balance with the greatest amount of detail available for the years under review
3	Tax Due Diligence	Financial Statements	Annual accounts for the years under review by the tax authorities
4	Tax Due Diligence	General	Valid and most updated official statements of inexistence of debts towards the Tax Authorities and the Social Security.
5	Tax Due Diligence	General	Most updated commercial registry certificate.
6	Tax Due Diligence	General	Identification of all shareholding changes that occurred in years under review, and copy of any request of maintenance of tax losses and respective answer of the Portuguese Tax Authority ("PTA").
7	Tax Due Diligence	General	Minutes regarding the approval of any profits distribution for the years under review.
8	Tax Due Diligence	General	Print extracted from the PTA's website (showing date of issuance) in section "Consultar/ Informação Financeira/ Movimentos financeiros" search options (i) fines (ii) VAT (iii) CIT (iv) MPT (v) RETT (vi) SD (vii) "IStg" (viii) WHT PIT(ix) WHT CIT.
9	Tax Due Diligence	General	Notifications received regarding tax audits performed by tax authorities, as well as any communications exchanged with the tax authorities (namely binding opinions, revaluations of the VPT, amongst others) or any litigation.
10	Tax Due Diligence	General	Evidence of any other communication from/to the PTA not mentioned above.
11	Tax Due Diligence	General	Other tax debts and contingencies that the companies may be aware of.

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Nº.	Category	Sub-Category	Description of Request
12	Tax Due Diligence	Corporate Tax	Annual declaration of the CIT - "Modelo 22 do IRC" of the Companies for the years under review.
13	Tax Due Diligence	Corporate Tax	Declaration of Simplified Corporate Information (IES) of the Companies for the years under review.
14	Tax Due Diligence	Corporate Tax	Communication of the option to apply the RETGS (tax consolidation regime) and of all subsequent amendments to the perimeter of the Companies' group.
15	Tax Due Diligence	Corporate Tax	Detailed computation of the CIT estimate of the Companies and supporting documentation.
16	Tax Due Diligence	Corporate Tax	Detailed information of the computation of the CIT payable / receivable of each "Modelo 22 do IRC".
17	Tax Due Diligence	Corporate Tax	Computation and proof of payment (showing date of payment) of all CIT payments made in the years under review (e.g. payments on account, etc.) as well as evidence of any final CIT payments or refunds by the PTA.
18	Tax Due Diligence	Corporate Tax	Control-map of available tax losses including the tax losses generated in each year under review and the respective utilisation/per year and the balance to carry forward.
19	Tax Due Diligence	Corporate Tax	Computation of the autonomous taxation of the FYs under review (segregated by nature of expenses, rates applied and evidence of the underlying documentation).
20	Tax Due Diligence	Corporate Tax	Official tax forms "Modelo 30", explanation of procedures adopted for deductible provisions, adjustments to inventories and credits, impairments and provisions in the FYs under review.
21	Tax Due Diligence	Corporate Tax	Official tax forms "Modelo 32" for the depreciation and amortization of tangible and intangible assets in the FYs under review and underlying documentation.
22	Tax Due Diligence	Corporate Tax	Official tax forms "Modelo 31" for assessment of taxable capital gains and losses and summary spreadsheet for control of rollover relief mechanism of the FYs under review.
23	Tax Due Diligence	Transfer Pricing	Transfer pricing documentation for the FYs under review.
24	Tax Due Diligence	Transfer Pricing	Evidence or written declaration on whether the Tax file and Transfer pricing documentation (whenever applicable) are duly organized and transactions duly justified for the FYs under review.
25	Tax Due Diligence	Transfer Pricing	Evidence that the CbCr (Country by Country report) declarative obligation - "Modelo 55" (or that the reporting entity was identified to the PTA - "Modelo 54") was fulfilled (whenever applicable).
26	Tax Due Diligence	Corporate Tax	Evidence of the annual communication of the inventory for the FYs under review.
27	Tax Due Diligence	Corporate Tax	Supporting documentation and justification of any tax benefits, including subsidies received during the years open to inspection and their tax treatment.
28	Tax Due Diligence	Corporate Tax	Information regarding the participation in Joint ventures or other participations (e.g. ACE's) applying the tax transparency regime.

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Nº.	Category	Sub-Category	Description of Request
29	Tax Due Diligence	Corporate Tax	Evidence of the procedures adopted regarding representation expenses and travel and accommodation expenses as well as daily allowances and compensation given for the use of worker's own vehicle and underlying supporting documentation (namely, the necessary control maps and if when the daily allowances are paid any other meal allowances are correspondingly annulled/ deducted).
30	Tax Due Diligence	Corporate Tax	Evidence of the organisation structure for purposes of application of the EU Directives regarding payment of dividends, financial interests and/ or royalties payable to non-resident entities.
31	Tax Due Diligence	Corporate Tax	Evidence of any procedure entailed by the Companies to prove that the price actually paid on the sale or purchase of real estate was lower than the VPT for purposes of MPT.
32	Tax Due Diligence	Corporate Tax	Summary of social useful contributions given to employees, and confirmation that they are attributed to the overall employees under an objective and identical criteria, as well as information of expenses related to retirement benefits and other post-employment benefits or long-term employee benefits.
33	Tax Due Diligence	VAT	VAT initial activity return and subsequent amendments to business activity returns, and current print extracted from the PTA's.
34	Tax Due Diligence	VAT	Print extracted from the PTA's website in sections "Consultar/ Informação Financeira/ IVA/ Conta Corrente" and "Consultar/ Informação Financeira/ IVA/ Reembolsos/ Todos os periodos" for all FYs under analysis.
35	Tax Due Diligence	VAT	Evidence of the most relevant VAT reimbursement procedure entailed for the FYs under review.
36	Tax Due Diligence	VAT	Periodic VAT returns of the Companies submitted and respective payments of the FYs under review.
37	Tax Due Diligence	VAT	VAT recapitulative statements submitted in the FYs under review.
39	Tax Due Diligence	VAT	Brief description of the main active and passive transactions and of the adopted procedures in the assessment, reverse charge, and deduction of VAT (specifying the applied pro-rata and/or other allocation method).
40	Tax Due Diligence	VAT	Evidence of underlying documentation to the VAT adjustments ("regularizações") performed submitted in the FYs under review.
41	Tax Due Diligence	VAT	Evidence of situations and procedures adopted regarding the recharge of expenses to other entities and sample invoicing.
42	Tax Due Diligence	VAT	Description and supporting documentation regarding the applied discount policies for the FYs under review.
43	Tax Due Diligence	VAT	Evidence of compliance with the formalities required for export, namely, evidence of the appropriate customs documents or declaration issued by the purchaser of the goods or the user of the services.

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Nº.	Category	Sub-Category	Description of Request
44	Tax Due Diligence	VAT	Evidence of compliance with the formalities necessary for import, namely, electronic import declaration ("declaração eletrónica de importação") – STADA.
46	Tax Due Diligence	VAT	Detailed information on all transactions performed under the waiver of VAT exemption and underlying documentation regarding the compliance of the regime's conditions (PTA certificates, agreements, public deeds, VAT activity, evidence of ownership, etc).
47	Tax Due Diligence	VAT	Chart/table identifying the amount of VAT incurred and deducted regarding construction works and acquisitions within the VAT regularization period of 20 years if applicable.
48	Tax Due Diligence	VAT	Description and supporting documentation regarding any call-off stock arrangements ("vendas à consignação") implemented.
49	Tax Due Diligence	VAT	Evidence that the invoicing communication have been successfully and timely submitted on a monthly basis for the FYs under review.
50	Tax Due Diligence	VAT	Written confirmation that the communication of transport documents have been successfully made to the PTA in the period under analysis and if they were correctly issued and evidence of 2 samples per year of the FYs under review.
51	Tax Due Diligence	VAT	Evidence that if the SAF-T (PT) file was timely and successfully submitted in the FYs under review.
52	Tax Due Diligence	Payroll Taxes	Chart or table identifying the taxation procedure of the income paid to employees and board members under PIT (namely applied rates, exemptions, etc.) by nature of income, including segregation of bonuses, share of profits, remuneration in kind (e.g. car use, any "realizações de utilidade social" as health life insurances) and other fringe benefits, etc. always segregating board members from employees and specifying conditions of attribution.
53	Tax Due Diligence	Payroll Taxes	Evidence of payroll procedures regarding allowances, bonuses, share of profits, daily allowances, compensation given for the use of worker's own vehicle or similar granted to employees and board members, and underlying supporting documentation (namely internal policy, board meeting minutes, communication to employees, etc., segregating employees from board members) - months of January and August of each of the FYs under review.
54	Tax Due Diligence	Payroll Taxes	Confirmation that all monthly payroll declarations (DMR) were timely submitted to the PTA and evidence of DMRs respecting to January and August of each of the FYs under review.
55	Tax Due Diligence	Payroll Taxes	Payroll process for the month of January and July of each of year under review, as well as supporting documentation regarding daily-allowances and/or compensation for the use of worker's own vehicles paid.
56	Tax Due Diligence	Payroll Taxes	Minutes identifying remuneration of board members and proof of registration before Social Security authorities even if not remunerated (or provide evidence of any exemption from Social Security contribution applied/requested).



Nº.	Category	Sub-Category	Description of Request
57	Tax Due Diligence	Property Taxes	Chart summarizing all real estate transactions and related (namely promissory contracts, surface rights, usage rights, assignment of real estate related contractual position) performed, identifying: (i) nature of the transactions; (ii) date of purchase; (iii) value of purchase; (iv) VPT; (v) RETT paid; (vi) RETT applied exemption; (vii) specification if transactions performed with related party.
58	Tax Due Diligence	Property Taxes	Public deeds and other documentation concerning all the real estate transactions mentioned in the item above.
59	Tax Due Diligence	Property Taxes	Evidence of RETT assessments (even when an exemption was applied or delay in payment occurred) regarding all real estate transactions for the FYs under review and respective proof of payment (showing date of payment).
60	Tax Due Diligence	Property Taxes	Information and support documentation on any real estate acquisition performed in order to benefit from the RETT resale exemption (namely, information on the first acquisition performed to benefit from the exemption) in the FYs under review.
61	Tax Due Diligence	Property Taxes	Updated property land registry certificates ("certidão predial permanente").
62	Tax Due Diligence	Property Taxes	Updated tax registry certificates ("caderneta predial").
63	Tax Due Diligence	Property Taxes	Evidence of MPT assessments and proof of its payment for the FYs under review.
64	Tax Due Diligence	Property Taxes	Chart or table identifying any changes to the properties' areas or uses (services, housing, parking, etc.) as well as any constructions performed in the period under analysis.
65	Tax Due Diligence	Property Taxes	Forms "Modelo 1" submitted in the FYs under review.
66	Tax Due Diligence	Stamp Duty	List of operations / transactions performed by the Companies that were deemed subject to SD and evidence of the procedures adopted (namely if any exemptions were applied) as well as proof of any SD assessments and payments.
67	Tax Due Diligence	Stamp Duty	Monthly SD returns ("Declaração Mensal de Imposto do Selo") as well as any substitutive returns submitted and evidence of payment of the corresponding tax.
68	Tax Due Diligence	Stamp Duty	Sample of rental agreements, transfer of going concern, sub-concessions, loans and other agreements subject to SD and proof correspondent payment and / or identification of the applied exemption.
69	Tax Due Diligence	Stamp Duty	Information on shareholder's loans or other shareholder debts/credits and underlying agreements and underlying ledger of accounts for the FYs under review, and if any loans were provided on the grounds of treasury needs, please provide evidence for the treasury needs.
70	Tax Due Diligence	Stamp Duty	Copy of granted guarantees, containing: (i) name of the bank or financial institution; (ii) amounts guaranteed; (iii) granting and maturity dates; (iv) description of the type of guarantee; (v) beneficiary
71	Tax Due Diligence	Stamp Duty	Evidence of the submission of forms "Modelo 2" to communicate lease agreements in FYs under review.

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1. INTRODUCTION

a. Forms of Legal Entity

Romanian Company law allows for the incorporation of five different types of companies as legal entities, namely: General Partnership, Limited Partnership, Joint Stock Company, Company Limited by Shares and Limited Liability Company. All of these are liable to tax themselves, they are not considered transparent for tax purposes.

The most common legal forms of incorporation used in Romania are the Limited Liability Company ("LLC", or the so called "SRL") and the Joint Stock Company ("SA"). Generally, a legal entity should have at least two participants. Nonetheless, LLCs are allowed to have a sole shareholder. The minimum share capital in the case of a joint stock company is of approximately EUR19,000, while no minimum share capital is regulated in the case of the LLCs (prior to 5 November 2020, the LLCs minimum share capital was of approximately EUR40).

From 5 July 2020, as a measure aimed at relaxing and encouraging the development of the business environment, Romanian Company Law was amended so as to eliminate the legal restriction according to which (i) a natural or legal person could be a sole shareholder in only one LLC and (ii) an LLC with a sole shareholder could not have another LLC made up of a single person as sole shareholder.

b. Taxes, Tax Rates

From a tax standpoint, taxpayers are subject to various tax regimes depending inter alia on their legal status (e.g. individual vs. legal entity), type and size of activity carried out or type of income obtained.

In general, Romanian legal entities are subject to a tax on their taxable income (the microenterprise tax) following their incorporation. It is a flat rate of 1% or 3% (depending on certain criteria) applied to the taxable income, (the deduction of expenses is not allowed as a principle), this regime would generally be maintained as long as the yearly taxable revenue does not exceed EUR1 million. The microenterprises may however opt for the corporate income tax ("CIT") system if they meet certain requirements. This microenterprise tax system will suffer significant changes which will come in force on 1 January 2023 (e.g. the system will become optional, the taxable turnover threshold will be reduced to EUR0.5 million, the company will have to have at least one full time employee to be able to apply for the system, there will be a single tax rate, namely 1%, the company should not undertake specific activities like banking, insurance, or derive 20% or more of its turnover from consultancy and management activities etc.).

Another specific tax regime is the one applicable to the so called HoReCa industry (hotels / accommodation facilities, restaurants / catering and bars) which varies depending on several factors (e.g. type of activity, the useful commercial surface, rank of the locality etc.). This system will be eliminated from 1 January 2023 and these companies will be able to opt for applying the microenterprise or the corporate income tax system.

On the other hand, some Romanian legal entities (e.g. not falling into the category of microenterprises) and foreign legal entities that either carry out an activity via a permanent establishment in Romania, have their place of effective management in Romania or derive capital gains from Romania (related to Romanian shares or real estate) are subject to CIT currently at a flat rate of 16% applied to the taxable result (which is the accounting profit to which certain tax adjustments are made).

Romanian resident individuals are generally taxed at a flat rate of 10% on different types of revenues including also capital gains or interest, except dividend income which is taxed at a 5% flat rate (dividend tax rate will increase to 8% from 1 January 2023). Individuals may owe social security contributions for certain types of income, including investment income. Non-resident individuals also become subject to tax in Romania for certain Romanian sourced income which includes the investment income obtained from residents.

Aside from taxation of income, local taxes apply for various types of property. For instance, building tax is levied at a standard rate ranging from 0.08% to 1.3% (mainly depending on whether the building has a residential / non-residential or mixed use); while land tax is levied at a fixed rate per square metre and the rate varies according to the local council's categorisation of the location of land, the type of land use, locality rank, etc. From 1 January 2023, the local tax rates will be changed.

c. Common divergences between income shown on tax returns and local financial statements

For CIT payers, the taxable result is computed based on the accounting profit / loss (reflected in the financial statements) to which certain tax adjustments are made. Examples are the add back of non-deductible expenses and items similar to expenses (though not recorded in the profits and loss account) and deduction of non-taxable income and items similar to income.

2. RECENT DEVELOPMENTS

a. EU Directives tackling tax avoidance practices

As of 1 January 2018, Romania transposed into its domestic legislation four rules of Council Directive (EU) 2016/1164 *laying down rules against tax avoidance practices that directly affect the functioning of the internal market* ("ATAD"), specifically: interest limitation rule, exit taxation, general anti-abuse rule and controlled foreign company rule. For the most part, ATAD was implemented without many variations from its original text.

Subsequently, from 1 January 2019 several much awaited amendments were enacted in the domestic interest limitation rules, such as:

- An increase of the fixed tax deductible threshold from EUR200,000 to EUR1 million;
- An increase of the variable deductible threshold from 10% to 30% of tax-EBIDTA;
- Clarification that in the case of taxpayers involved in merger / spin-off operations, the right to carry forward exceeding borrowing costs is transferred to the absorbing / receiving companies, in certain conditions.

The latest development in this area represents the transposition into domestic legislation of Council Directive (EU) 2017/952 *amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries* ("ATAD2"), in February 2020.

b. Tax discounts for the net equity increase

According to the Government Emergency Ordinance no. 153/2020 ("GEO 153"), during the period 2021 – 2025 the taxpayers subject to CIT, microenterprise tax or the specific tax regime applicable to HoReCa industry may benefit of yearly tax discounts should they achieve certain increases of their net equity, as follows:

- Tax discount of 2% for recording a certain level of the net equity;
- Tax discounts between 5% to 10% for recording an increase of the adjusted net equity compared to the previous year (first condition should also be met);
- Tax discount of 3% for recording between 2022 and 2025 an increase over a certain threshold of the adjusted net equity compared to the adjusted net equity of 2020 (first condition should also be met).

The discounts may be cumulative where taxpayers fulfil more than one of the aforementioned conditions. GEO 153 also provides specific rules applicable in case of e.g. reorganisations, taxpayers with modified tax year, etc.

c. Coronavirus Aid and Relief measures

In the context of the COVID-19 situation, a state of emergency was declared in Romania on 16 March 2020 which was, as of 18 May 2020, replaced by an alert state. From 9 March 2022, the alert state was terminated in Romania and most of the restrictions associated with the COVID-19 pandemic were repealed.

The Romanian Government adopted measures to support economic operations for businesses affected by the spread of COVID-19. Some of the key tax measures taken in this respect consisted of:

- Non-application of late payment charges (penalties and interest) in case of certain tax obligations (applicable during 2020);
- Forced executions by garnishment in the case of budgetary receivables were either suspended or were not started, as the case may be (applicable during 2020);
- Social protection measures, such as technical unemployment were partially borne by the state (applicable in different periods of 2020 to 2022);
- "Bonuses" for the payment, within the legal deadline, of certain taxes (applicable during 2020);
- Tax discounts applicable for the HoReCa industry (applicable during 2020 and 2021).

Starting in 2022, most of the COVID-19 key tax measures were no longer applicable, but may be relevant to tax due diligence processes going forward.

3. SHARE ACQUISITION

a. General Comments

Share deals consist of the acquisition of a company's shares and as a consequence, the buyer indirectly achieves the ownership over the targeted assets and liabilities, having in general a minimum impact on the operational activity of the acquired company.

b. Tax Attributes

Changes in the shareholding structure of the acquired company taking place under a share deal scenario do not affect its tax position. Hence, any tax attributes such as tax losses, sponsorship tax credits, non-deductible reportable expenses which may be carried forward in the future, available at the level of the acquired company prior to the share deal will continue to be available post-acquisition.

c. Tax Grouping

With effect from 1 January 2021, Romanian tax legislation provides a specific framework regarding the consolidation regime for corporate income tax ("CIT") purposes. CIT consolidation involves the setting up of a tax group in which the calculation, declaration and payment of CIT is performed by one of its members, called the responsible legal entity. Specifically, each of the members calculate their individual tax result (taxable profit or tax loss) and the responsible legal entity adds-up the results of all the members in order to determine the tax result at group level.



A CIT consolidation group may consist of:

- A Romanian legal entity/legal entity with a registered office in Romania established according to European law and one or more other such entities in which the first legal entity holds, directly or indirectly, at least 75% of the value/number of participation titles or their voting rights;
- At least two Romanian legal entities in which a Romanian individual holds, directly or indirectly, at least 75% of the value/number of participation titles or voting rights;
- At least two Romanian legal entities in which a legal entity/individual, resident in a state with which Romania has concluded a double taxation treaty or an information exchange agreement, holds, directly or indirectly, at least 75% of the value/number of participation titles or voting rights; or
- At least one Romanian legal entity in which a legal entity, resident in a state with which Romania has concluded a double taxation treaty or an information exchange agreement, holds, directly or indirectly, at least 75% of the value/number of participation titles or voting rights and the permanent establishment in Romania of such foreign legal entity.

The Romanian tax legislation provides certain conditions which qualifying entities should fulfil in order to be a part of a CIT consolidation group such as being registered as CIT payers and applying the same CIT payment system (not applying microenterprise tax or HoReCa tax systems), having the same tax year, not being part of a different CIT consolidation group, not performing certain types of activities, etc.

The legislative framework provides specific provisions with respect to setting up the CIT consolidation group, the minimum period for which the group should be maintained, joining or exiting a CIT consolidation group during its existence and tax consequences thereof, computing the taxable result and declaring the CIT due by the group. If a member exits a CIT consolidation group before the minimum period expires, the respective member and the group should recalculate the tax results of prior periods as if that member was not part of the group (this may lead to additional tax liabilities); there are certain exceptions to this rule.

The Romanian legislation also provides a specific framework regulating the implementation of tax grouping for VAT purposes.

d. Tax Free Reorganisations

Reorganisations may be implemented in a tax neutral manner by way of a merger, spin-off, transfer of assets (in exchange for shares) or exchange of shares. Such operations involving Romanian legal entities, as well as EU qualifying legal entities, may be generally tax neutral for the difference between the market value of the assets / liabilities transferred and their tax value (e.g. no CIT is due), provided certain criteria are cumulatively met (e.g. the receiving entity maintains the tax value, tax depreciation methods and useful lives of the assets transferred at the same level as they were prior to the reorganisation process). In case of partial spin-offs, the transfer should consist of one or more independent business lines towards one or more existing / new entities, while the company undergoing the spin-off operation should maintain at least one independent business line.

Reorganisation operations must have business substance to be considered tax neutral. Domestic and EU cross border reorganisation operations may not enjoy tax neutrality if they result in fraud and tax evasion detected according to the law. Share deals, as well as merger and spin-off operations are outside the VAT scope by default (i.e. the transfer does not represent a VATable operation), while asset deals may enjoy VAT neutrality only provided they qualify as a transfer of a going concern ("TOGC") per the domestic legislation.

e. Purchase Agreement

Usually, the acquisition of shares is made either by a holding company that owns and manages the investee(s), or by a special purpose vehicle set-up in light of a leveraged buyout structure.

It is recommended that specific buyer-protection clauses (e.g. representations and warranties, indemnity clauses) are inserted in the share purchase agreements ("SPAs") to provide the buyer with protection against risks which may crystalise in the future as a result of pre-closing events. The following tax areas are heavily scrutinised by the tax authorities at present, regardless of the industry of the taxpayer:

- Deductibility of service expenses: to claim CIT deductibility, the target should be able to demonstrate with written evidence that the services acquired have been actually rendered, that they were acquired and used for business purposes as well as the benefits derived by the taxpayer therefrom;
- Transfer pricing issues may arise for transactions carried out by the target with related parties: these should be carried out at fair market value (in line with the "arm's length principle"). Lack of a complete transfer pricing file may trigger fines and adjustment of taxable basis for CIT purposes and also for VAT in certain circumstances;
- Services acquired by the target from individuals organised as freelancers / limited liability companies etc. may be re-qualified in certain cases as dependent relationships from a tax point of view and hence trigger personal income tax and mandatory social security contributions, similarly to salaries. These, as well as late payment charges may be imposed on the target.

f. Transfer taxes on share transfers

There is no indirect transfer tax for the sale of shares (certain commissions / taxes may be due if the shares are traded on the regulated market, or certain fixed amounts may be due to the Trade Register). Sale of shares is an exempt without credit operation for VAT purposes, and therefore no Romanian VAT should be charged.

g. "Purchase accounting" applicable to share acquisitions

In the case of share acquisitions, the local accounting regulations (Order 1.802/2014) provide that the shares are recognised by the buyer at the level of their acquisition cost, regardless of any differences that may exist between the fair value and historical cost of the assets in the acquired company.

h. Share Purchase Advantages

One of the key advantages of a share deal is the possibility to take over a business together with any tax assets available (e.g. tax losses, tax credits). For instance, a Romanian company is entitled to carry forward and recover its fiscal losses in the next seven consecutive years based on FIFO method provided it is a CIT payer (this means that companies subject to microenterprise tax or HoReCa specific tax are not entitled to carry forward tax losses).

Additional benefits such as the possibility to deduct reportable expenses in future periods are also available in share deals.

Though the value of the tangible and intangible assets in a share deal cannot be stepped up at the date of the share deal, the value of the tangible non-current assets can be increased for both accounting and tax purposes further to a year-end revaluation which generates a surplus. Nevertheless, the CIT impact of increased tax depreciation corresponding to the revaluation surplus is netted-off by an equal taxable item. Such a revaluation may be performed provided that the target accounting policy is to revaluate its depreciable non-current assets. Recognition of a step-up in value of intangible assets for accounting and tax purposes is not allowed. Moreover, under a share deal, the target company is entitled to continue with the same tax depreciation plan applicable for its non-current assets as before the transaction.

Another advantage of a share deal is the possibility for the acquired company to request the issuance of tax clearance certificates from the Romanian tax authorities certifying that the company has no outstanding tax liabilities. However, such certificates confirm that the company settled the tax liabilities which were self-assessed. Hence, the certificate does not ensure that there are no undeclared tax liabilities for instance. Thus, for an increased level of comfort regarding past tax liabilities, the company should also undergo a tax audit carried out by the tax authorities.

Going forward, no real estate tax implications arise in the case of a share deal, as far as the immovable assets of the acquired company are concerned. However, potential notary fees may be due if the parties opt to have the share purchase agreement authenticated by a notary public. In this case, the notary fees are due by either the seller or by the buyer, as contractually agreed between the parties.

Also, from a VAT standpoint, the sale of shares is a VAT exempt without credit operation.

i. Share Purchase Disadvantages

The main drawback of a share deal is that the buyer takes over all liabilities, including tax liabilities, of the target. Therefore, buyers should perform in-depth due diligence to quantify the potential risks and seek protection through the sale and purchase agreement (by asking the seller for guarantees and indemnities in respect of pre-closing events).

4. ASSET ACQUISITION

a. General Comments

By comparison to a share deal, asset deals consist in the acquisition of a part or the totality of a company's assets, the ownership right being transferred as a whole.

b. Purchase Price Allocation

In case of a business transfer, the purchase price allocation should be made based on a valuation report.

c. Tax Attributes

Taking over a business by way of an asset deal does not involve taking over of the tax attributes available of the transferring company (e.g. tax losses, tax credits) prior to the transfer, as only the assets per se are transferred to the receiving company. Nevertheless, the history of the assets is relevant as the buyer should continue the tax depreciation over the remaining useful life (if this information is available) and if the sale qualifies as a transfer of the business as a going concern (outside the VAT scope), the buyer becomes the successor of the transferor in terms of VAT adjustment liability.

d. Tax Free Reorganisations

Reorganisations may be implemented by way of a merger, spin-off or transfer of assets (in exchange for shares) or exchange of shares. In order for the aforementioned operations to be tax free, certain criteria should be cumulatively met (e.g. the receiving entity maintains the tax value, tax depreciation methods and useful lives of the assets transferred at the same level as they were prior to the reorganisation process). In particular, asset deals per se may enjoy direct tax neutrality provided they are performed by way of consideration as an exchange of shares (i.e. like a transfer of assets in exchange for shares – e.g. a partial spin-off where the transferring entity receives shares in in the receiving entity in exchange for the assets transferred to the latter) and VAT neutrality provided they qualify as a 'transfer of a going concern' per the domestic legislation.

Further to performing an asset deal, the receiving company may later on perform a spin-off operation whereby the acquired line of business can be subsequently transferred to an existing or newly incorporated company. The spin-off enjoys VAT neutrality (as the operation is outside the scope of VAT) and subject to the fulfilment of certain conditions, may also enjoy direct tax neutrality.

e. Purchase Agreement

When discussing Business Transfer Agreements ("BTAs"), it is key that the parties (and especially the seller) ensure the BTA clauses accurately reflect the economic substance of the transaction. For instance, assuming the transaction qualifies as a TOGC for VAT purposes, the clauses of the BTA should be drafted to capture the essential features of the business line transferred, its key elements and the intention of the receiving company to continue that same business. Furthermore, buyers should ensure they are protected in case the tax neutrality of the asset deal is later challenged by the tax authorities.

f. Depreciation and Amortisation

For Romanian tax purposes, the useful life of depreciable non-current tangible assets is established within specific ranges, depending on the category of assets concerned. The taxpayer has the option to choose any period falling within the legal range. Under an asset deal, the buyer is entitled to recover the acquisition price of the depreciable non-current tangible assets during their remaining useful life via tax depreciation charges. Intangibles recognised for accounting purposes and which have a determined useful life are generally amortised for tax purposes on a straight line basis over their useful life or the contractual term. One of the exceptions to this rule is that no tax depreciation is allowed for any resulting goodwill item.

g. Transfer Taxes, VAT

No stamp duties, real estate tax or notary fees are due at the moment of the asset deal. Notary fees are due in case the parties opt to authenticate the contract for the transfer of ownership right. It is generally mandatory for the transfer of the ownership rights over land and buildings to be authenticated by a notary public. The notary fees are owed either by the seller or by the buyer, as mutually agreed.

As previously mentioned, in case the asset deal does not qualify as a TOGC for VAT purposes and hence, the transaction is VATable, the applicable VAT rate depends on the nature of assets transferred. The standard VAT rate applicable in Romania is 19%.

h. Asset Purchase Advantages

The main advantage of an asset deal is that the buyer should not take over the seller's pre-closing financial and tax liabilities, as would be the case under a share deal.

i. Asset Purchase Disadvantages

Generally, in cases where the asset deal does not enjoy VAT neutrality, the buyer may request reimbursement of the input VAT incurred upon the acquisition of assets. However, such a procedure may prove to be administratively burdensome and lengthy (as it generally entails a tax audit for instance if it is the first reimbursement request). In the case of specific operations, VAT simplification measures apply if the seller and buyer are both registered for VAT purposes in Romania. Examples of operations are sales of constructions and land. The simplification measures provide that the buyer accounts for VAT via reverse charge mechanism without any VAT cashflow effect to the extent it has the right to fully deduct VAT. If the asset deal qualifies as a TOGC, it falls outside of the Romanian VAT scope and no VAT should apply.

Another drawback is that in an asset deal any historical tax losses recorded by the transferring company cannot be used by the buyer, but may be offset by the transferring company against potential gains arising at the date of the asset deal (if it does not qualify for direct tax neutrality).

Moreover, if buildings are transferred, the related real estate tax (building tax) which will be owed by the buyer (as new owner) is likely to differ from the real estate tax that was owed by the seller prior to disposal. The buildings are chargeable to different local tax rates depending on their purpose (residential vs. non-residential).

If the buyer is a legal entity, the taxable base for the first 5 years will be represented by the acquisition cost. Building's value should be updated based on a valuation report prepared by an authorised valuator at least once in every 5 years, as otherwise the building tax rate will increase (this valuation is different from the one made for accounting purposes). The seller of a building pays the building tax for the remaining period of the calendar year in which the asset is sold. The buyer pays the building tax starting the following year.

5. ACQUISITION VEHICLES

a. General Comments

There are various reasons for deciding to set up a special purpose vehicle ("SPV") in a specific jurisdiction (e.g. ease of doing business, stability of the tax framework, availability of tax incentives, overall economic context, banking system, set up and maintenance costs etc.), be it in Romania or in a different jurisdiction.

Nonetheless, it is worth mentioning that given the concerns raised by the wide-spread BEPS (base erosion and profit shifting) phenomenon, actions have been taken in order to effectively tackle aggressive tax planning practices such as treaty shopping (i.e. arrangements through which a person who is not a resident of a State attempts to obtain benefits that a tax treaty concluded by that State grants to residents of that State, for example by establishing a company in that State). It is viewed that such strategies could be established also to avoid, for example, capital gains tax with respect to the sale of shares in (real estate) companies located in jurisdictions whose (capital gains) taxing rights are not granted to them under the applicable Double Taxation Treaty ("DTT").

In this respect, Romania has announced that the OECD's BEPS Action 6 (aimed at targeting and preventing treaty abuse) is a priority and its recommendations will be implemented in Romania's DTTs through a multilateral instrument in the upcoming years. Additionally, on 10 January 2022 the law for the ratification of the Multilateral Convention was published for the implementation in the DTTs the measures related to the prevention of the erosion of the tax base and the transfer of profits, opened for signing and signed by Romania in Paris, in 2017. This will enter into force on 1 June 2022.

Thus, the provisions of the current DTTs concluded by Romania would need to be read in conjunction with Romania's list of reservations on the Multilateral Convention insofar as they address forms of treaty abuse by denying the benefits provided by the DTTs. Nevertheless, the Romanian tax legislation already contains a general anti-abuse rule under which artificial cross border transactions deemed as such by the Romanian tax authorities would be denied the benefits provided by the DTT.

Also, a Draft EU Directive laying down rules to prevent the misuse of shell entities for tax purposes (so called "ATAD 3") was released in December 2021.

b. Domestic Acquisition Vehicle

Setting up a domestic SPV may involve certain advantages with respect to the taxation of income flows derived from its local subsidiaries. For instance, the dividends the SPV receives from a Romanian subsidiary (legal entity) are not taxable for corporate income tax ("CIT") and microenterprise tax purposes. Moreover, the gross dividends may also be exempt from the 5% dividend tax applied by the subsidiary (this rate will be increased to 8% from 1 January 2023) provided the SPV holds at least 10% of the subsidiary's share capital for an uninterrupted period of minimum one year at dividend payment date.

Also, capital gains obtained (from the sale of shares and / or of assets) by Romanian resident companies registered as CIT payers are included in their ordinary profit and taxed at the CIT rate of 16%. If the seller owns at least 10% of the share capital of the subsidiary for an uninterrupted period of minimum one year, the capital gains from the sale of the shares are not taxable for CIT. Capital losses related to a sale of shares are in general tax deductible, except for the cases where the participation meets the above holding conditions (10%, for one year).

Lastly, liquidation proceeds derived by a Romanian CIT payer following the liquidation of a Romanian subsidiary or foreign subsidiaries resident in treaty countries are subject to the same participation exemption, (i.e. such income is non-taxable provided the holding requirements are met, 10%, for one year, when the liquidation procedure is initiated).

c. Foreign Acquisition Vehicle

As Romania has a large network of DTTs with more than 85 other countries, the incorporation of a foreign SPV is at times also contemplated by investors. If a non-resident company acquires the shares of a Romanian target company, the Romanian standard tax rules applicable to dividends and capital gains are in principle similar to those applicable to acquisitions made by Romanian companies.

Capital gains obtained by non-residents from the sale of shares held in Romanian companies are taxable in Romania at the 16% CIT rate. Sellers resident in treaty countries are exempt from CIT if at the date of disposal the participation exemption conditions are met (holding 10%, for one year). If the holding conditions are not met, the capital gain may still be CIT exempt in Romania if the DTT concluded between Romania and the country where the seller is tax resident awards the right to tax such gains only to the other state (investor's country). However, certain DTTs award taxation rights to Romania in case the shares sold by the non-resident derive their value (in)directly mainly from real estate located in Romania, this should therefore be analysed on a case by case basis.

In addition, the corporate non-resident seller is required to register for Romanian CIT purposes either directly (in case of EU / EEA tax residents) or by appointing a Romanian tax agent. The tax registration is used for declaring and paying any Romanian capital gains tax owed. Obtaining a tax number and filing nil tax returns is required even if no tax is due in Romania (e.g. by virtue of the applicable DTT).

The non-resident should make available a tax residence certificate issued by competent authorities in its residence jurisdiction in order to be able to invoke treaty benefits and the non-resident should have appropriate economic substance.



Other types of income flows towards the non-resident SPV (e.g. dividends, interest, royalties, etc.) are subject to Romanian withholding tax ("WHT"), currently at a 5% rate in the case of dividends (to be increased to 8% from 1 January 2023) and 16% for all other payments (save for individuals who are tax resident of an EU state or a DTT state who are subject to a 10% standard WHT rate in Romania). Nonetheless, qualifying EU tax resident investors may benefit from a WHT exemption for dividends, interest and royalty income received from the Romanian subsidiary (under the specific conditions of the transposed EU Parent Subsidiary Directive and EU Interest and Royalties Directive). Substance as well as other formal requirements should be met for to benefit from such exemptions.

It is also worth mentioning that:

- Lack of substance of the foreign investor may lead to non-application of the above mentioned exemptions or reduced rates under DTTs, EU legislation, etc.;
- If a non-resident company acquires the assets of a Romanian company and continues to operate the business, it will likely give rise to a permanent establishment in Romania, in which case 16% CIT would be due on the allocable taxable profits;
- If the foreign investor has the actual place of effective management in Romania, it becomes a Romanian tax resident and is liable to 16% Romanian CIT on its worldwide income, from 2021 a procedure is available in order to establish if a foreign investor may be considered as having the effective place of management in Romania, as well as the obligations arising in this situation. Additionally the Romanian law contains general anti-abuse rules (covering also artificial cross border transactions) which may be used to requalify a transaction as to reflect its underlying economic substance.

d. Partnerships and joint ventures

Based on our experience, it is not common practice that shares are acquired by an unincorporated entity such as a partnership or a joint venture.

e. Strategic vs Private Equity Buyers

There are no particular distinctions or differentiators to highlight in terms of tax considerations between strategic or private equity buyers investing in Romania. The M&A market in Romania has significantly evolved and growth in investment is anticipated to continue.



6. ACQUISITION FINANCING

a. General Comments

At a first glance, purely from a Romanian tax perspective, equity financing may be preferred in certain cases to debt funding as there are no tax deductibility limitations for corporate income taxpayers. However, it leads to a less flexible structure in terms of funds repatriation as compared to debt financing.

b. Equity

Cash injections leading to an increase in the share capital of a company are made either by (a) the issuance of new shares or (b) the increase of the nominal value of existing shares. From a tax standpoint, if performed according to the law, such operations are excluded from the definition of dividends and should not trigger taxable events. Separately, Romanian Company Law requires that the level of net assets is at least equal to 50% of the subscribed share capital, so this aspect should be monitored as well.

Nonetheless, lack of substance of the foreign investor may lead to non-application of the exemptions provided by the domestic legislation or the reduced rates under DTTs for capital gains, dividend and other income flows such as interest or royalties. If the foreign investor has the actual place of effective management in Romania, it becomes a Romanian tax resident and is liable to 16% Romanian CIT on its worldwide income. From 2021 a procedure is available in order to establish if a foreign investor may be considered as having the effective place of management in Romania, as well as the obligations arising in this situation. Additionally, the Romanian law contains general anti-abuse rules (covering also artificial cross-border transactions) which may be used to requalify a transaction as to reflect its underlying economic substance. Regarding the vehicle used for holding this equity in a Romanian target, please refer to Section 5. above.

c. Debt

i Limitation on interest deductions

Purely from a tax perspective, expenses (including interest expenses) are deductible if they are incurred for business purposes. Moreover, from a legal standpoint, the debt should be used exclusively for the benefit of the company and not for personal use.

With effect from 1 January 2019, the domestic interest tax deductibility rules (which implemented *Council Directive (EU) 2016/1164 laying down rules against tax avoidance practices that directly affect the functioning of the internal market* starting 1 January 2018) were further amended. Thus, excess borrowing costs (generally defined as financing expenses less financing income) are deductible for CIT purposes up to a EUR1 million threshold per year (vs. the previous EUR200,000 threshold). Excess borrowing cost in excess of this amount is further deductible up to an increased quota of 30% (vs. a 10% quota applicable in 2018) of adjusted (positive) EBITDA (computed as the accounting result of which non-taxable income are excluded and to which CIT expenses, excess borrowing costs and tax deductible depreciation are added back). Excess borrowing costs which are non-deductible in the reporting period may be carried forward for an unlimited period of time under the same conditions for deductibility purposes.

Interest limitation does not apply to independent companies (i.e. entities which are not part of a consolidated group for financial accounting purposes, having no associated enterprise and no permanent establishment) nor in respect of loans used to finance long term public infrastructure projects. If the taxpayer applies the tax on microenterprises income (instead of CIT), the above rule is not relevant as deductions are not generally allowed under this regime.



To sum up, these limitations apply for both intragroup financing and third party (e.g. bank) financing and also for the interest capitalised into the asset value per the accounting rules (e.g. constructions), if the case. In this respect, the relationship with an associated entity is generally characterised by a direct or indirect participation of 25% or more of the share capital / vote rights or the right to receive 25% or more of the entity's profits. Moreover, if the financing is intragroup, the cost should be set at fair market value and documented for transfer pricing purposes, otherwise the tax authority is entitled to make adjustments for tax purposes.

ii Debt Pushdown

One way to achieve debt pushdown related to the acquisition of a Romanian target company is to use a leveraged buyout structure. Under a leveraged buyout a Romanian special purpose vehicle ("SPV") is used to buy the target's shares on the basis it obtains financing in this regard. Subsequently the SPV and the target are merged and hence the debt obtained to acquire the target's shares is presented in the resulting entity's balance sheet. However mergers implemented under a leveraged buyout must have business substance in order to be tax neutral. To our knowledge, so far in practice, the Romanian tax authorities have not challenged leveraged buyouts. Pre-merger interest accrued may be entirely non-deductible if at least 10% of the shares are acquired and held for at least one year. Moreover, there are arguments to benefit from tax deduction of interest accrued post-merger within the limits of the ATAD interest limitation rules as long as the company carries out economic activity.

d. Hybrid Instruments

From 3 February 2020, the rules regarding hybrid mismatches, reverse hybrid mismatches and tax residency mismatches provided by Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries ("ATAD2") were implemented in the Romanian tax law.

The rules address mismatch situations which result from double deductions, from conflict in the characterisation of financial instruments, payments and entities, or from the allocation of payments. Where the mismatch leads to a double deduction or to a deduction without inclusion, Romania will either deny the deduction of a payment, expenses or losses, or require the taxpayer to include the payment in its taxable income, as the case may be. To this end, it is expressly mentioned that the norms/concepts/definitions/examples provided in the OECD BEPS report on Action 2 should be observed.

e. Earn-outs

Earn-out clauses may be included in share purchase agreements, as at times they may prove an appropriate instrument for structuring the price of a transaction. The tax implications should be assessed on a case by case basis depending on specific circumstances.

7. DIVESTITURES

a. Tax Free

Tax free divestitures are generally achievable provided the participation exemption conditions are met.

In this regard, capital gains arising from the sale of shares by Romanian resident companies registered as CIT payers are CIT exempt if the seller owns for an uninterrupted period of minimum one year at least 10% of the share capital of the subsidiary.

Capital gains obtained by non-residents from the sale of shares held in Romanian companies are taxable in Romania at the 16% CIT rate. Sellers resident in treaty countries are exempt from CIT if at the date of disposal the participation exemption conditions are met (holding 10%, for one year). If the holding conditions are not met, the capital gain may still be CIT exempt in Romania if the DTT concluded between Romania and the country where the seller is tax resident awards the right to tax such gains only to the other state (investor's country). However, certain DTTs award taxation rights to Romania in case the shares sold by the non-resident derive their value (in)directly mainly from real estate located in Romania, this should therefore be analysed on a case by case basis.

Lastly, liquidation proceeds derived by a Romanian CIT payer following the liquidation of a Romanian subsidiary or foreign subsidiaries resident in treaty countries are subject to the same participation exemption (i.e. such income is non-taxable provided the holding requirements are met, holding 10%, for one year, when the liquidation procedure is initiated).

b. Taxable

An exit may generate taxation in Romania in certain situations (e.g. the seller is a Romanian tax resident individual, if the participation exemption conditions are not met by the corporate seller, if the seller is a resident of a state with which Romania did not enter a DTT, or if the DTT grants Romania taxing rights on capital gains (and local participation exemption rules are not met).

c. Cross Border

From 1 January 2018, following the partial implementation by Romania in its domestic tax law of the ATAD provisions, a taxpayer is subject to exit tax, where transferring, for example, (i) assets from its Romanian permanent establishment to its head office, or (ii) another permanent establishment in another EU member state or in a third country, in so far as Romania no longer has the right to tax the transferred assets due to the transfer. According to the tax law, the exit tax is currently assessed at 16% tax rate, applicable on the difference determined between the market value of the transferred assets, at the time of exit of the assets and their value for tax purposes. Nonetheless, in certain conditions, a deferral in the payment of the exit tax is given, allowing the taxpayer to pay the exit tax in instalments over a 5 year period.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Romanian residents are subject to tax on their worldwide taxable income. Per the domestic tax legislation, a resident is any Romanian legal entity, any foreign legal entity having its place of effective management in Romania, any legal entity having its seat (registered office) in Romania and which is incorporated according to the European legislation and any resident individual.

b. CFC Regime

From 1 January 2018, CFC rules were implemented in the Romanian legislation and the provisions do not stray significantly from the ATAD's provisions. Specifically, a Romanian taxpayer deemed to have a CFC in another jurisdiction includes in its corporate income tax ("CIT") tax base undistributed revenues such as interest, royalties, dividends, capital gains, revenues from certain financial activities (e.g. financial leasing, insurance, banking etc.) and revenues indirectly derived from transactions with associated companies in certain conditions. The CFC regulations do not apply to CEE companies which have a significant economic activity, supported by personnel, equipment, assets and facilities or if the relevant revenues derived by the CFC (mentioned above) are equal or less than one third of the total revenues booked in the respective tax period. The avoidance of double taxation is ensured via the credit mechanism.

c. Foreign branches and partnerships

Domestic companies undertaking activities via a permanent establishment situated in another country may apply one of the methods for the avoidance of double taxation depending on the provisions of the relevant double tax treaty, namely:

- The credit method : the domestic target can benefit from a tax credit for the tax paid abroad but the tax credit so granted cannot exceed the corporate income tax which would have been due if the Romanian corporate income tax provisions would have been applied; or
- The exemption method : the profits derived from the foreign permanent establishment are exempt from corporate income tax purposes in Romania.

Where partnerships are concerned, assuming they are seen as tax transparent entities, the income so derived is taxable at the level of each Romanian partner, based on the relevant rules.

d. Cash Repatriation

According to the domestic legislation, cash repatriation from a branch or permanent establishment to its head office is not deemed to be a distribution of dividends.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Attention should be paid to the DTT concluded between Romania and the country of tax residence of the buyer of the Romanian target whose assets are mainly represented by Romanian real estate.

Specifically, it should be checked whether, according to the above mentioned DTT, Romania has the right to tax the capital gains derived by a non-resident investor from the sale of the shares in an entity whose major assets are Romanian real estate. If this is the case, any capital gains received upon a future exit are subject to 16% Romanian corporate income tax, save for the case where the seller is tax resident in a treaty country and has maintained a participation of minimum 10% in the target`s capital for at least one year prior the sale.

b. CbC and Other Reporting Regimes

Country by Country (CbC) reporting obligations were introduced locally in 2017. An ultimate parent entity of a MNE Group (i.e. a multinational group having total consolidated group revenue of more than EUR750 million or an amount in RON equivalent to EUR750 million during the fiscal year preceding the reporting fiscal year) tax resident in Romania or another reporting entity (namely, a surrogate parent entity or other constituent entity under certain conditions, both resident in Romania), shall submit a CbC report for each fiscal reporting year (beginning on or after 1 January 2016; in case of constituent entities, the first reporting year was 2017). The filing term of the CbC report is of 12 months since the last day of the reporting fiscal year of the MNE Group (for instance, 31 December 2020 for FY 2019 calendar year).

The Romanian resident entity that does not fulfil the criteria mentioned above (i.e. not being the final parent entity or the surrogate parent entity or the designated constituent entity), but is part of a MNE Group (which has the consolidated group revenue over EUR750 million during the fiscal year preceding the reporting fiscal year), has the obligation to notify the relevant Romanian authorities with regard to the identity and residence of the reporting entity until the last day of the reporting fiscal year of the MNE Group at the latest, but not later than the submission deadline of the tax statement of the respective constituent entity for the previous year.

10. TRANSFER PRICING

The Romanian transfer pricing rules apply to intragroup transactions performed either between domestic entities or between a Romanian and a foreign entity. The national transfer pricing legislation follows the OECD Guidelines and requires that all transactions between related parties be carried out at market value (i.e. at arm's length value).

In cases where transfer prices are not set according to the arm's length principle, the Romanian tax authorities have the right, upon a tax audit, to adjust the taxpayer's expenses or revenues to reflect the market value of transactions. Hence, for instance where taxable mergers and spin-offs performed between related parties are concerned, business valuations should be performed in order to document that the taxation was applied with reference to the fair market value.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

With the implementation of the ATAD2 rules regarding hybrid mismatches starting 2020, the arrangements that involve the use of hybrid entities should be carefully analysed in order to determine whether they result in mismatches that lead to either double deduction or a deduction without inclusion, case in which specific tax rules should be observed in Romania.

Moreover, it is specifically provided that where one or more non-resident related companies hold a total (in)direct participation of at least 50% in a Romanian established / registered hybrid entity and these non-resident companies are located in jurisdictions that treat the respective hybrid entity as a taxpayer, the hybrid entity is considered tax resident in Romania and subject to CIT as long as the income it derives is not taxed in another way in any of the other jurisdictions involved.

b. Use of Hybrid Instruments

From 3 February 2020, the rules regarding hybrid mismatches, reverse hybrid mismatches and tax residency mismatches provided by Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries ("ATAD2") were implemented in the Romanian tax law.

The rules address mismatch situations which result from double deductions, from conflict in the characterisation of financial instruments, payments and entities, or from the allocation of payments. Where the mismatch leads to a double deduction or to a deduction without inclusion, Romania will either deny the deduction of a payment, expenses or losses, or require the taxpayer to include the payment in its taxable income, as the case may be. To this end, it is expressly mentioned that the norms/concepts/definitions/examples provided in the OECD BEPS report on Action 2 should be observed.

c. Principal/Limited Risk Distribution or Similar Structures

Such structures can be implemented in the post-acquisition integration phase. However, in accordance with the general anti-abuse rule, attention should be given to the practical aspects of such arrangements, not to the formal ones. Consequently, the relevant tax provisions regarding, inter alia, transfer pricing (e.g. appropriate pricing method, comprehensive functional and risk analysis, etc.) and the creation of permanent establishments (e.g. where the activity performed in practice exceeds the auxiliary / preparatory threshold, usage of commissionaire arrangements, etc.) should be observed.

d. Intellectual property

Transactions involving intellectual property (IP) are rather sensitive and should be carefully analysed on a case by case basis in order to correctly identify the related tax implications. Going forward, where such transactions are performed between related parties transfer pricing rules should be observed. Also, the recently implemented exit taxation rules could be relevant where the transfer of such assets leads to Romania losing the taxation right over such assets while they remain in the legal / economic ownership of the same taxpayer (e.g. transfers from a Romanian PE to the head office).



e. Special tax regimes

Though no IP related preferential tax regimes are currently available, the domestic legislation contains a specific tax framework for research and development ("R&D") companies and activities. Specifically, companies performing R&D activities are granted tax deductions for corporate income tax purposes, as follows:

- An additional tax deduction of 50% of eligible expenses for R&D activities;
- The possibility of applying the accelerated tax depreciation method regarding devices and equipment used in R&D activity; and
- An exemption is also available on reinvested profit in new technological equipment, computers and related peripherals, computer programs, etc. (list of qualifying assets will be extended from 2023).

A similar incentive is available for individuals carrying out R&D activities in that related as salary income is exempt from personal income tax purposes.

Moreover, taxpayers engaged exclusively in innovation, research, development, and related activities, are exempt from corporate income tax during the first 10 years of activity. This tax relief is applied in compliance with state aid regulations. State aid schemes (in the form of non-refundable grants) aimed at supporting R&D activities and investments in the R&D sector are also available.

Other special tax regimes include:

- The special regime for activities relating to bars, nightclubs, clubs and casinos. If the corporate income tax due for such activities is lower than 5% of the related revenues, the CIT is determined as 5% applied on revenues;
- The special regime applicable for the IT sector : individuals deriving salaries from activities carried out in the IT programming field are exempt from personal income tax under certain conditions;
- The special regime for the constructions sector : from 1 January 2019 until 31 December 2028, individuals deriving salaries from activities carried out in the constructions field will benefit from personal income tax exemptions and decrease of social security contributions (for salary related income) under certain conditions which refer to the employer's type of activity, the turnover derived by the employer, the monthly gross income from salaries derived by the employees benefiting from the personal income tax exemption.

12. OECD BEPS CONSIDERATIONS

Romania is a member of the Inclusive Framework on BEPS and is reviewing and monitoring implementation of the OECD/G20 BEPS Action Plan.

Romania has announced that the OECD's BEPS Action 6 (preventing misuse of treaties) is a priority for Romania. Thus, BEPS measures on avoidance of double taxation agreements will be implemented through a multilateral instrument that was negotiated within the ad hoc group established in 2015 for this purpose. In this respect, on 10 January 2022 the law was published for the ratification of the Multilateral Convention for the implementation in the DTTs of the measures related to the prevention of the erosion of the tax base and the transfer of profits; this was previously opened for signing and signed by Romania in Paris, in 2017.

Moreover, the domestic framework setting the procedures for preparing the local file and master file transfer pricing documents are already in line with the OECD BEPS project, Action 13. Large taxpayers must prepare transfer pricing documentation by the deadline of the annual CIT return submission (i.e. June 25 of the year following the tax year for the tax years 2021 – 2025 and 25 March of the year following the tax year starting 2026) and have it available upon request, when the annual value of a related-party transaction exceeds certain thresholds.

Also, Romania has enacted legislation to implement the provisions of Directive 2016/881/EU (DAC4) on Country-by-Country reporting ("CbCr") and exchange of CbC reports within the EU (the Directive is based on the Final Report on Action 13 of the OECD/G20 BEPS Project), as well as those of Directive 2018/822/EU ("DAC6") effective from 1 July 2020 (it should be noted though that Romania opted for a 6 month deferral of the initial reporting deadlines in the context of the COVID-19 pandemic).

13. ACCOUNTING CONSIDERATIONS

a. Combinations

The key accounting aspects that should be considered in combinations scenarios are related, amongst others, to:

- The booking of goodwill (either positive or negative, depending on the difference between the acquisition cost and the fair market value of the net assets acquired at transaction date);
- The accurate recognition of client contracts / lists depending on whether such elements qualify as intangible assets per the statutory accounting rules;
- The recapture of equity, asset and liability elements at the level of the absorbing / acquiring company; and
- The correct computation of the merger / spin-off premium (if the case).

The Romanian legislation contains specific provisions and guidelines in respect of the accounting treatment applicable in case of mergers and spin-offs.

b. Divestitures

Divestitures may be implemented in several ways, such as liquidating the target, sale of shares or withdrawal of the shareholder from the target. Among the main aspects that should be observed from an accounting standpoint we note:

- The inventory and valuation of assets, liabilities and equity;
- Valorisation of the target's assets (The term "valorisation" refers to one of the steps that should be followed in e.g. a liquidation procedure – the "valorisation" may be achieved by way of selling the assets, cashing-in the receivables, etc.); and
- Valuation of remuneration due to shareholders which withdraw from the target.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Distributable reserves refer in general to reserves whose booking is facultative according to the Romanian legal provisions. Generally, the distribution of such reserves to shareholders gives rise to a taxable event for CIT purposes as long as the reserves were previously deducted. Such distributions are deemed dividends for tax purposes.

b. Substance Requirements for Recipients

Under the general anti-abuse rule provided by the domestic legislation, arrangements which are not genuine and lack valid commercial reasons which reflect economic reality, but have been put into place for the main purpose or one of the main purposes of obtaining a tax advantage, shall be disregarded by the Romanian tax authorities. In such events, the tax liabilities are established based on the domestic provisions (in other words, the international legislative instruments such as DTTs or EU Directives are inapplicable).

c. Application of Regional Rules

As a member of the European Union since 1 January 2007, Romania implemented / is obliged to implement all EU Directives. In the field of taxation, after transposing directives like Council Directive 2011/96/EU of 30 November 2011 *on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States*, Council Directive 2003/49/EC of 3 June 2003 *on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States* or Council Directive 2009/133/EC of 19 October 2009 *on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States*, Council Directive (EU) 2016/1164 *laying down rules against tax avoidance practices that directly affect the functioning of the internal market* ("ATAD"), the latest EU Directive to be implemented in the domestic legislation is Council Directive (EU) 2017/952 *amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries* ("ATAD2").



d. Tax Rulings and Clearances

Companies may request the issuance of an Advance Pricing Agreement ("APA"), subject to a fee ranging between the RON equivalent of EUR10,000 – EUR 20,000 or Advance Individual Tax Rulings ("AITR"), subject to a fee ranging between the RON equivalent of EUR3,000 – EUR 5,000, depending on the taxpayer's size (i.e. whether r small and middle-sized or large taxpayer). The terms for issuing APAs are 12 months for unilateral APAs and 18 months for bilateral and multilateral APAs. The term for issuing AITRs is 6 months.

AITRs and APAs can be requested only for future tax situation / transactions and are applicable solely at the level of the applicant taxpayer. Where new business models or arrangements are contemplated to be implemented post acquisition, the issuance of an AITR or APA can clarify and / or secure the tax treatment from the earliest possible stages. Bilateral / multilateral APAs may only be issued for transactions carried out in connection with taxpayers located in countries with which Romania has concluded double taxation agreements.

In practice, the taxpayers may also ask for non-binding rulings from the Ministry of Finance or the Tax Administration.

15. MAJOR NON-TAX CONSIDERATIONS

Due regard should be given to the legal aspects that arise in the context of an M&A deal. Where mergers are concerned, it is recommended that a legal due diligence is performed in order to identify any potential risks that may materialise at the level of the target company (e.g. where the target has significant real estate property or operates in a highly-regulated sector). In the context of reorganisations, the legal aspects related to the transfer of employees should be carefully analysed and observed. General Data Protection Regulation ("GDPR") obligations may also arise.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
Albania	10 / 15	10	15	[3]
Algeria	15	0 / 15	15	
Armenia	5 / 10	10	10	[3]
Australia	5 / 15	10	10	[1] [3]
Austria	0 / 5	0 / 3	3	[3]
Azerbaijan	5 / 10	8	10	[3]
Bangladesh	10 / 15	10	10	[1]
Belarus	10	10	15	
Belgium	5 / 15	10	5	[3]
Bulgaria	5	0 / 5	5	[19]
Canada	5 / 15	10	5 / 10	[1] [21]
China	0 / 3	0 / 3	3	[20]
Croatia	5	10	10	
Cyprus	10	10	5	
Czech Republic	10	7	10	
Denmark	10 / 15	10	10	[3]
Ecuador	15	10	10	
Egypt	10	15	15	
Estonia	10	10	10	
Ethiopia	10	15	15	
Finland	5	5	2.5 / 5	[21]
France	10	10	10	
Georgia	8	10	5	
Germany	5 / 15	0 / 3	3	[3] [4]
Greece	20 / 45	10	5 / 7	[5] [21]
Hong Kong	0 / 3 / 5	0 / 3	3	[18]
Hungary	5 / 15	15	10	[6]
Iceland	5 / 10	3	5	[3]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
India	10	10	10	
Indonesia	12.5 / 15	13	12.5 / 15	[3] [21]
Iran	10	8	10	
Ireland	3	0 / 3	0 / 3	[7] [21]
Israel	15	5 / 10	10	[12]
Italy	0 / 5	0 / 5	5	[1]
Japan	10	10	10 / 15	[21]
Jordan	15	13	15	
Kazakhstan	10	10	10	
Kuwait	0 / 1	0 / 1	20	[3]
Latvia	10	10	10	
Lebanon	5	5	5	
Lithuania	10	10	10	
Luxembourg	5 / 15	0 / 10	10	[2] [3]
Macedonia	5	10	10	
Malaysia	0 / 10	0 / 15	12	[13]
Malta	5 / 30	5	5	[14]
Mexico	10	15	15	
Moldavia	10	10	10 / 15	[21]
Morocco	10	10	10	
Namibia	15	15	15	
Netherlands	0 / 5 / 15	0 / 3	0 / 3	[8] [9] [21]
Nigeria	13	13	13	[15]
North Korea	10	10	10	
Norway	0 / 5 / 10	0 / 5	5	[1] [2]
Pakistan	10	10	13	
Philippines	10 / 15	10 / 15	10 / 15 / 25	[3] [12] [21]
Poland	5 / 15	10	10	[3]
Portugal	10 / 15	10	10	[3]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
Qatar	3	3	5	
Russian Federation	15	15	10	
San Marino	0 / 5 / 10	3	3	[8]
Saudi Arabia	5	5	10	
Singapore	5	5	5	
Slovak Republic	10	10	10	
Slovenia	5	5	5	
South Africa	15	15	15	
South Korea	7 / 10	10	7 / 10	[3] [12] [21]
Spain	5 / 0	3 / 0	3	[1] [2]
Sri Lanka	13	10	10	
Sudan	5 / 10	5	5	[3]
Sweden	10	10	10	
Switzerland	0 / 15	0 / 5	10	[10]
Syria	5 / 15	10	12	[3]
Tajikistan	5 / 10	10	10	[3]
Thailand	15 / 20	10 / 20 / 25	15	[3] [16]
Tunisia	12	10	12	[17]
Turkmenistan	10	10	15	
Turkey	15	10	10	
Ukraine	10 / 15	10	10 / 15	[3] [21]
United Arab Emirates	3	3	3	[1] [2]
United Kingdom	10 / 15	10	10 / 15	[3] [21]
United States	10	10	10 / 15	[21]
Uruguay	5 /10	0 / 10	10	[3] [11]
Uzbekistan	10	10	10	
Vietnam	15	10	15	
Yugoslavia (applicable in Serbia and Montenegro)	10	10	10	[2]



Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
Yugoslavia (applicable in Bosnia and Herzegovina)	5 / 10	7	5	[2] [3]
Zambia	10	10	15	

Footnotes	
1	In the case of Australia, the lower rate is applicable if the dividend's beneficiary is a company (other than a partnership) owning directly at least 10% of the capital of the payer and the dividends are paid of profits that borne the normal rate of company tax. In the case of Bangladesh the lower rate is applicable if the beneficiary of dividends is a company owning directly at least 10% of the capital of the payer. In the case of Canada, the lower rate is applicable if the beneficial owner is a company that controls directly or indirectly at least 10% of the voting power in the company paying the dividends, except in case of dividends paid by a non resident-owned investment corporation that is resident of Canada. In the case of Italy, the 0% rate is applicable if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends on the date the dividends are paid and has done so or will have done so for an uninterrupted period of two years in which that date falls. In the case of the DTT concluded between Romania and Spain, the 0% rate for dividends is applicable if the beneficial owner is a company which holds directly or indirectly at least 10% of the capital of the company paying the dividends on the date the dividends are paid and has done so for an uninterrupted period of one year or is a pension scheme which is resident in one of the Contracting States. In the case of Norway, the 5% dividend tax rate is applicable if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends. Romanian-sourced dividends derived and beneficially owned by the Central Bank of Norway, the Government Pension Fund Global or a statutory body or any entity wholly or mainly owned by Norway shall be taxable only in Norway. In the case of UAE, Romanian-sourced dividends are non-taxable if the beneficial owner of the dividends is the Government of UAE or any governmental institutions or entity thereof, a company which is a resident of UAE and the capital of which is owned directly or indirectly (>25%) by the Government or governmental institutions of UAE.

Footnotes	
2	In the case of Luxembourg, the 0% tax rate applies if the loan generating the interest is guaranteed, insured or financed by the other State or by a financial institution which is a resident of that other State. In the case of Italy, Romanian-sourced interest is exempt from tax in Romania if: (a) the payer of the interest is the Romanian Government or a local organisation thereof, (b) the interest is paid to the Italian Government or local authority thereof or to a body or an agency (including a financial institution) which is wholly owned by Italy or local authority thereof, or (c) the interest is paid to other bodies or agencies (including financial institutions) dependent for their funds on the same above mentioned entities by virtue of agreements concluded between the Governments of the Contracting States. In the case of Norway, Romanian-sourced interest is exempt in Romania if it is derived and beneficially owned by the Government of Norway or a political subdivision, local authority or administrative - territorial unit thereof or any agency or bank unit or institution of Norway or political subdivision, local authority or administrative - territorial unit or if the debt claims of a resident of Norway are warranted, insured or financed by a financial institution wholly owned by the Government of Norway. In the case of UAE, Romanian-sourced interest is exempt in Romania if it is paid to the Government of UAE or its financial institutions or if it arises from institutions the capital of which is wholly or partially owned by the Government of Romania. In the case of Bosnia and Herzegovina, Romanian-sourced interest is exempt in Romania if it is derived and beneficially owned by the Government of Bosnia and Herzegovina or an administrative - territorial unit, political subdivision or local authority thereof or any agency or bank unit or institution of that Government or administrative - territorial unit, political subdivision or local authority or if the debt-claims of a resident of Bosnia and Herzegovina are warranted, insured or financed by a financial institution wholly owned by the Government of Bosnia and Herzegovina. In the case of Serbia and Montenegro, Romanian-sourced interest is exempt from tax in Romania if it is derived and beneficially owned by the Government of Serbia and Montenegro, a political subdivision, or an administrative-territorial unit or a local authority thereof or any bank of that Government, a political subdivision, or an administrative-territorial unit or a local authority thereof. In the case of the DTT concluded between Romania and Spain, the interest sourced from a Contracting State shall be exempt from tax in the other Contracting State if it is derived and effectively obtained by the other Contracting State or by a political subdivision or administrative-territorial unit thereof or by any agency or bank or an institution of the other Contracting State or of that political subdivision or administrative-territorial unit, or if the claims of a resident of the other Contracting State are guaranteed, secured or financed by a financial institution wholly or principally owned by the other Contracting State.

Footnotes	
3	The lower rate is applicable if the beneficiary of dividends is a company owning directly at least 25% of the capital of the payer. In the case of Thailand, an additional requirement applies (i.e. the company paying the dividends engages in an industrial undertaking). In the case of Albania, Australia, Austria, Denmark, Germany, Iceland, Luxembourg, Poland, South Korea, Sudan, Syria, Tajikistan, Thailand, Ukraine, Uruguay dividends distributed to partnerships are taxed at higher rate, irrespective of the participation share. In the case of Kuwait, the 0% rate is applicable if the beneficial owner of dividends is a company resident in the other state and owned to an extent of at least 51% by the Government (or assimilated institutions provided in the Convention) of the state directly or indirectly, and the remaining capital is owned by national residents of that State. Also, the 0% rate for interest is applicable if the beneficial owner of interest is a company resident in the other state and owned to an extent of at least 25% by the Government (or assimilated institutions provided in the Convention) of the state directly or indirectly, and the remaining capital is owned by national residents of that State. In the case of the Philippines, the lower rate applies for dividends received by a company (other than a partnership) which owns during the part of the paying company's taxable year, preceding the dividend payment date, and, where appropriate, during its entire prior taxable year, at least 25% of the outstanding shares of the voting stock of the company paying the dividends. In the case of Portugal, the lower rate applies for dividends received by a company which, for an uninterrupted period of two years prior to the payment of the dividends, owns directly at least 25% of the capital stock of the company paying the dividends. In the case of the UK, the lower rate applies if the beneficial owner is a company which controls directly or indirectly at least 25% of the voting power in the company paying the dividends. In the case of Austria, interest arising in Romania shall not be taxable in Romania if the interest is paid in respect of a loan granted, approved, guaranteed of insured by the Government of a Contracting State, the Central Bank of a Contracting State or any financial institution owned or controlled by the Government of a Contracting State, the interest is paid in respect of a loan granted by a bank or any other financial institution (including an insurance company), the interest is paid on a loan made for a period of more than two years, the interest is paid in connection with the sale on credit of any industrial, commercial or scientific equipment. Starting 1 January 2015, the interest arising in Romania may be tax exempt in Romania only to the extent that the receiver of the interest is a legal entity, resident for tax purposes in Austria.
4	The 0% rate is applicable in Romania if the interest is paid to the German Government, Deutsche Bundesbank, the Kreditanstalt fur Wiederaufbau or Deutsche Investitions und Entwicklungsgesellschaft (DEG) or interest paid for a loan guaranteed by HERMES-Deckung. The zero rate is also applicable in Germany for interest paid to Romanian Government, if it is derived and beneficially owned by the Government of Romania, an administrative-territorial unit or a local authority thereof or any agency or bank unit or institution of the Government of Romania, an administrative-territorial unit or a local authority or if the debt claims of a resident of Romania are warranted, insured or financed by a financial institution wholly owned by the Government of Romania. Also, if and as long as the Germany, under its domestic legislation, levies no withholding tax on interest paid to a resident of Romania, the percentage provided for in paragraph 2 of Article 11 (3%) shall be reduced to 0%. Dividend and interest income arising in Romania may be taxed in Romania if the income is derived from debt claims carrying a right to participate in profits, including income derived by a silent partner from his participation as such, or from a loan with an interest rate linked to borrower's profit or from profit sharing bonds within the meaning of the German tax law and under the condition that they are deductible in the determination of profits of the debtor of such income.
5	The lower rate is applicable to dividends paid by companies resident in Romania.
6	The lower rate is applicable if the beneficiary of the dividends is a company owning directly at least 40% of the capital of the payer.

Footnotes	
7	Some of the DTTs that Romania entered into, provide that the zero rate is applicable if the interest is paid in connection with the sale on credit of any industrial, commercial or scientific equipment, or on any loan granted by a bank or financial institution (including Insurance Companies), on any loan made for more than a two year period, or on any debt-claim of whatever kind guaranteed, insured or directly or indirectly financed by or on behalf of the Government of either Contracting State. Ireland is one of the cases.
8	The 0% rate applies if the beneficiary of the dividends is a company (other than a partnership) owning directly at least 25% of the capital of the payer. The 5% rate applies if the dividends' beneficiary is a company (other than a partnership) owning directly at least 10% of the capital of the payer. The 15% rate applies to other dividends. In case of San Marino, the 0% rate applies if the beneficial owner of the dividends is a company (other than a partnership) owning directly at least 50% of the capital of the payer. The 5% rate applies if the beneficial owner of dividends is a company (other than a partnership) owning directly at least 10% of the capital of the payer. The 10% rate applies to other dividends.
9	Romania will not impose WHT on interest as long as Dutch domestic law is not imposing tax on this type of payments.
10	A Protocol for the amendment of the DTT between Romania and Switzerland signed in February 2011 became effective 1 January 2013. According to this Protocol, the dividend tax rate applicable in the state of source is of 15%. However, it is reduced to nil if the beneficial owner is (i) a company (other than a partnership) holding directly at least 25% of the payer's capital, (ii) a pension fund or a similar institution supplying pension schemes (iii) the Government of that other state, a political subdivision, local authority or administrative-territorial unit thereof or the central bank of that other State. As regards taxation of interest, per the Protocol, interest shall be taxed in the state of source at a rate of 5% or it can be reduced to 0% in case the beneficiary company holds at least 25% in the capital of the Romanian paying company or in case a third company holds at least 25% of the capital of both the payer and the recipient or the interest is related to a loan, debt claim or credit which is due, realised, provided, guaranteed or insured by the Government of the other state or a political subdivision, local authority, administrative- territorial unit or export financing institution thereof.
11	The interest arising in Romania and paid towards a resident of Uruguay shall be exempted from withholding tax in Romania in case the beneficial owner of such interest is represented by the Government of Uruguay or a political subdivision, a local authority or an administrative territorial unit or any agency or bank unit or institution of the Government of Uruguay, political subdivision, local authority or administrative territorial unit, or in case the debt claim of the resident of Uruguay is warranted, insured or financed by a financial institution wholly owned by the Government of Uruguay.
12	The lower rate is applicable only if the interest paid is related to sales on credit of industrial, commercial or scientific equipment, any merchandise sold between enterprises or any loan granted by a bank. In the case of South Korea, the interest paid regarding credit sale of any industrial or scientific equipment shall be taxable only in the Contracting State in which the beneficiary resides. In the case of the Philippines the lower rate is applicable for interests paid regarding credit sale of any industrial, commercial or scientific machine or equipment or similar installation or for any loan, regardless of its nature, granted by a bank or if the interests are paid regarding public issues of bonds, debentures and other similar obligations. The higher rate is applicable for interests paid in respect with the sale on credit of any means of transport and all other cases not mentioned in the Convention.
13	Dividends paid by a resident company of Malaysia to a resident of Romania who is the beneficial owner, shall be exempt from any tax in Malaysia imposed in addition to the tax on Malaysian company's income. The interest paid to a resident of Romania shall be exempt from tax if the loan or debt for which the interest is paid is an approved or a long term loan.

Footnotes	
14	The higher rate is applicable when dividends are paid by a company which is a resident of Malta to a resident of Romania who is the beneficial owner.
15	If the recipient of dividends/ interests is subject to taxation in the other Contracting State.
16	The 10% rate is applicable for interests received by any financial institution (including an insurance company), the 20% rate is applicable for interest related to sales on credit and the 25% rate is applicable in any other cases.
17	The 10% rate does not apply for interests on loans granted and guaranteed directly or indirectly by a Contracting State, a territorial- administrative unit, a local or public authority (including financial institutions or state-owned banks).
18	The 5% rate applies if the recipient of dividends is the beneficial owner. The reduced 3% dividend tax rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 15% of the capital of the company paying the dividends. The 3% rate on interest payments applies if the recipient of dividends is the beneficial owner but may be reduced to 0% if Hong Kong levies no withholding tax on interest under its domestic law. The 3% rate applies if the recipient of royalties is the beneficial owner. Romanian-sourced dividends and interest may also be exempt in Romania if they are derived and beneficially owned by the Government of the Hong Kong Special Administrative Region, the Hong Kong Monetary Authority, the Exchange Fund, a financial institution wholly or mainly owned by the Government of the Hong Kong Special Administrative Region and mutually agreed upon by the competent authorities of the Contracting Parties.
19	The 5% rate applies if the recipient of dividends/ interest/ royalties is the beneficial owner. The 5% dividend tax rate does not apply to income assimilated to dividends for tax purposes under the Romanian law; in such case, the domestic rate applies. Romanian-sourced interest is tax exempt in Romania if it is derived and beneficially owned by Bulgaria or an administrative - territorial unit or a local authority thereof, or the Central Bank of Bulgaria, or any agency or bank or institution of Bulgaria or administrative - territorial unit or local authority or if the debt claims of a resident of Bulgaria are warranted, insured or financed by a financial institution wholly owned by Bulgaria.
20	The 3% rate applies if the recipient of dividends/ interest is the beneficial owner. Romanian-sourced dividends are tax exempt in Romania if paid to China or a political subdivision, local authority or administrative-territorial unit thereof, or any entity wholly or mainly owned by China (>50%). Interest arising in Romania and beneficially owned by a resident of China shall be taxable only in China to the extent that such interest is paid in respect of indebtedness arising as a consequence of the sale on credit of any equipment, merchandise or services; any loan of whatever kind granted by a financial institution of China; to China or a political subdivision, local authority or administrative-territorial unit thereof, or any entity wholly or mainly owned (>50%) by China.



Footnotes	
21	In the case of Canada, the reduced rate applies for Romanian-sourced royalties if they are (i) copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or other artistic work (but not including royalties in respect of motion picture films nor royalties in respect of works on film or videotape or other means of reproduction for use in connection with television broadcasting), or (ii) royalties paid as consideration for the use of, or the right to use, computer software or any patent or for information concerning industrial, commercial or scientific experience (but not including any such royalty provided in connection with a rental or franchise agreement). In the case of Finland, the reduced rate applies for Romanian-sourced royalties received for the use of, or the right to use, computer software, or industrial, commercial or scientific equipment. In the case of Greece, the reduced rate applied for Romanian-sourced royalties paid as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, and films or tapes for television or radio broadcasting. In the case of Indonesia, the 15% rate applies for Romanian-sourced royalties received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work. In the case of Ireland, Romanian-sourced royalties received as a consideration for the use of, or the right to use: any copyright of literary, artistic or scientific work including motion pictures or films, recordings on tape or other media used for radio or television broadcasting or other means of reproduction or transmission are non-taxable in Romania. In the case of Japan, the 10% rate applies for cultural royalties, while the 15% rate applies for industrial royalties. In the case of Moldavia, the reduced rate applies to royalties received as a consideration for the use, or the right to use, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific fields. In the case of the Philippines, the 10% rate applies to royalties paid by an enterprise registered with the Romanian Agency for Development and engaged in preferred pioneer areas of activities, while the 15% rate applies to royalties relating to cinematographic films and tapes for television of broadcasting. In the case of South Korea, the reduced rate applies to royalties paid for the use of or the right to use any patent, trade mark, design or model plan, secret formula or process, or for the use of, or the right to use industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience. In the case of Ukraine, the reduced rate applies to royalties paid for the use of or the right to use any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience. In the case of the US, the 10% rate applies to cultural royalties, while the 15% rate applies to industrial royalties. In the case of the United Kingdom, the reduced rate applies to royalties received as consideration for the use of, or the right to use, any copyright of literary, dramatic, musical, artistic or scientific work (including cinematograph films and films or tapes for radio or television broadcasting). In the case of the Netherlands, as long as the Netherlands, under its national legislation, levies no withholding tax on royalties paid to a resident of Romania, the tax applicable to Romanian-sourced royalties is reduced to 0%.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

According to the Romanian tax legislation, the statute of limitations for tax liabilities for which the Romanian tax authorities may perform tax audits is 5 years, computed starting with 1 July of the year following the one for which the tax obligation is due. In certain circumstances, this period may be extended to 10 years in cases where the taxpayer committed an act sanctioned by the criminal law. In this regard, a tax due diligence exercise can be performed for the entire period open for tax audit, however, generally such exercises may cover the last 3 years open for tax audit and this can then be extended to the 5 year term if material issues are identified.

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Copy of the taxpayer factsheet (Rom. *"fisa pe platitor"/"fisa sintetica"*) drawn-up at a recent date.
2	Tax Due Diligence	General	Details regarding the accrual policy applied at the level of the Target.
3	Tax Due Diligence	General	Copy all correspondence with the tax authorities during or related to the period under review.
4	Tax Due Diligence	General	The Transfer Pricing file (if available).
5	Tax Due Diligence	Corporate income tax	Annual analytical trial balances and general ledgers (prepared based on the Romanian accounting regulations) in electronic format (Excel) for the period under review.
6	Tax Due Diligence	Corporate income tax	Copy of the annual initial/ rectifying corporate income tax returns (Form 101) submitted for the period under review (and the related submission proofs).
7	Tax Due Diligence	Corporate income tax	Copy of the quarterly initial/ rectifying tax returns regarding the corporate income tax for the period under review (and the related submission proof).
8	Tax Due Diligence	Corporate income tax	Annual corporate income tax computations for the period under review, accompanied by details regarding the non-taxable items, non-deductible expenses, tax deductions.
9	Tax Due Diligence	Corporate income tax	Copies of loan agreements regarding loans contracted by the Target during the period under review and the computation of the tax deductible interest expenses (if the case).
10	Tax Due Diligence	Corporate income tax	Information regarding the computation of tax depreciation of tangible and intangible fixed assets.
11	Tax Due Diligence	Corporate income tax	Information about any increases, reductions of share capital, movements of reserves, liquidations, mergers, dissolutions, spin-offs, contributions in kind to the share capital of the Target or to other companies, acquisitions and sale of shares of other companies, etc.

Nº.	Category	Sub-Category	Description of Request
12	Tax Due Diligence	Corporate income tax	Copies of the Top 5 yearly contracts entered with service suppliers (e.g. management, consultancy marketing etc.) for the period under review and sample back-up documentation.
13	Tax Due Diligence	Corporate income tax	Information / details on the existence and, if the case, accounting entries and tax treatment for: a) sales of fixed assets b) joint-venture agreements, lease or rental agreements, free lease agreements, etc. (if the case). c) agreements for sales/acquisitions with the payment in advance or by instalments. d) sponsorship agreements concluded by the Target (if the case).
14	Tax Due Diligence	Corporate income tax	Details regarding the recharge method towards other related parties and brief summary of the cases where recharges are performed.
15	Tax Due Diligence	Corporate income tax	A breakdown detailing the fiscal losses reported from previous years at the level of the Target, accompanied by the related annual corporate income tax returns.
16	Tax Due Diligence	Value added tax	Copies of the monthly VAT returns (form 300), recapitulative statements (form 390), returns regarding the delivery / provision of services and the purchases made on the national territory (form 394), copies of the monthly purchases and sales journals and the copy of the register of capital goods for the period under review.
17	Tax Due Diligence	Value added tax	Description of the VAT policy at the level of the Target in relation to the following: protocol expenses, sponsorship expenses, fuel and other car related expenses, leasing.
18	Tax Due Diligence	Value added tax	The accounting and VAT treatment and information regarding the write-off for destroyed, lost or stolen goods, quality damaged goods, goods granted for free as samples within promotions, goods granted for boosting sales, write-off of fixed assets.
19	Tax Due Diligence	Value added tax	Information regarding input VAT adjustment in case of capital goods.
20	Tax Due Diligence	Withholding tax	Copy of the monthly and annual tax returns submitted regarding the withholding tax for the income obtained from Romania by non-residents for the period under review.
21	Tax Due Diligence	Withholding tax	Copies of the tax residency certificates for each year under review issued for the non-residents towards which the Target performed payments subject to WHT in Romania during the period under review.



Nº.	Category	Sub-Category	Description of Request
22	Tax Due Diligence	Withholding tax	Summary of the payments made by the Target to non-resident service providers.
23	Tax Due Diligence	Personal income tax and social security contributions	Details regarding the benefits policy (benefits in cash or in kind) granted to employees during the period under review, as well as the tax treatment applied.
24	Tax Due Diligence	Personal income tax and social security contributions	Details regarding individual income tax exemptions applied for employees (if applicable), as well as regarding other amounts exempted.
25	Tax Due Diligence	Personal income tax and social security contributions	Copies of the mandate agreements for the individuals in the Target's management positions, if the case.
26	Tax Due Diligence	Personal income tax and social security contributions	Details regarding the types of service agreements signed by the Target with independent contractors/ agents/ microenterprises / etc. and details with respect to the tax regime applied by the Target to such payments.
27	Tax Due Diligence	Local taxes	Information regarding buildings and land, such as acquisitions/ sales during the year, tax statements files, tax payments and correspondence with the local tax authorities.

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SLOVAKIA

1. INTRODUCTION

a. Forms of Legal Entity

In Slovakia, legal entities established for the purpose of doing business may be formed by one or more individuals or legal entities. All the details on the legal entity are entered in the commercial register. The Slovak law differentiates four basic forms of a legal entity: limited liability company, joint-stock company, limited partnership and general partnership.

Limited liability company ("*spoločnosť s ručením obmedzeným*", "s.r.o.", "spol. s r.o.") is the most common type of legal entity used in Slovakia. It can be established by one or more owners (shareholders). However, the maximum number of shareholders is 50. The liability of the shareholders for the debts of the company is limited to the amount of their unpaid contribution. The minimum registered capital of a limited liability company is EUR5,000, while the minimum contribution of one shareholder is EUR750. The supreme body of a limited liability company is the general meeting, made up of shareholders. A supervisory board may also be established but is not obligatory. The statutory representative of the company is the managing director. A limited liability company is taxed on the company level (i.e. it is treated as an opaque entity for corporate tax purposes) and corporate income tax is applicable.

Joint-stock company ("*akciová spoločnosť*", "a.s.", "akc. spol.") is a corporation with an unlimited number of shareholders. It is liable for its debts up to the amount of its assets. The shareholders are not liable for the company's debts. The minimum share capital of the joint stock company is EUR25,000. The capital is divided into a certain number of shares, and these are held by individual shareholders. Important matters of the company are decided by voting at the general assembly of shareholders. The supreme body is the board of directors. Activities of the company are supervised by the supervisory board, which is obligatory. A joint-stock company is taxed at the company level (i.e. it is treated as an opaque entity for corporate tax purposes) and corporate income tax is applicable.

Limited partnership ("*komanditná spoločnosť*", "k.s.") has two types of partners, a general partner and a limited partner. General partners have unlimited liability for the debts of the limited partnership. Limited partners only have limited liability up to the amount of their contribution. A limited partnership is a combination of a transparent and an opaque entity. The tax base is calculated for the limited partnership as a whole and is attributed separately to general and limited partners in the next step. The share attributable to limited partners is taxed on the level of the limited partnership (corporate income tax is applicable) and the share attributable to general partners is treated transparently and taxed at the level of the individual general partners.

General partnership ("*verejná obchodná spoločnosť*", "v.o.s.") consists of at least two partners. The partners have unlimited liability for the debts of the general partnership. A general partnership may be established by natural and legal persons. The partners operate under a common business name. This legal entity is transparent. The tax base is calculated for the general partnership as a whole and is attributed separately to the partners in the next step. The taxation follows on the level of the individual partners.

In addition to these basic types of legal entities, there are also special legal forms, such as a simplified joint-stock company (*"jednoduchá spoločnosť na akcie", "j.s.a."*), a state-owned enterprise ("*štátny podnik*", "š.p.") and a cooperative ("*družstvo*").

Legal entities may be established also based on EU law, Societas Europaea ("SE"), European Economic Interest Grouping ("EEIG") and European Cooperative Society ("SCE").



b. Taxes, Tax Rates

i Corporate Income Tax

The general corporate income tax rate in Slovakia is 21%, irrespective of the amount of profits generated by the company (i.e. 21 % flat tax). The corporate income tax ("CIT") is due within the corporate income tax return filing deadline (generally three months after the end of the tax period, extensions of three or six months are possible subject to meeting the prescribed conditions). The standard tax period is a calendar year, it is also possible to apply a fiscal year. If losses are generated, only loss carry forward is possible (according to prescribed rules).

Since 2020, a reduced income tax rate of 15% has been applicable to small companies whose taxable income per year does not exceed a specified threshold. For 2020, the threshold was EUR100,000 and starting from 2021, the threshold has been reduced to EUR49,790.

No minimum CIT is applicable in Slovakia, if the company does not generate a profit, it does not pay any tax for the relevant tax period.

ii Personal Income Tax

The personal income tax ("PIT") rates are slightly progressive, 19% or 25%, with thresholds as follows:

If the annual income of the individual does not exceed 176.8 times the subsistence minimum in Slovakia, the PIT rate amounts to 19%. The subsistence minimum changes annually. For 2021, 176.8 times the subsistence minimum is EUR37,982 and for 2022 EUR38,553. The income of individuals exceeding this amount is taxed at 25%.

A special tax rate of 15% was introduced for individuals, sole traders, in 2020 (corresponding to the reduced tax rate for businesses with taxable income not exceeding a certain threshold). For 2020, the threshold to apply the reduced tax rate was EUR100,000 and starting from 2021, it has been reduced to EUR49,790. This tax rate is applicable only to business income of sole traders.

Special withholding taxes apply to specific types of income of both companies and individuals, such as dividends, interest income, royalties etc.

iii Value Added Tax

The standard value added tax ("VAT") rate is 20% and applies to most goods and services.

Besides the standard rate, there is a reduced VAT rate of 10% applicable to certain goods. The aim of the reduced VAT rate is to offer some basic goods and services at a lower price for final consumers. The reduced VAT rate applies e.g. to selected basic foodstuffs, medicines, some medical devices, printed books and newspapers.

There are also other tax types applicable in Slovakia, including excise duties on specific products, real estate tax, motor vehicle tax, insurance tax etc. On the other hand, neither real estate transfer, inheritance nor gift tax is applicable in Slovakia.



c. Common divergences between income shown on tax returns and local financial statements

Local financial statements are prepared based on full scope double entry bookkeeping under Slovak accounting regulations ("Slovak GAAP"). In general, Slovak GAAP follows the IFRS concept.

In the next step, the accounting result may be subject to adjustments, items to be added or deducted from the tax base. These items may be of temporary nature, most commonly these adjustments include:

- Provisions and reserves.
- Certain expenses, if unpaid.
- Expenditures not deductible for tax purposes, including private consumption.
- Tax depreciation.
- Dividends and capital gains, if conditions are met.

2. RECENT DEVELOPMENTS

Most significant recent tax-related developments:

a. Recent Double Tax Treaties

In 2021, the Double Tax Treaty ("DTT") with Oman came into force. The DTT with New Zealand has been approved by the government in 2020, but has not been signed and ratified yet.

Based on the Multilateral Instrument ("MLI"), notices of addition and amendment to the DTT were published in 2021 and 2022 with the following countries: Estonia (effective 01/01/2022), Greece (effective 01/01/2022), Croatia (effective 01/12/2021), Indonesia (effective 01/01/2021), Hungary (effective 01/01/2022), Malaysia (effective 01/12/2021), and Spain (effective 01/01/2023).

b. Special deduction of investment costs

Starting with the 2022 tax period, a new tool of legitimate corporate income tax reduction is available. Taxpayers planning to invest in new progressive technologies (Industry 4.0 - investments in connection with digitalisation, automation, robotisation of production and logistical processes) will be able to take advantage of an additional deduction from 15% to 55% of the expenses for these investments from tax depreciation charges. The amount of the deduction depends on the ratio of the new investments compared to the average of the previous three tax periods (at least 700%) as well as on the amount of the new investments (minimum EUR1 million). To apply the deduction, no approval of competent authorities is necessary, it is sufficient to meet the conditions prescribed by law.

c. Public tax reliability index

Perhaps the most discussed recent change is the introduction of the public Tax Reliability Index to be published on the website of the Slovak Tax Directorate until 31 January 2023. The tax administration has divided taxpayers into four categories: very reliable, reliable, unreliable or unclassified. Depending on the classification, highly reliable entities have new benefits, while disadvantages exist for unreliable entities. As for the most important new benefits, the fees for binding rulings as well as advance pricing agreement ("APA") procedures have been reduced to half the standard amount. Specifically, this means that a very reliable entity will pay EUR5,000 instead of EUR10,000 for a unilateral APA request. In the case of a bilateral APA, the fee for very reliable entities will be EUR15,000 instead of EUR30,000.

d. Legislative changes resulting from transposition of EU directives

As a member state of the European Union ("EU"), Slovakia is obliged to transpose EU directives into its national law within the prescribed deadlines. These obligations are being met and all the EU directives in the field of taxation aimed at e.g. the common system of the VAT, anti-avoidance practices, EU Council Directive 2018/882/EU ("DAC 6") legislation, etc. are being transposed as scheduled, including the upcoming Unshell Directive.

3. SHARE ACQUISITION

a. General Comments

The acquisition of a share in a company is a common and standard purchase transaction in Slovakia. The buyer becomes co-owner of the company and, depending on its share and voting rights, may participate in decision-making. The acquisition may be conducted also via merger of companies.

From the tax point of view no special transfer tax is applied. There is no step up for the buyer in relation to the acquired assets. The buyer also inherits all tax liabilities including undisclosed ones.

Most M&A transactions in Slovakia are private share deals, when shares in a corporation (limited liability company or a joint-stock company) are acquired. From a legal point of view, these transactions are governed by the Commercial Code and in case of joint-stock companies, also by the Securities Act. Be aware that tax consequences of a deal will be different for the sale of shares in a corporation and the sale of a partnership interest.

Generally, the income from the sale of shares is taxable under the Slovak Income Tax Act. Depending on whether the seller is an individual or a legal entity, such income is subject either to personal or corporate income tax.

i Sale by an individual

If the seller is an individual, the income falls into the category Other Income (for the relevant tax rates see Chapter 1 above) and a tax exemption of EUR500 per year applies.

Expenses incurred in order to generate the income from the sale of shares may be deducted from the tax base. However, expenses may be deducted only up to the amount of the income received, e.g. losses from the sale of shares may not be claimed for tax purposes against other types of income.

Subject to meeting specific conditions, the income from the sale of shares may be exempt from taxation. Accordingly, the income from the sale of shares which were acquired before 2004 and held for the period of at least five years is exempt from tax.

ii Sale by a legal entity

With respect to legal entities, on one hand a loss generated by the sale of shares is generally non-deductible, with certain exceptions.

On the other hand, capital gains exemption may apply. The income from the sale of shares is tax exempt, if the minimum holding period of 24 calendar months since the acquisition of the direct share in the registered/share capital of at least 10 % has been met (subject to meeting also several other conditions including substance criteria.)

Please note that under certain circumstances, Slovakia may claim its taxing rights even in a share deal involving two non-resident entities, in particular when the seller is a company owning real estate located in Slovakia and the value of the real estate exceeds 50 % of the equity of the company. The income from the sale of real estate located in Slovakia is taxable in Slovakia unless an applicable tax treaty provides otherwise.

b. Tax Attributes

The tax losses of the target may be carried forward after a share deal under the general conditions for tax losses carried forward. There are no restrictions in the tax loss carried forward rules relating to a change of shareholders of a company. Generally, provided the only purpose of the restructuring was not to gain a tax advantage, a legal successor may carry forward tax losses reported by the target.

c. Tax Grouping

In Slovakia, the concept of a tax grouping for CIT purposes has not been approved yet. In general, each corporate entity is regarded as a separate entity for income tax purposes. Thus, parent corporations and subsidiaries are taxed separately. Resident parent corporations and resident subsidiaries may not elect for taxation as a fiscal unity. Any agreements in this regard are not valid for tax purposes. On the other hand, there are concepts including unlimited partnership that enable tax consolidation.

Currently, there are discussions and plans on the government level regarding the introduction of group taxation for income tax purposes, similar to the one in place for VAT purposes.

d. Tax Free Reorganisations

The EU Parent-Subsidiary Directive and EU Merger Directive, which have been transposed into the Slovak national law, apply.

Under the Slovak Income Tax Act (“ITA”), taxpayers are not given a choice as to whether to perform selected types of reorganisation, for tax purposes, at historical cost or at fair value. The fair value takes precedence (since January 2018) and special exemption applies for cross border situations only and when the state of acquirer (another Member State or EEA) recognises the historical value and additional conditions are met.

Certain issues may arise due to the fact that the Slovak ITA is heavily driven by the Slovak GAAP and does not reflect the differences between national legislation.

To summarise, there is the potential to structure a tax free reorganisation; however, individual in-depth legal analysis is strongly recommended. Under certain circumstances hidden reserves might be taxed (i.e. subject to withholding tax) or exit tax might apply.



e. Purchase Agreement

A share deal is carried out on the basis of a Share Purchase Agreement (in a limited liability company) or by purchasing shares under the Securities Act (in the case of a joint stock company). These contracts transfer the ownership of the shares or business interest in the target company to the investor. The contracting party in this case is not the company, but the individual shareholders of the target company. It is therefore up to the shareholders whether they are willing to sell their shareholding. After the share-deal transaction, the assets (property) of the target company will still belong to the target company.

In a share deal, the purchaser takes over the target together with all the liabilities and contingent liabilities. Therefore, it is advisable that the purchaser requires more extensive indemnities and warranties than in an asset deal.

From a tax perspective, it is recommended that warranties and indemnities cover the period of statute of limitation in tax law in Slovakia (five years for domestic transactions and 10 years for international transactions). The standard tax or/and legal Due Diligence covers a period of three to five years.

Moreover, a valuation for tax purposes may be recommendable, to support evidence that the purchase price is at arm's length, especially if related parties are involved.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

There are no special transfer taxes on share transfers in Slovakia. There is no special real estate transfer tax. Notary and registration fees (obligatory registration of changes in the Commercial Register) apply, however, their amount is not significant.

No VAT is applicable on a share deal.

g. Share Purchase Advantages

The corporate identity of the target remains untouched.

All the existing contracts of the target (e.g. with suppliers, customers) remain valid. Thus, it is not necessary to conclude new contracts and try to get all the approvals.

A share deal is a suitable transaction form e.g. if the goal of the acquisition is to gain new customers (as the contracts with the existing customers remain valid and do not have to be negotiated anew).

If the target is a going concern and is commercially viable, this form of acquisition is administratively simpler than an asset deal.

From tax point of view, tax losses may be carried forward (for details, see above).

h. Share Purchase Disadvantages

The need of detailed due diligence to identify all the risks, including potential tax liabilities.

The purchaser will take over the commercial risk. Once the purchaser acquires a share in the target, it also acquires the liabilities of the target.

4. ASSET ACQUISITION

a. General Comments

Within an asset deal transaction, the assets of a company are transferred. From legal point of view, this transfer can be implemented through the purchase of individual assets (the buyer only picks up the assets they wish to purchase) or through the purchase of the entire business or its organisational part (i.e. as the purchase of a "going concern"). From tax point of view, an asset deal guarantees a step up in asset value. The purchase price of the individual assets determines the tax base for depreciation purposes whereas purchase price of a going concern has more complex tax consequences, for details see below.

i Purchase of individual assets

The buyer can determine which assets they want to buy and which they do not. Thus, the buyer can choose only those that are interesting for them, which he wants or can use in his business activities. The buyer can determine what, if any, liabilities he will assume in the transaction.

The buyer may decide to acquire only certain, suitable for them, employees of the company. In order to transfer a particular asset, it is necessary to identify each single asset being purchased and to prepare transfer documents relating to each of them.

This type of transaction is suitable if the investor is only interested in acquiring certain assets, such as machinery, real estate, etc.

The purchase of individual assets is also appropriate in the case of a poor economic situation of the target company, as the investor can choose which and whether to take on any liabilities at all. It is also appropriate if the company is involved in serious legal proceedings or has weak and insufficient documentation.

ii Purchase of the going concern

The purchase of the entire business (or its part) is conducted based on a Contract for the sale of business. In a contract for the sale of business, the seller undertakes to transfer to the buyer the ownership right to assets, other rights and other values that serve the operation of the business. All rights and obligations related to the business, i.e. the business as a whole, are thus transferred. It is thus a legally simplified transfer, where the individual assets are not transferred by separate contracts but by one comprehensive contract. The parties cannot agree that certain rights and obligations are not transferred to the buyer. All rights and obligations arising from the employment relationship with the company's employees are likewise transferred to the buyer. The purchaser cannot therefore choose which employees he wishes to retain and which he does not.

The contract for the sale of business requires the approval of the general meeting. Thus, the need for shareholder approval makes the transaction more time consuming.



b. Purchase Price Allocation

An important basis for the determination of the purchase price is the due diligence. Once determined, it can be apportioned between individual assets that are being transferred or set for assets subject to a transfer as a going concern. The difference between the purchase price and the valuation of assets in the books is defined as goodwill (positive difference) or badwill (negative difference), special documentation for tax purposes is recommended. From a tax perspective, badwill or goodwill is included in the tax base for the duration of a maximum seven tax periods.

If the transaction is taking place between related parties, in most cases an expert's opinion is used to determine the purchase price. The expert's opinion evaluates the transferred assets at market value (fair value) and serves also as a confirmation that the price for the transferred assets corresponds to the arm's length principle. The acquirer of the assets or of the company records the assets in its books at fair value, including the liabilities and receivables.

c. Tax Attributes

Tax losses remain with the seller only in the case of an asset deal and therefore cannot be utilised by the buyer.

Please note that under certain circumstances, Slovakia may claim its taxing rights even in an asset deal involving two non-resident entities, in particular when the seller transfers real estate located in Slovakia.

d. Tax Free Reorganisations

Generally, the sale of assets is a taxable transaction and the income is added to the tax base of the seller. Deductibility of losses may be restricted for certain assets.

e. Purchase Agreement

The contract for the sale of business is governed by the Slovak Commercial Code. Under this contract, the seller undertakes to transfer to the buyer the ownership right to assets, other rights and other values that serve the operation of the business, and the buyer undertakes to assume the seller's obligations related to the business and to pay the purchase price. In the case of the sale of a business, the tax liabilities are transferred to the purchaser. However, under certain circumstances, the seller may also be required to cover these liabilities.

The Commercial Code requires that the contract for the sale of business is concluded in written form and the signatures of the seller and the buyer must be certified. Another essential feature of a contract for the sale of business is the determination of the purchase price. The purchase price is determined on the basis of the totality of the assets, rights and liabilities listed in the accounts of the business being sold and on the basis of the other values specified in the contract in so far as they are not included in the accounts. Thus, if the contract were gratuitous, it would not meet the characteristics of a contract for the sale of business. The contract has to be approved by the general meeting.

f. Depreciation and Amortisation

Generally, the purchase price of assets is considered to be the acquisition value for tax depreciation purposes, The acquired assets may be depreciated for tax purposes up to the value of the acquisition price, except for certain assets which may not be depreciated, e.g. land.

Goodwill under b. above is depreciated for tax purposes for a maximum of up to 7 years, at a minimum of 1/7th each year.

g. Transfer Taxes, VAT

There are no special transfer taxes on asset transfers in Slovakia nor are there special real estate transfer taxes.

The VAT treatment of an asset deal depends on whether only individual assets or the entire business (or its organisational part) are transferred. If individual (selected) assets are transferred, the transaction is subject to VAT. The applicable VAT rate is 20%.

If the business is transferred as a whole, the transaction is out of scope of VAT, given certain conditions are met.

A taxpayer who has acquired individual assets (with VAT) can usually claim back the VAT paid on their acquisition if he uses the assets to provide taxable supplies/services.

If a taxpayer not registered for VAT acquired a business or part of a business from a VAT registered taxpayer, the buyer automatically becomes a VAT registered entity from the day of the acquisition.

h. Asset Purchase Advantages

In the case of an asset purchase the step up in the asset value is available for tax depreciation purposes which is the main advantage compared to a share acquisition. Further advantages of an asset purchase transaction depend on whether individual assets or an entire business are transferred.

Purchase of individual assets, advantages:

- Both with assets and liabilities, the buyer may choose which assets/liabilities it wants to acquire and does not have to buy all of them;
- Purchase price of individual assets determines the tax base; and
- Simple tax treatment.

Purchase of a business, advantages:

- All the assets are transferred by one comprehensive contract which can be administratively simpler.



i. Asset Purchase Disadvantages

In the case of an asset deal, tax losses of the target usually cannot be transferred which can be a major tax disadvantage as compared to a share acquisition. Further disadvantages of an asset purchase transaction depend on whether individual assets or an entire business are transferred.

Purchase of individual assets, disadvantages:

- It is necessary to identify each single asset being purchased and to prepare transfer documents relating to each of them, which may be administratively more challenging.

Purchase of business, disadvantages:

- Shareholder approval is needed which might be more time-consuming;
- All assets and liabilities including tax issues are transferred, which may be associated with a higher risk; and
- There is a more complex tax treatment.

5. ACQUISITION VEHICLES

a. General Comments

Slovak law does not specifically recognise acquisition vehicles either for legal or tax purposes. Debt push down structures used to be frequently used in Slovakia, however, due to the rulings issued by the Slovak tax authority in recent years aimed at restricting interest deductions related to share acquisition loans, an individual analysis including appropriate business reasoning is recommended.

b. Domestic Acquisition Vehicle

In general, the main acquisition vehicle is the limited liability company (SK "s.r.o.") or the joint stock company (SK "a.s."). The reason for choosing this legal form is the possibility to benefit from the participation exemption from both taxation of profit distribution and capital gains.

c. Foreign Acquisition Vehicle

The most common jurisdiction in Slovakia for a foreign holding company is currently the Netherlands. Foreign holding structures enjoy DTT benefits in front of the Slovak tax authority only in case of sufficient business substance.



d. Partnerships and joint ventures

General partnerships in Slovakia (v.o.s.) are transparent, therefore the income is taxed at the level of the partners of the partnership. Withholding taxes may apply. A purchase or creation of a Slovak partnership triggers a Slovak permanent establishment for its foreign partners. Tax advantages may include benefits of a tax group.

Depending on individual preferences, a limited partnership may be a good acquisition vehicle as well.

e. Strategic vs Private Equity Buyers

This section is left intentionally blank.

6. ACQUISITION FINANCING

a. General Comments

In Slovakia, the acquisition of a target may be funded either by:

(i) equity financing that includes an increase in the registered capital as well as a partially hybrid increase in the so called "other capital funds";

(ii) debt financing (e.g. through a loan granted directly by the shareholder or by another related party); or

(iii) a combination of debt and equity financing.

For the tax treatment please refer to point 6.c. below.

b. Foreign Acquirer

The most common jurisdiction for a holding entity in Slovakia is the Netherlands. One of the benefits is a favourable DTT in respect of WHT, provided the holding company has a sufficient business substance. For the tax treatment please refer to point 6.c. below as well as the withholding tax rates applicable under relevant treaties which are set out in Appendix I.

c. Debt

i Limitations on Interest Deductions

Generally, both the debt/equity ratio and the interest rate should be in line with the credit facility market. In addition, when a loan or credit is granted by a related party, the debtor shall include in tax expenses interest and related costs on borrowings up to a maximum of 25 % of EBITDA. Any amounts exceeding this threshold are non-deductible for tax purposes. Related entities from the financial sector are exempt.

Obligatory transfer pricing documentation is applicable (for details see section 10 below).

Interest deductibility from a debt push down transaction can be subject to restriction (see also section 5 above).

ii Related Party Debt

See i. above.

iii Debt Pushdown

Interest from a debt push down transaction can be restricted in its deductibility, depending on the business reasoning available (see also section 5 above). The interest may be treated as tax deductible no sooner than in the tax period in which this share is sold.

d. Hybrid Instruments

In Slovakia there are no typical hybrid instruments available for tax purposes. The EU's ATAD provisions are implemented in the Slovak Income Tax Act in addition to Slovak GAAR.

e. Other Instruments

This section is left intentionally blank.

f. Earn-outs

Contractual provisions that lead to obtaining additional compensation in the future should be tailored to the specific case, both the legal drafting and accounting approach including moment of recognition should be reviewed from a tax perspective. The Slovak tax legislation does not provide any specific regulation in respect of earn-out instruments, therefore the situation depends on the facts and circumstances of the case. Depending on the circumstances, earn-outs can be either fully expensed or become part of the purchase price and expensed at the moment of sale.



7. DIVESTITURES

a. Tax Free

i Domestic

Since 1 January 2018, domestic participation exemption rules for capital gains from the sale of shares and business shares have been in force in Slovakia. They are applicable to Slovak resident companies and permanent establishments of non-residents, provided the following conditions are met:

- Minimum holding of 10% of the registered capital,
- Minimum holding period of 24 months (consecutive),
- Passing the substance test including economic activities in Slovakia, significant functions and risks related to the investment, relevant personal and material equipment.

The domestic participation exemption is available only to legal entities.

ii International

In addition to the above, Slovakia fully respects participation exemption for income from subsidiaries located in the EU under the Parent Subsidiary Directive.

b. Taxable

General income tax rates apply. The general corporate income tax rate in Slovakia is 21%, irrespective of the amount of profits generated by the company (i.e. 21 % flat tax).

The personal income tax ("PIT") rates are slightly progressive, 19% or 25%, with the main threshold being below TEUR 40 (for 2021 EUR 37,982 and for 2022 EUR 38,553). The income of individuals including capital gains exceeding this amount is taxed at 25%.

c. Cross Border

General income tax rates (CIT 21%, PIT 19% and 25%) and bilateral double tax treaties apply.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Slovak tax residents declare their worldwide income in Slovakia. The taxation of worldwide income follows the provisions of the Slovak Income Tax Act and of the applicable Double Tax Treaty ("DTT"), which takes precedence over Slovak law. Depending on the provisions of the applicable DTT, a credit or exemption method is applicable to avoid the double taxation of foreign-sourced income.

Slovak non-residents declare and tax only their Slovak sourced income in Slovakia, such as income from the sale of real estate located in Slovakia, rental income from the real estate located in Slovakia, income from the sale of shares in a company with at least 50% of assets being real estate located in Slovakia, income attributable to a permanent establishment ("PE") located in Slovakia. The taxation follows the provisions of the Slovak Income Tax Act and of the applicable Double Tax Treaty.

b. CFC Regime

In Slovakia, controlled foreign company ("CFC") rules are applicable both for legal entities and individuals.

CFC rules for legal entities have been applicable since 2019 in line with the ATAD 1 EU Directive. They apply to legal entities resident in Slovakia owning directly or indirectly more than 50% of shares / voting rights / profit rights or untaxed PEs, if their actual corporate income tax paid is less than the difference between the corporate income tax they would have paid in the taxpayer's Member State and the actual corporate income tax paid by the company or permanent establishment.

CFC rules for individuals have been applicable since 2022. Compared to CFC rules for legal entities, CFC rules for individuals are stricter. Participation of 10% is sufficient to be classified as a CFC. Tax rate amounts to 25% or 35% for non-cooperative countries. Income up to EUR100,000 is exempt.

c. Foreign Branches and Partnerships

Foreign companies may set up branch offices in Slovakia. A branch office is not a separate legal entity and is generally considered to be subject to Slovak-sourced income only. Such an income attributable to the branch office is subject to the corporate income tax ("CIT") in Slovakia. The arm's length principle is applicable.

Partnerships are transparent entities, and their income is taxed at the level of partners. In order to prevent double non-taxation, Slovakia introduced rules for hybrid and transparent entities in 2020, which have been applicable since 2022 (see also section 12) and are in line with ATAD.

d. Cash Repatriation

Cash repatriation is generally not restricted, whether in form of dividends, royalties, interest payments, management fees and service fees.

Withholding tax applies. The general withholding tax rate applicable to foreign source income is 35% (undisclosed beneficial owner) or 19% (beneficial owner disclosed and residing in a country on the so called "white list"). This rate is automatically reduced to a rate agreed by the double tax treaty (see section 16).

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Real estate transfer tax ("RETT") was abolished in Slovakia in 2005.

The Slovak Income Tax Act includes a domestic real estate clause for CIT purposes. Under these provisions, income from the transfer of shares in a non-resident company is subject to the Slovak CIT if the company owns immovable property situated in Slovakia, the book value of which, based on the financial statements for the accounting period preceding the transfer, is more than 50% of the value of the company's equity.

b. CbC and Other Reporting Regimes

Country-by-country ("CbC") reporting regulations have been applicable in Slovakia since 2017 in line with EU rules. Entities that are part of a group of multinational enterprises as defined by law (MNEs) and whose consolidated revenues exceed EUR750 million are required to file either a CbC report in Slovakia or a notification with the Slovak tax authorities. The deadline for filing the notification is the same as the deadline for filing the Slovak corporate income tax return for the relevant tax period. A fine of up to EUR3,000 may be imposed for the failure to file the notification (even repeatedly).

Further, Slovakia has transposed the Council Directive 2018/882/EU (DAC 6) into its national law and the therefrom resulting reporting duties have been applicable since 2020. On the other hand, strong professional client privilege rules were implemented along.

10. TRANSFER PRICING

Related parties that carry out controlled transactions generally have an obligation to maintain transfer pricing documentation. Depending on the annual value of transactions conducted with related parties, full-scope, basic or shortened transfer pricing documentation is obligatory. All methods specified in the OECD Transfer Pricing Guidelines are applicable and equal in Slovakia. The transfer pricing documentation is to be submitted upon the request of the tax administrator within 15 days, therefore sustainable upfront preparation is strongly recommended.

The Slovak tax administration has been focusing on transfer pricing audits in the last years. Therefore, the tax risk assessment for this area should be considered medium to high depending on individual circumstances of the target company. Tax due diligence should focus heavily on this income tax area.

Penalties for incorrect settings of transfer prices amount to 20% per annum and can be imposed for the period of 10 previous years.

More details can be obtained in a special TP Guide upon your request.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

The most common transparent entities in Slovakia are the general partnership (*verejná obchodná spoločnosť ("v.o.s.")*) and the limited partnership (*komanditná spoločnosť ("k.s.")*), the income of which is taxed at the level of partners (for more details on general partnership and limited partnership see section 1.a.). No other hybrid entities are available.



b. Use of Hybrid Instruments

ATAD 2 has been transposed into Slovak national law with the aim to avoid hybrid mismatches which lead to double non-taxation of income. Accordingly, the state in which the entity is established and considered to be transparent, should treat the entity as opaque if the entity is treated so by its foreign founder.

The legislation on reverse hybrid entities is based on the principle that the income of non-resident majority partners (at least 50% in registered capital, voting rights or profit) is taxed at the level of this transparent entity applying the corporate income tax rate of 21%, if it cannot be taxed at the level of a permanent establishment in Slovakia or if it is not taxed at the level of this non-resident partner in its residency state. To put it simply, if there is no proof of taxation of this income abroad or at the level of the permanent establishment in Slovakia, this income will be taxed at the level of v.o.s. or k.s. in Slovakia. In such way a double non-taxation of income is avoided.

c. Principal/Limited Risk Distribution or Similar Structures

On one hand, Slovakia follows the OECD methodology including concepts such as “principal / limited risk distributor” or “licensed / contractual manufacturer”, on the other hand, the tax administrator may be opposed to accept structures that undermine fiscal interests of Slovakia, which is a typical capital importing country. Cost plus method or TNMM are commonly accepted by the Slovak tax authority, however, both the margins and basis can be subject to an in-depth analysis.

The Slovak tax administration has been focusing on transfer pricing audits in recent years. Therefore, the related tax risk assessment should be considered medium to high depending on individual circumstances of the target. Tax due diligence should focus heavily on this income tax area.

d. Intellectual Property

There is no special patent box regime in Slovakia or any other special tax regimes related to intellectual property. On the other hand, Slovakia has very generous tax regime applicable to the deduction of research and development costs as well as to the deduction of investments into Industry 4.0 technologies (for more details see part e. below).



e. Special Tax Regimes

Super deduction of Research and Development Costs

Given the relatively low administrative burden, the "super deduction" of R&D costs is a favourite tool to legitimately reduce the tax base. Since 2022, it is possible to deduct additionally as much as 100% of R&D costs. The crucial criterion is the element of novelty, the presence of which is, under the OECD Frascati Manual, the basic criterion for differentiating R&D from similar activities.

Super deduction of Investment Costs

This new tool of legitimate corporate income tax reduction can be applied already for the 2022 tax period. Taxpayers planning to invest in new progressive technologies (Industry 4.0 - investments in connection with digitalization, automation of production and logistics processes) will be able to take advantage of an additional deduction of 15% to 55% of the expenses for these investments from tax depreciation charges, depending on the amount (minimum EUR1 million) and comparison to previous years.

12. OECD BEPS CONSIDERATIONS

Slovakia is a member state of the OECD and supports its BEPS initiatives and measures. A number of changes to the Slovak legal regulations have been made as a result of the BEPS initiative, such as transposition of Anti-Tax Avoidance Directive ("ATAD 2") (neutralising the effects of hybrid mismatch arrangements), introduction of controlled foreign company rules for both legal entities and individuals, thin capitalization rules, stricter definition of a permanent establishment (PE) (incl. introduction of a "digital PE"), taxation of profits from virtual currencies, introduction of the Act on the rules for tax dispute resolution (transposition of the Council Directive (EU) 2017/1852), Council Directive 2018/882/EU (DAC 6), country-by-country reporting, exit taxation.

Ratification of the Multilateral Instrument ("MLI") was accepted as well, step by step. Slovakia updates its network of bilateral Double Tax Treaties ("DTTs") and introduces changes resulting from MLI. So far, 38 of Slovakia's 70 DTTs have been modified.

13. ACCOUNTING CONSIDERATIONS

In general, transactions should be accounted for based on Slovak GAAP, IFRS rules are applicable to selected entities (based on size and industry sector). For tax purposes, Slovak GAAP take precedence. From the accounting point of view, the assets transferred within the following types of reorganisation are to be valued as follows:

(i) Purchase of business or its organisational part: valuation at fair value.

(ii) Contribution-in-kind: valuation at fair value, at the value allocated as the contribution of a shareholder, or at historical cost.

(iii) Merger or de-merger: valuation at fair value or historical cost.

Since 2018, resident taxpayers shall apply the historical cost only in the case of cross-border contributions-in-kind/mergers/de-mergers carried out to the EU or EEA, provided that the assets which are the subject of the transaction remain part of the permanent establishment in Slovakia, and the legislation of the other state allows the successor to transfer the assets at historical cost or gives the option to choose and the successor chooses the historical cost.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

A profit distribution (dividend) abroad is generally subject to the withholding tax at 19% / 35% unless exempt by the Parent-Subsidiary Directive or the respective DTT specifies otherwise. If so, the reduced DTT rate applies automatically.

b. Application of Regional Rules

Being a Member State of the European Union ("EU"), Slovakia is obliged to transpose all the EU directives into its national law. Thus, the PSD, the Interest and Royalty Directive, the Merger Directive, Anti-Tax Avoidance Directives etc. have been transposed and are applicable also in Slovakia (see also section 12 above).

c. Tax Rulings and Clearances

Basically, there are two types of rulings, unbinding or binding.

A simple request can be addressed free of charge and the reply of the tax administrator is not binding, it is to be perceived as a general guidance.

There is also the possibility to file a request for a binding ruling. Before 2022, the fees for binding rulings were rather high (up to EUR 30,000), depending on the value of the relevant transactions of the taxpayer relating to the request. Consequently, there were only 1 or 2 requests per year filed. Beginning with 2022, a fixed fee of EUR 1,000 was introduced and the number of requests went up rapidly. Moreover, the fee for taxpayers classified as "very reliable" within the tax reliability index has dropped to EUR500. The areas to which a binding ruling can refer are specifically regulated (especially purchase or sale of a business at fair value, adjustments of the tax base by specific items, tax deductibility of expenses and certain VAT issues). The legally prescribed deadline for the issuance of a binding ruling is 6 months. However, in many cases the tax administrator issues the binding ruling within 60 days after the receipt of the complete request.

In the field of transfer pricing, it is possible to apply for a unilateral or bilateral advance pricing agreement, including a roll-back.

15. MAJOR NON-TAX CONSIDERATIONS

This section is left intentionally blank.

16. APPENDIX I - TAX TREATY RATES

More detailed references can be obtained on this web page of the Slovak Ministry of Finance as the application can be complex.

https://www.mfsr.sk/en/taxes-customs-accounting/direct-taxes/income-tax/international-taxation/double-tax-treaties/

Jurisdiction	Dividends %	Interest %	Royalties %
Armenia	5 / 10	10	5
Australia	15	10	10
Austria	10	0	5 / 0
Belarus	10 / 15	10	5 / 10
Belgium	5 / 15	10	5
Bosnia and Herzegovina	5 / 15	0	10
Brazil	15	10 / 15	25 / 15
Bulgaria	10	10	10
Canada	5 / 15	10	10 / 0
China	10	10	10
Croatia	5 / 10	10	10
Cyprus	10	10	5 / 0
Czech Republic	5 / 15	0	10
Denmark	15	0	5 / 0
Estonia	10	10	10
Ethiopia	5 / 10	5	5
Finland	5 / 15	0	0 / 1 / 5 / 10
France	10	0	0 / 5
Georgia	0	5	5
Germany	5 / 15	0	0 / 5
Greece	19	10	10 / 0
Hungary	5 / 15	0	10

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Jurisdiction	Dividends %	Interest %	Royalties %
Iceland	5 / 10	0	10
India	15 / 25	15	30
Indonesia	10	10	15 / 10
Iran	5	5	7.5
Ireland	0 / 10	0	0 / 10
Israel	5 / 10	2 / 5/ 10	5
Italy	15	0	0 / 5
Japan	10 / 15	10	0 / 10
Kazakhstan	10 / 15	10	10
Korea, Republic of	5 / 10	10	0 / 10
Kuwait	0	10	10
Latvia	10	10	10
Libya	0	10	5
Lithuania	10	10	10
Luxembourg	5 / 15	0	0 / 10
Malaysia	0 / 5	10	10
Malta	5	0	5
Mexico	0	10	10
Moldova	5 / 15	10	10
Montenegro	5 / 15	10	10
Netherlands	0 / 10	0	5
Nigeria	12.5 / 15	15	10
North Macedonia	5	10	10
Norway	5 / 15	0	5 / 0
Oman	0	10	10
Poland	0 / 5	5	5
Portugal	10 / 15	10	10
Romania	10	10	10 / 15
Russia	10	0	10

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Jurisdiction	Dividends %	Interest %	Royalties %
Serbia	5 / 15	10	10
Singapore	5 / 10	0	10
Slovenia	5 / 15	10	10
South Africa	5 / 15	0	10
Spain	5 / 15	0	0 / 5
Sri Lanka	15	10	0 / 10
Sweden	0 / 10	0	0 / 5
Switzerland	0 / 15	5	0 / 10
Syria	5	10	12
Taiwan	10	10	5 / 10
Tunisia	10 / 15	12	5 / 15
Turkey	5 / 10	10	10
Turkmenistan	10	10	10
UAE	0	10	10
United Kingdom	5 / 15	0	0 / 10
Ukraine	10	10	10
United States	5 / 15	0	0 / 10
Uzbekistan	10	10	10
Vietnam	5 / 10	10	5 / 10 / 15

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

From a tax perspective, it is recommended that warranties and indemnities cover the period of statute of limitation in tax law in Slovakia (five years for domestic transactions and 10 years for international transactions). The standard tax or/and legal Due Diligence covers a period of three to five years.

No.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Financial Statements: BS, P&L, Notes for the reviewed periods.
2	Tax Due Diligence	General	Tax registration documents.
3	Tax Due Diligence	General	Information/documents on previous/pending tax audits and their results.
4	Tax Due Diligence	General	Binding rulings issued by tax authorities / if any.
5	Tax Due Diligence	General	Information on target company business activities and business contracts in Slovakia.
6	Tax Due Diligence	General	Information on target company business activities abroad, permanent establishments abroad.
7	Tax Due Diligence	General	Information on granted tax exemptions and subsidies.
8	Tax Due Diligence	General	Information on unusual transactions.
9	Tax Due Diligence	General	Information on fraudulent behaviour, court or tax disputes.
10	Tax Due Diligence	General	Information on persons responsible for bookkeeping.
11	Tax Due Diligence	General	Organisation chart of the company and responsibilities of the departments/persons.
12	Tax Due Diligence	General	Overview of profits/losses for the reviewed periods.
13	Tax Due Diligence	CIT + Accountancy	CIT returns for the reviewed periods, amended CIT returns if any.
14	Tax Due Diligence	CIT + Accountancy	CIT cover letter to the CIT calculation (relevant if calculated by an external advisor),
15	Tax Due Diligence	CIT + Accountancy	Detailed CIT calculation for the reviewed periods,
16	Tax Due Diligence	CIT + Accountancy	Information on tax losses to be carried forward,
17	Tax Due Diligence	CIT + Accountancy	Information on transactions with related parties.
18	Tax Due Diligence	CIT + Accountancy	Transfer pricing documentation.
19	Tax Due Diligence	CIT + Accountancy	Information on cross-border payments (royalties, interest, services etc.).
20	Tax Due Diligence	CIT + Accountancy	Information on R&D activities, APAs, MAPs.
21	Tax Due Diligence	VAT	VAT returns for the reviewed periods, amended VAT returns if any.
22	Tax Due Diligence	VAT	VAT registration documents.
23	Tax Due Diligence	VAT	Description of transactions performed by the company from VAT perspective, types of supplies/acquisitions, sample invoices.



No.	Category	Sub-Category	Description of Request
24	Tax Due Diligence	VAT	EC Sales Lists for the reviewed periods.
25	Tax Due Diligence	VAT	Inland recapitulation statements for the reviewed periods.
26	Tax Due Diligence	VAT	VAT records for selected months.
27	Tax Due Diligence	VAT	Information on excessive VAT deductions refused.
28	Tax Due Diligence	VAT	Information of VAT audits and their results.
29	Tax Due Diligence	VAT	Information on eventual VAT underpayments.
30	Tax Due Diligence	PIT	Information on employees and types of employment contracts.
31	Tax Due Diligence	PIT	Information on taxation of employee benefits in kind.
32	Tax Due Diligence	PIT	Information on expats/impats – employee secondments.
33	Tax Due Diligence	PIT	Information on payroll accounting.
34	Tax Due Diligence	Other tax types	Depending on the particular tax type.

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SLOVENIA

1. INTRODUCTION

a. Forms of Legal Entity

Business activities in Slovenia are performed by sole entrepreneurs or by companies. A sole entrepreneur is defined as an individual carrying on business activities. The term "company" refers to legal entities. Moreover, a distinction can be made between entities with legal personality (legal entities) and entities without legal personality (non-legal entities). Legal entities are in the majority, while non-legal entities are, in general, civil law companies and pension funds. The silent partnership was abolished in 2012.

Companies in Slovenia are organised in one of the following forms:

- Either as personal companies
  - Unlimited liability company ("d.n.o.").
  - Limited partnership ("k.d.").
- Or as companies with share capital:
  - Limited liability company ("d.o.o.").
  - Public limited company ("d.d.").
  - A limited partnership with share capital ("k.d.d.").
  - Societas Europea ("SE").

The main legal difference between partnerships and corporations is that the liability of shareholders of corporations is generally restricted to the subscribed share capital, while no limitation of liability is given for general partners of a partnership (for limited partners, liability is also limited to an amount agreed in the partnership agreement). Furthermore, while corporations may be established by a single shareholder, partnerships must consist of at least two different partners.

A foreign company can also conduct its business activity through a branch office, which is not a separate legal entity but deemed to be a part of its founding company.

From a tax perspective, Slovenian companies and partnerships are recognised as tax subjects and income is assessed at the company level (partnerships are considered as tax non-transparent entities (i.e. opaque entities).



b. Taxes, Tax Rates

Corporate Income Tax

Companies are subject to corporate income tax ("CIT"). In Slovenia, this is regulated by the Corporate Income Tax Law (Zakon o davku od dohodkov pravnih oseb, Official Gazette RS, No. 117/2006, "CITA"). CITA regulates the substantive corporate tax issues, while tax procedure and administration are governed by the Tax Procedure Law (Zakon o davčnem postopku, Official Gazette RS, No. 117/2006 and the following, "TPA").

The general CIT rate is 19%.

Additionally, there is a special CIT rate of 0% that applies to:

- Investment funds established under the Investment Funds and Management Companies Act, if at least 90% of the profit generated in the preceding tax period is distributed by 30 November of the tax period.
- Pension funds established under the law regulating pension and disability insurance.
- Insurance companies authorised to manage pension schemes under the law regulating pensions and disability insurance, within the qualified activities.

Taxation of individuals

Personal taxation of individuals is levied based on progressive tax rates (i.e. between 16% and 45% as of 1 January 2022). A special tax rate of 70% applies to taxation of income whose source cannot be explained by the taxpayer.

As of 1 January 2022, dividends and interest are taxed at a 25% final tax rate. There is a tax exempt amount (EUR1,000) of interest on bank deposits with Slovenian or other EU banks.

Capital gains are taxed at a 25% final tax rate. After expiry of a five-year holding period, the rate is reduced from 25% to 20%. After expiry of a 10-year holding period, the rate is reduced to 15%. After expiry of 15-year holding period, any gains are tax-exempt.

As of 1 January 2022, resident taxpayers are able to opt for progressive taxation of their capital gains instead of scheduled.



Value added tax

In general, taxable persons carrying out taxable transactions in Slovenia are subject to value added tax ("VAT") liability.

The following tax rates are provided for by the appliable Value Added Tax Act (Zakon o davku na dodano vrednost, ZDDV-1, Official Gazette RS no. 13/11 ("VATA")):

The standard VAT rate is 22%.

There is also a reduced VAT rate of 9.5%, which applies to food and beverages, preparation of meals, agricultural products, books, plants, artists, transportation of persons, hospitals, acquisition of residential housing if part of the social policy, renovation and maintenance work for residential housing (when charged directly to the investor), admission to the theatre, museums, movie theatres, sport and music events, etc, some personal services and renting of rooms in hotels, apartments, etc.

A further special reduced VAT rate of 5% applies to the supply (including on loan by libraries) of books, newspapers, and periodicals supplied either physically or electronically or both (including brochures, leaflets, and similar printed matter), children's pictures, drawings, or colouring books; music printed or in manuscript form; and maps and hydrographic or similar charts. The only exceptions are publications wholly or predominantly devoted to advertising and publications wholly or predominantly consisting of video content or audible music.

Special rules apply for zero-rated supplies and exempt supplies.

c. Common divergences between income shown on tax returns and local financial statements

The basis for the calculation of income tax is income as declared in the annual financial statements according to the applicable accounting standards, either Slovenian Accounting Standards ("SAS") or International Accounting Standards ("IFRS") as applicable. Provisions of the CITA then apply, according to which certain adjustments are carried out in order to determine the tax base.

Commonly made tax adjustments include:

- Correction of income/expenditures to the level that is tax recognised.
- Revaluation expenses (receivables, financial assets and financial instruments measured at fair value through profit or loss, goodwill, debts, receivables, investments and cash receivables, provided that the revaluations are based on changes in the exchange rate).
- Depreciation (under provided maximum depreciation rates).
- Provisions.
- Incentives (tax incentives are available for research and development, investments, employment-related, donations, voluntary supplementary pension insurance).



2. RECENT DEVELOPMENTS

The most important tax developments relevant to M&A in Slovenia are related to measures implemented to prevent or limit tax avoidance or abuse in respect of Corporate Income Tax ("CIT"). In light of the Organisation for Economic Co-operation and Development ("OECD") Base Erosion and Profit Shifting ("BEPS") Action programme and EU legislation, Slovenia recently implemented into the CITA:

- EU Directive 2016/1164 and 952/2017 so called "ATAD1" (exception regarding Article 4) and "ATAD2";
- EU Directive 2018/822 so called DAC6, whereby previous DACs were also implemented.

DAC6 had been implemented into Slovenian tax law in June 2019. However, EU Directive 2020/876 amending the DAC6 to address the urgent need to defer certain time limits for the filing and exchange of information in the field of taxation because of the COVID-19 pandemic, delayed its execution until 2021.

Important changes were also implemented in the field of Mutual Agreement Procedures. Slovenia specifically regulated this area, provided certain discrepancies between the local tax procedure and the applicable EU law (EU Directive 2017/1852, better known as the Arbitration Directive) were incurred.

There are no concrete implementations or amendments in the field of taxation of digital economy. However, in October 2021 Slovenia joined 136 other OECD/G20 countries in the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. This was intended to secure fairer taxation of multinational enterprises ("MNEs") worldwide in markets where they operate and generate profits.

While under Pillar One, profits are expected to be reallocated to market jurisdictions where the MNEs create profit, Pillar Two introduces a global minimum corporate tax rate of 15%. This new rate applies to companies with revenue above EUR750 million and is expected to generate about USD150 billion in additional annual global tax revenues. Countries intend to sign a multilateral convention to this effect in 2022, with effective implementation in 2023.

Taxpayers doing business in Slovenia from countries with which double tax treaties ("DTT") are covered by the OECD Multilateral Instrument ("MLI"), must take into consideration the relevant provisions of the MLI because they may impact their commercial activities and capital flows. Combined bilingual wordings of updated conventions are available on the Financial Administration's webpage in local and English version.

At the time of writing, relevant and significant measures relating to the COVID-19 pandemic have mainly expired or are no longer available. However, in the context of M&A transactions, it will be important to consider the measures introduced during tax due diligence processes. In particular attention should be paid to obtained benefits or aids given in the past, together with their underlying conditions in order to avoid potential reimbursement claims from the State on the grounds of legislation breach; for example dividend payments and management bonus restrictions were in place during 2020 for companies which were granted state aid to mitigate COVID-19 economic disruptions. If bonuses and dividends, sourcing in 2020 are paid out in later periods, such payment may constitute a breach of COVID-19 legislation and trigger reimbursement claims. In summary, compliance with COVID-19 state aid rules should be carefully examined in due diligence procedures.



3. SHARE ACQUISITION

a. General Comments

When concluding a share deal, tax and other liabilities stay with the target company. There are no step-ups envisaged for a share deal. From a buyer's perspective, a domestic participation exemption applies for dividend distributions. For outbound dividend distributions, a withholding tax ("WHT") of 15% applies, but exemptions and tax decreases are possible on the basis of domestic, EU and international tax law. Tax losses remain with the target and their use is subject to further conditions, which are explained in detail in the next section. From a seller's perspective, general capital gains rules apply. As of 1 January 2022, capital gains are taxed at a 25% final tax rate (before 1 January 2022 at 27.5%). After expiry of a five-year holding period, the rate is reduced from 25% to 20%. After expiry of a 10 year holding period, the rate is reduced to 15%. After expiry of 15 year holding period, any gains are tax-exempt.

b. Tax Attributes

Generally, a taxpayer can set off a tax loss arising in a given tax period by reducing the tax base in the subsequent tax periods. Losses may be carried forward indefinitely. However, the losses cannot be used to offset more than 50% of the taxable base in any tax year. This is a general limitation applicable only to tax losses.

An additional overall limitation as regards the reduction of the taxable base also applies. Incentives such as investment allowances, research and development allowances, employment-related reliefs and donation allowances, as well as utilization of tax losses, are limited also with a joint limitation. The tax base can be reduced up to a maximum of 63% through utilisation of incentives, allowances and losses together.

Thus, the taxpayer might consider how to combine the available options in order to reduce a taxable base, e.g. only with tax losses (maximum 50% of the tax base), only with incentives (maximum 63% of the tax base) or with combination of tax losses and incentives (63% of the tax base whereby tax losses cannot exceed 50% of the tax base in any case).

Nevertheless, losses from current and previous years may not be carried forward if the direct or indirect ownership of the capital or voting rights of a company changes by at least 50% and:

- The taxpayer has not carried out the company's business activity for at least two years before the change in ownership; or
- The taxpayer has essentially changed the company's business activity two years before or after the change in ownership, unless the change in activities is necessary in order to preserve jobs or implement a business restructuring.

c. Tax Grouping

There is no tax grouping regime in Slovenia.



d. Tax Free Reorganisations

Under general income tax principles, a reorganisation of companies normally constitutes a taxable event and triggers the realisation of hidden reserves of the assets transferred in the course of the reorganisation. However, the Corporate Income Tax Act ("CITA"), which implemented the EC Merger Directive 90/434/EEC, provides for a special tax regime applicable to the following types of reorganisations:

- Mergers.
- Divisions.
- Contributions of assets.
- Exchanges of shares.

The CITA basically provides for the following tax treatment, subject to certain conditions:

- No liquidation taxation in the course of a reorganisation (either on the level of the company/partnership or on the level of the shareholder/partner).
- A tax neutral transfer of assets.
- Transfer of loss carryforward to the receiving entity.
- Beneficial rules as to the tax base for real estate transfer tax purposes.
- Exemption from capital tax.
- Exemption from value added tax.

The CITA allows reorganisations with retroactive effect (basically within a nine month period) as well as multiple reorganisations on the same effective date.

e. Purchase Agreement

Standard tax warranties or indemnities also apply to share deals in Slovenian companies. When drafting contractual clauses, it should be kept in mind that the general period of limitation in tax matters is five years and the absolute period of limitation in tax matters is 10 years.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

There is no share transfer tax or other levies on transfers of shares. Share sales are also generally outside the scope of VAT.

g. Share Purchase Advantages

Tax losses carried forward of the target generally remain available (see also 3.b. above for the conditions of a tax losses carried forward).

h. Share Purchase Disadvantages

Since all liabilities remain with the target, an adequate due diligence procedure should be executed on all critical areas, especially in the light of newly adopted anti-tax avoidance rules and transfer pricing, in order to secure the assets to manage the liabilities taken on.

4. ASSET ACQUISITION

a. General Comments

In the event of an asset deal, ownership of the assets is transferred on a singular basis (i.e. under the principle of singular succession). For this reason, this type of transaction is popular among buyers. However, special attention should be paid to liabilities related to the assets that constitute a business or a business unit.

From a buyer's perspective:

Generally, the tax liabilities remain with the seller. However, a special buyer's warranty for tax liabilities applies under the tax procedure law in the event of under-priced or free asset disposal. The risk of a tax liability shift is minimised or eliminated in cases of asset sales under an arm's length price. However, in transactions where the price of assets is set too low to meet the arm's length approach, due diligence in all tax areas is recommended.

Similar provisions regarding debt liabilities for transferred assets are also provided in the law of obligations. It follows that a person who takes over a business or business unit under an agreement is jointly liable for debt relating to this property, alongside its former holder, but only up to the active value of assets. A contractual limitation or exclusion of this liability has no legal effect on creditors.

This is a highly disputed provision in Slovenian obligations law because it undermines the general principle of singular succession in typical asset deal transactions. It is a strong position in theory and in judicial practice (e.g. Case I Cpg 547/2020, Higher Court in Ljubljana) that this provision should apply only in cases where there is no proper compensation for the transferred property (i.e. free transfer or transfer for a price too low or insignificant), even if not specifically so limited in the applicable law.

Therefore, it applies that by proper compensation the transferor's estate is not decreased and its creditors can be repaid from that compensation. Also, for these reasons an adequate market price should be set for the assets sold. It is recommended that this is based on a certified valuation, since the financial authority may seek a legal basis for its claims towards buyers on these grounds.

Moreover, in the event of staff takeover, special employment relationship rules over the change of employer apply, under which the liability for employees' claims is transferred to the new employer. It is worth noting that employees' transfer with assets, forming a business unit or part of one, is automatic and cannot be avoided. Since the liabilities to employees include personal income tax and social security contributions, due diligence is recommended in these areas.

Under an asset deal, generally the full historical VAT liability is transferred, as would occur in the case of a share deal.

General depreciation rules apply for the assets acquired. Expenses resulting from the revaluation of goodwill can be deducted for tax purposes up to a maximum of 20% of the original value.



From a seller's perspective:

A sale of assets is likely to result in corporate income tax ("CIT") at the level of the seller if a profit on the sale is realised. Any losses incurred by the seller can be used to offset the profit. If the assets disposed of form a business or a business unit, such a disposal is VAT neutral.

It may be difficult for an asset transaction to be executed by the seller, since all the legal relationships have to be transferred to the buyer individually.

Under Slovenian civil law, a seller's liability for damages (i.e. also for breach of contractual warranties and representations) cannot be entirely excluded. Exclusion is possible only for events of minor negligence. However, the limitation of a damages amount is permitted, if it is not in obvious disproportion to damages actually incurred, or if it is not a consequence of unequal relationships among the parties involved. Nevertheless, for gross negligence and intentional breaches, the difference to total damages can be claimed.

b. Purchase Price Allocation

The purchase price is allocated to the acquired assets up to their value at the time of acquisition (i.e. the acquisition method). Any excess is capitalised as goodwill if the transferred assets represent a business.

c. Tax Attributes

Tax attributes, such as tax losses carried forwards, are not transferred in an asset deal and remain with the seller.



d. Tax Free Reorganisations

Under general income tax principles, a reorganisation of companies normally constitutes a taxable event and triggers the realisation of hidden reserves of the assets transferred in the course of the reorganisation. However, the CITA, which is based on EC Merger Directive 90/434/EEC, provides for a special tax regime applicable to the following types of reorganisations:

- Mergers.
- Divisions.
- Contributions of assets.
- Exchanges of shares.

The CITA basically provides for the following tax treatment, subject to certain conditions:

- No liquidation taxation in the course of a reorganisation (either on the level of the company/partnership or on the level of the shareholder/partner).
- A tax neutral transfer of assets.
- Transfer of tax losses carried forward to the receiving entity.
- Beneficial rules as to the tax base for real estate transfer tax purposes.
- Exemption from capital tax.
- Exemption from value added tax.

The CITA allows reorganisations with retroactive effect (basically within a nine month period) as well as multiple reorganisations on the same effective date.

e. Purchase Agreement

Due to the potential tax liability transfer in the case of business unit transfers, special attention should be given to the asset purchase agreement warranties and indemnities, as well as to remedies in event of breaches. Typical tax liability warranties apply.

f. Depreciation and Amortisation

Depreciable tangible and intangible assets must be depreciated over their useful life. For depreciation and amortisation, standard Slovenian Reporting Standards ("SRS") and IFRS rules apply, as appropriate. However, tax recognised amortisation and depreciation rates and rules are provided in the CITA. Write-downs or write-offs are possible in the case of sustainable impairments and special conditions apply when they are recognised for tax purposes.

Goodwill can be capitalised in general. Amortisation of goodwill is not tax deductible.



g. Transfer Taxes, VAT

In principle, an asset deal is a taxable event for the seller, except for the VAT-neutral disposal of a business or business unit. If the criteria for a business or business unit are not met, other VAT exemptions may be applicable, depending on the type of assets.

For a real estate sale, a real estate transfer tax of 2% applies, though the seller and buyer can opt for VAT instead.

h. Asset Purchase Advantages

Transfer of liability is limited, but some particular legal aspects have to be considered, as explained above. A step-up in asset basis provides an option of a higher tax deductible depreciation for the buyer.

i. Asset Purchase Disadvantages

Notwithstanding the principle of singular succession, there may still be uncertainty regarding liabilities transferred in asset deals, as described above. For example, VAT liabilities, withholding tax liabilities and personal income tax and social security contribution liabilities can transfer to the buyer along with acquired assets.

5. ACQUISITION VEHICLES

a. General Comments

The Corporate Income Tax Law ("CITA") provides no particular tax treatment regarding different types of acquisition vehicles. The most common acquisitions vehicle is by way of a new local or foreign limited liability company as a special purpose vehicle company. Generally, the choice of acquisition vehicle is subject to relevant interests.

b. Domestic Acquisition Vehicle

This section is left intentionally blank.

c. Foreign Acquisition Vehicle

This section is left intentionally blank.

d. Partnerships and joint ventures

There are no specific rules applicable to joint ventures, but they are not commonly used in M&A structures in Slovenia. Using partnerships as acquisition vehicles is not common either.

e. Strategic vs Private Equity Buyers

The preferred acquisition vehicle depends mainly on the investment strategy of the investor, as well as the industry. There are no special tax regimes available.

6. ACQUISITION FINANCING

a. General Comments

This section is left intentionally blank.

b. Foreign Acquirer

This section is left intentionally blank.

c. Debt

In general any kind of expenses (e.g. transaction costs or interest on acquisition debt) are recognised for tax purposes if such expenses are necessary to obtain a taxable income. Only expenses which were necessary to obtain a taxable income are recognised for tax purposes. This should be checked on a case by case basis.

Expenses that are not required to acquire a taxable income are expenses for which, in respect of the circumstances, it follows that:

- They are not a direct condition for performing activities and are not a consequence of performing activities.
- They are of a private nature.
- They do not conform with normal business practice.

Expenses shall be deemed not to conform with normal business practice if they are not customary in the operation of the individual activity in respect of past and other experience and in comparison with other activities as well as facts and circumstances. This is with the exception of expenses incurred by extraordinary and infrequent events such as natural disasters, or as a result of other extraordinary and infrequent events.

i Limitations on Interest Deductions

Interest on the debt financing of the acquisition of a participant in a (resident or non-resident) corporation is generally tax deductible. There are no thin capitalisation rules or other similar rules in relation to third party debt, considerations in respect of related party debt are noted below.

ii Related Party Debt

Interest from related party debt can be recognised as a tax deductible expense only if it is in line with transfer pricing rules. Interest paid to related persons is tax deductible, if it does not exceed the current and published recognised interest rate. A higher interest rate is tax deductible if the company is able to prove that it could obtain the loans under the same terms from a non-related party.

Thin capitalisation rules apply to loans from shareholders who hold, directly or indirectly, at least 25% of the capital or voting rights at any time during the tax period. The thin capitalisation rule is also applicable to sister companies. The thin capitalisation rule does not apply if the loan recipients are banks or insurance companies (e.g. leasing companies are not excluded from the thin capitalisation rule).



According to the rules, the interest on loans from such shareholders may not be deducted if the loans exceed four times the value of the lender's share in the capital of the company (share capital). The term "share capital" includes all capital items according to the Companies Act and accounting standards, with the exception of net profit or loss of the current financial year. Therefore, the calculation shall also contain transferred business losses and revaluation reserves, which are part of the capital items. The average capital is calculated as the average of the state of the capital items at the beginning and at the end of the tax year. The thin capitalisation rules do not apply if a taxpayer demonstrates that they could raise the surplus of loans from a lender who is a non-associated enterprise.

Thin capitalisation rules apply to direct loans and loans granted indirectly through a bank or any other third party if the direct or indirect shareholder offers a guarantee for the loan. The new provision covers not only the debt financing of companies subject to unlimited tax liability in Slovenia, but also the financing of companies that are only subject to limited tax liability, such as Slovenian permanent establishments of foreign companies.

Article 4 of the Anti-Tax Avoidance Directive ("ATAD") requires the member states, including Slovenia, to introduce interest limitation rules. The interest limitation rules laid down in the ATAD are significantly different in comparison to the thin capitalisation rules described above. Nevertheless, the EU Commission considers the thin capitalisation rules implemented by Slovenia to be "just as effective" as the interest limitation rules in the ATAD. Therefore, Slovenia may continue to apply these rules in accordance with Article 11 of the ATAD until 1 January 2024. Alternatively, they may be applied until the end of the first full fiscal year following the date of publication of the agreement between the OECD members on the official website on a minimum standard with regard to BEPS Action 4.

Payments of interest by a Slovenian company to a resident or non-resident are subject to a 15% WHT. The WHT may be exempt or decreased by a tax treaty or the EU Interest and Royalties Directive.

iii Debt Pushdown

Slovenian corporate law provides for restrictions (e.g. forbidden repayment of contributions as the main restriction) regarding debt pushdown securing the interest of debtors. A transaction by which the target grants an advance payment, or a loan for shares, or a transaction with a similar effect, is null. Tax grouping is not possible in Slovenia.

If a buyer takes a loan to finance an acquisition of a target, interest is generally tax deductible. However, if a target is later merged with a buyer, such interest is no longer tax deductible.

d. Hybrid Instruments

The CITA provides that profits paid out in relation to securities and credits that grant participation in profit are treated as income, similar to dividend. Payments to related persons under conditions that are not at arm's length are deemed hidden profit distributions, and as such are regarded as income similar to dividends. Income similar to dividends is taxed as dividends.

Slovenia adopted ATAD1 and ATAD2, so the hybrid mismatch rules apply and shall be taken into account when using hybrids in transactions.

e. Other Instruments

This section is left intentionally blank.

f. Earn-outs

This section is left intentionally blank.

7. DIVESTITURES

a. Tax Free

When determining a CIT base for a Slovenian resident company and a non-resident company conducting activity in Slovenia via a permanent establishment, 50% of the capital gains deriving from the disposal of shares are excluded from the tax base, if the resident's participation in capital of that entity was at least 8%, it held that participation for at least six months and it had in that time employed at least one person full time. Up to 50% of the loss realised from a similar transaction as described is not allowable (i.e. it cannot be offset against taxable income).

b. Taxable

Capital gains on the sale of shares of individuals are taxed at a 25% final tax rate. After the expiry of a five year holding period, the rate is reduced from 25% to 20%. After the expiry of a 10 year holding period, the rate is reduced to 15%. After a 15 year holding period any gains are tax exempt. As of 1 January 2022, resident taxpayers may opt for progressive taxation.

Capital gains on the sale of shares by a Slovenian corporation are generally subject to 19% CIT.

Capital gains generated by Slovenian resident individuals from the alienation of assets are generally taxed at the progressive income tax rate (up to 50%).

Capital gains generated by a Slovenian resident corporation from the sale of assets are generally subject to 19% CIT. In the event of a transfer of business unit or its part, the assets sale is also VAT exempt.

c. Cross Border

Capital gains of a non-resident corporation resulting from the alienation of shares in a Slovenian entity are not taxable in Slovenia.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

A taxpayer that has its statutory seat or place of effective management in Slovenia is subject to unlimited corporate income tax liability, (i.e. to taxation of income on a worldwide basis, subject to applicable tax treaties). Under Slovenian law, the place of effective management is the place where management actually manages the business activities. This place is not necessarily the same place where the main control or supervisory activities are carried out. If the business activities are not managed from the same place, the place of effective management is considered a place where day to day business activities are managed or carried out.

Taxpayers without a statutory seat or an effective place of management in Slovenia are taxable only on income derived through a permanent establishment in Slovenia or from another Slovenian source.

b. CFC Regime

The rules on controlled foreign corporations ("CFCs") were implemented under the CITA with the new Chapter X.b., which contains three new articles (67.h – 67.j), applicable since 1 January 2019. The main purpose of the rule is the attribution of the subsidiary's passive income to the parent company from jurisdictions with more favourable tax conditions.

i Definition of a CFC

A taxpayer shall treat an entity as a CFC where the following conditions are met:

- The taxpayer by itself, directly or indirectly, participates in more than 50% of the voting rights, or has, directly or indirectly, more than 50% of the capital, or is entitled to more than 50% of that entity's profits, and
- Corporate income tax on profits actually paid by this entity is lower than half of the CIT that would be paid for this profit under the CITA rules.

ii Income attribution and inclusion in the tax base of the parent company

Only the undistributed profits generated from so called passive income of a CFC (interest, dividends, income from property rights, royalties, etc.), is attributed to the tax base of the parent company.

There are two exceptions in this regard. Namely, the attribution is not required if:

- It is clear from the facts and circumstances that a CFC carries out substantive economic activity supported by personnel, equipment, assets and premises; or
- One third or less of the income accruing to the CFC falls within the passive income categories.

iii Calculation of the attribution of profit

The profit to be included in the tax base of the parent company is calculated in accordance with the CITA rules and is taken into account in proportion to the participation in a CFC. The profit is included in the tax base of the parent company in the tax period in which the tax period of a CFC ends.

Losses of a CFC are not included in the tax base of the parent company but can be carried forward in accordance with CITA rules and taken into account in subsequent tax periods. The CITA also provides for rules to eliminate possible double taxation.



c. Foreign Branches and Partnerships

A non-resident corporation (i.e. which does not have either a place of management or a registered seat in Slovenia) is subject to limited CIT liability if it carries on a business in Slovenia through a permanent establishment ("PE"). In this case, the tax liability is limited to the income attributed to that PE. In addition, income is deemed to have its source in Slovenia in the following cases:

- Income from immovable property and from the rights pertaining to immovable property if the immovable property concerned is located in Slovenia.
- Income from agricultural and forestry activities if the activity is performed on land located in Slovenia.
- Income from exploitation or the right to exploitation of deposits of ores, wellsprings or other natural resources if these are located in Slovenia.
- Profits from disposal and dividends, including income similar to dividends and income from holdings sourced in financial instruments and/or all types of financial investments such as securities and ownership shares if issued by entities set up in accordance with the regulations of Slovenia, local authorities or the Bank of Slovenia, and/or from holdings in companies, co-operative societies and other types of organisations set up in accordance with the regulations of Slovenia.
- Interest if borne by a resident or non-resident through their business unit in Slovenia.
- Income from the use or the right to use copyrights, patents, brand names and other property rights and income from other similar rights if borne by a resident or a non-resident through their business unit in Slovenia.
- Profit from disposal of a resident's or non-resident's business unit in Slovenia.
- Profit from disposal of immovable property located in Slovenia (including the profit from disposal of equity holdings and the rights arising from equity holdings in a company, co-operative society or other type of organisation if more than half of the value thereof arises directly or indirectly from immovable property and the rights pertaining to immovable property located in Slovenia).
- Income from services provided by performing artists or athletes, belonging to another person if those services are provided in Slovenia.
- Income from services if those services are performed in Slovenia or borne by a resident or non-resident through their business unit in Slovenia.

The general tax rate is 19%. The tax on a non-resident's income is paid either through a final withholding tax, or through a tax return, depending on the type of income and on whether a payer of income is considered a taxpayer pursuant to the Tax Procedure Law.

A registered branch office is in principle liable for tax in Slovenia.



Partnerships are non-transparent entities for tax purposes in Slovenia. Partnerships are, consequently, treated as separate taxable persons, subject to corporate income tax ("CIT"). Profits made by the partnership are, first, taxable at the level of the partnership under the CITA and afterwards at the level of partners as well when/if distribution of profits is made:

- Under the Personal Income Tax Act ("PITA"), if partners are individuals, or
- Under the Corporate Income Tax Act ("CITA"), if partners are companies.

Income of foreign branches is in principle subject to income taxation in Slovenia.

d. Cash Repatriation

When calculating the tax base, the taxpayer may exempt received dividends and other similar income, except hidden reserves that were not taxed at the disburser level, if the dividend payer is:

- A resident of an EU member state for tax purposes under the law of that member state and is not deemed to be a resident outside the EU due to a tax treaty with a non-member state; and
- Liable to pay tax comparable to the Slovenian CIT and is not resident in or, in the case of a business unit, not situated in a country in which the general, average nominal corporate tax rate is less than 12.5% and which is on the list published by the Ministry of Finance.

The above provisions also apply to a non-resident recipient if the recipient's participation in the equity capital or management of the person distributing profits is connected with business activities performed by the non-resident in or through a permanent establishment in Slovenia. Expenses of an amount equal to 5% of the dividends received are not tax deductible, being deemed expenses incurred with respect to the exempt dividend income.



9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

This section is left intentionally blank.

b. CbC and Other Reporting Regimes

Multinational enterprise groups whose consolidated income in the business year previous to the business year of reporting amounts to EUR750 million or more are bound to Country by Country Reporting ("CbCr"). The CbCr is filed by the reporting entity of the MNE group. In principle, the reporting entity is the ultimate parent company that is tax resident in Slovenia.

In the CbCr the taxpayer must include:

- Aggregate information relating to the amount of revenue, profit (loss) before tax, tax paid, tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE group operates.
- An identification of each entity within the MNE group setting out the jurisdiction of its tax residence and, where different from such jurisdiction of tax residence, the jurisdiction under the laws of which the entity is incorporated, and the nature of its main business activity or activities. CbCrs will be automatically exchanged between financial authorities.



10. TRANSFER PRICING

The Slovenian Transfer Pricing Act ("TPA") contains specific provisions on the transfer pricing documentation in connection with the intercompany supply of goods and services.

Taxpayers have to prepare a master file, a country specific file and under certain conditions a country by country report (see above for details).

The master file should include at least:

- A description of the taxpayer.
- A description of the organisational structure and types of relations between the subjects.
- The system chosen for determining transfer prices.
- A description of the business activity and business strategy.
- A description of the competition.

In the country specific file, the taxpayer has to include:

- Information regarding transactions between related persons.
- Information on comparability analysis of transactions regarding:
  - Features of assets and services;
  - Functional analysis conducted;
  - Contractual terms;
  - Economic conditions that influence transactions;
  - Business strategies;
  - Other conditions influencing transactions;
  - Information regarding the method applied for determining the transfer prices; and
  - Other documentation about the comparability of transfer prices with comparable market prices.

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Advance Pricing Agreement ("APA") provisions enable all taxable persons to conclude an advance agreement with the financial administration regarding the transfer prices between related parties that are recognised for tax purposes. The agreement sets out the methodology, critical assumptions and other appropriate criteria for determining transfer prices for certain transactions for a fixed period before the transactions are performed. The procedure is as follows:

- Preparation. The taxable person files a written application for concluding an agreement and conducts an interview with the tax authorities, which serves as a guideline for the preparation of the relevant application.
- Submission of a written application for the agreement. The tax authority has three months to decide whether the procedure will start or not. The costs of concluding the agreement are EUR15,000.
- Concluding and signing the agreement. The agreement may be concluded for a maximum period of five years with the possibility of an extension. The price of prolonging the agreement is EUR7,500.
- Monitoring and implementation of the agreement. Taxable persons are obliged to report annually to the tax authorities on the critical assumptions' validity and adjustments (together with their submission of the corporate income tax return). If there are discrepancies in the critical assumptions, the taxable person should inform the tax authorities about them.

The APA may be amended if so agreed by both parties. It is terminated in three cases: the expiration of the term for which it was concluded; the non-implementation of the reporting obligations by the taxable person; and in the event of significant changes in critical assumptions of the agreement when the agreement as such does not change.



11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

There is no special tax regime for hybrids in Slovenia except for their use and hybrid mismatch rules.

b. Use of Hybrid Instruments

ATAD 1 and ATAD2 were incorporated in the Slovenian Corporate Income Tax Law ("CITA") and are applicable when using hybrid instruments. Specific instruments that include participation in income rights can be qualified as income similar to dividends and taxed as such.

c. Principal/Limited Risk Distribution or Similar Structures

Slovenia generally follows the OECD approach with regard to arm's length standards of intercompany distribution structures. Thus, transfer prices for distribution services can generally be calculated by means of the standard methods (comparable uncontrolled price method, resale price method and cost plus method). The transactional net margin method ("TNMM") is also used commonly in practice.

d. Intellectual Property

Slovenia does not have any special tax status or patent box regime in place. It does, however, promote research and development activities by providing a tax incentive for R&D. In this respect, 100% of investments in, or costs of, research and development are recognised as tax incentives and decrease the tax base. The amount of the incentive may not exceed 63% of the tax base in the current tax period (together with all other tax incentives and deductions of losses carried forward). For the unused part of the incentives in the tax period concerned, the taxpayer may reduce the tax base in the subsequent five tax periods.

e. Special Tax Regimes

Slovenia does not provide any special tax regimes.

12. OECD BEPS CONSIDERATIONS

Slovenia generally follows and is implementing the BEPS actions. Slovenian tax law already covers many aspects of the BEPS action plan (e.g. thin capitalisation rules, general anti-avoidance rules). Regarding BEPS Action 13, Slovenia implemented the requirement to submit master and local files as well as country by country reporting. Slovenia was also among the first countries to ratify the MLI and is active in adjusting its DTT network to MLI provisions. Slovenia implemented ATAD1, ATAD2 and all DACs.



13. ACCOUNTING CONSIDERATIONS

Slovenian Accounting Standards ("SAS") and international IFRS under certain conditions are applicable. As per the applicable corporate law, SASs shall implement EU Directive 2013/34/EU and shall generally be in line with IFRS. Companies bound to consolidation shall prepare consolidated annual accounts in line with IFRS.

A business combination occurs when an acquiror takes over control of one or more business units. A business unit comprises all assets and liabilities used for performing a business activity. A business combination occurs in the event of a share deal or an asset deal. In the context of business combinations, the acquisition method is to be applied. Acquired assets are recognised at the date of acquisition. The acquired assets and liabilities are recognised at fair value at the time of acquisition. This is the date on which the acquiror obtains control of the assets. The acquiror recognises goodwill as the surplus over the fair value of acquired assets. Business combinations with organisations under common control are calculated under the book value method.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Distributable reserves shall be considered in the balance sheet profit calculation in order to be distributable to the shareholder. Balance sheet profit can be paid out to shareholders as dividends and their tax treatment is the same as the tax treatment of dividends.

In Slovenian corporate law, there is a special reserves category (i.e. subsequent payments are provided as means available to shareholders to finance the company). Subsequent payments form capital reserves and this category is refundable to shareholders. Granting and refunding subsequent payments is tax neutral.

b. Application of Regional Rules

Slovenia has implemented EU Directives in tax related matters into Slovenian domestic law, (i.e the EU Parent Subsidiary Directive, the EU Interest and Royalty Directive and the EU Merger Directive, ATAD1 (partially, see above regarding interest limitation rule exception) and ATAD2). DAC1 to DAC6 inclusive have also been implemented.



c. Tax Rulings and Clearances

Based on a taxpayer's request and under certain conditions, the financial authority issues a binding decision regarding the tax treatment of intended transactions or intended business events. Due to the relatively high cost of the procedure, its complexity and the time needed for obtaining a ruling, this procedure is not very popular with taxpayers.

On 1 January 2017 the provisions relating to the Advance Pricing Agreement ("APA") came into force in Slovenia. They enable all taxable persons to conclude an advance agreement with the financial administration regarding the transfer prices between related parties that are recognised for tax purposes.

An APA is an agreement which sets out the methodology, critical assumptions and other appropriate criteria for determining transfer prices for certain transactions for a fixed period before the transactions are performed. The procedure is as follows:

- Preparation. The taxable person files a written application for concluding an agreement and conducts an interview with the tax authorities, which serves as a guideline for the preparation of the relevant application.
- Submission of a written application for the agreement. The tax authority has three months to decide whether the procedure will start or not. The cost of concluding the agreement is EUR15,000.
- Concluding and signing the agreement. The agreement may be concluded for a maximum period of five years, with the possibility of an extension. The price of prolonging the agreement is EUR7,500.
- Monitoring and implementation of the agreement. Taxable persons are obliged to report annually to the tax authorities on the critical assumptions' validity and adjustments (together with their submission of a corporate income tax return). If there are discrepancies in the critical assumptions, the taxable person should inform the tax authorities about them.

The APA may be amended if so agreed by both parties. It is terminated in three cases: the expiration of the term for which it was concluded; the non-implementation of the reporting obligations by the taxable person; and in the event of significant changes in critical assumptions of the agreement when the agreement as such does not change.

15. MAJOR NON-TAX CONSIDERATIONS

Within the measures related to COVID-19 situation, Slovenia adopted rules regarding mandatory notification of direct foreign investments to the Ministry of Economic Development and Technology, which included high penalties and nullity of the agreements if the law was not followed. Within the transaction procedures, the parties should also review obligations in this respect. Applicable rules are considered in practice to be very uncertain and unclear as to liabilities and conditions of liable persons, and regarding the scope of their applicability. Even though it is not stated specifically in the applicable act itself, a transaction can also be notified to the Ministry before it is completed (e.g. upon conclusion of an agreement, but determined as the condition precedent for completion of a transaction).

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Albania	5, 10	7	7	[1], [2]
Armenia	5, 10	10, 0	5	[3], [2]
Austria	5, 15	5, 0	5	[3], [2]
Azerbaijan	8	8, 0	5, 10	[2], [4]
Belarus	5	5, 0	5	[2]
Belgium	5, 15	10, 0	5	[1], [5]
Bosnia and Herzegovina	5, 10	7,0	5	[3], [2]
Bulgaria	5, 10	5, 0	5, 10	[3], [2], [6]
Canada	5, 15	10, 0	10	[7], [2]
China	5	10	10	
Croatia	5	5, 0	5	[2]
Cyprus	5	5, 0	5	[2]
Czech Republic	5, 15	5, 0	10	[3], [2]
Denmark	5, 15	5	5	[8]
Estonia	5; 15	10, 0	10	[3], [2]
Finland	5, 15	5, 0	5	[3], [2]
France	15, 0	5, 0	5, 0	[9], [2], [10]
Georgia	5	5	5	[2]
Germany	5, 15	5, 0	5	[3], [2]
Greece	10	10	10	
Hungary	5, 15	5, 0	5	[3], [2]
Iceland	5, 15	5, 0	5	[3], [2]
India	5, 15	10, 0	10	[11], [2]
Ireland	5, 15	5, 0	5	[1], [2]
Israel	5, 10, 15	5, 0	5	[11], [12], [2]
Italy	5, 15	10, 0	5	[3], [2]
Japan	5	5, 0	5	[2]
Kazakhstan	5, 15	10, 0	10	[1], [2]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Korea, Republic of	5, 15	5, 0	5	[3], [2]
Latvia	5, 15	10, 0	10	[3], [2]
Lithuania	5, 15	10, 0	10	[3], [2]
Luxembourg	5, 15	5, 0	5	[3], [2]
Macedonia	5, 15	10	10	[3]
Malta	5, 15	5	5	[3], [13]
Montenegro	5, 10	10, 0	5, 10	[3], [2], [14]
Netherlands	5, 15	5, 0	5	[11], [2]
Norway	0, 0, 15	5, 0	5	[15], [2]
Poland	5, 15	10, 0	10	[1], [2]
Portugal	5, 15	10, 0	5	[1], [2]
Romania	5	5, 0	5	[2]
Russia	10	10	10	
Serbia	5, 10	10, 0	5, 10	[1], [2], [14]
Singapore	5	5, 0	5	[2]
Slovakia	5, 5, 15	10	10	[16]
Spain	5, 15	5, 0	5	[3], [2]
Switzerland	15, 0	5, 0	5, 0	[17], [2], [18]
Thailand	10	10, 15, 0	10, 15	[19], [2], [20]
Turkey	10	10, 0	10	[2]
Ukraine	5, 15	5	5, 10	[3], [14]
United Kingdom	0, 15	5, 0	5	[21], [2]
United States	5, 15	5, 0	5	[22], [23], [24], [2]

Footnotes	
[1]	5% of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividend (365 days holding period).
[2]	Special exemption regarding interest is provided for interest paid to certain bodies (e.g., the Government, Central Bank).
[3]	5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.



Footnotes	
[4]	Lower rate applies regarding royalties paid for the use of or the right use of specific intangibles (a computer software, any patent, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience).
[5]	Tax exempt interest: interest on commercial debt-claims including debt-claims represented by commercial paper resulting from deferred payments for goods, merchandise or services supplied by an enterprise; interest paid in respect of a loan made, guaranteed or insured or a credit extended, guaranteed or insured by public entities the objective of which is to promote the export; interest paid to the other Contracting State, a political subdivision or a local authority thereof.
[6]	5% of the gross amount applies to royalties paid for the use of, or the right to use, any copyright of literary, artistic or scientific work (but not including cinematograph films); royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment.
[7]	5% of the gross amount of the dividends if the beneficial owner is a company that controls directly or indirectly at least 10% of the voting power in the company paying the dividends where that company is a resident of Canada; holds directly at least 25% of the capital of the company paying the dividends where that company is a resident of Slovenia (365 days holding period).
[8]	5% of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends where such holding is being possessed for an uninterrupted period of no less than one year and the dividends are declared within that period; and in the case of Denmark, 5% of the gross amount of the dividends if the beneficial owner is a company, being a resident of Denmark, which is a partner in a Danish partnership, and alone holds directly at least 25% of the capital of the company paying the dividends where such holding is being possessed for an uninterrupted period of no less than one year and the dividends are declared within that period (365 days holding period). 5% of the gross amount of the dividends if the beneficial owner of the dividends and the beneficial and direct owner of the shares or other corporate rights giving right to the dividends is a recognized pension fund.
[9]	Dividend, paid by the company, resident in the contracting state and of which the beneficial owner is a company, resident of the other contracting state, holding directly at least 20% of the capital of the paying company, is taxed only in this other state (365 days holding period).
[10]	Royalties are taxed only in the contracting state of which the recipient is a resident, if such a recipient is the beneficial owner of the payment and if such royalties are paid for copyright on literary or artistic work. Royalties are taxed only in a contracting state of which the recipient is a resident if such a resident is a company, holding at least 20% of the capital in a company, paying royalties or a third company, resident of one of the contracting states directly holds at least 20% of the capital in both, paying and receiving companies.
[11]	5% of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends (365 days holding period).
[12]	10% of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 per cent of the capital of the company paying the dividends and the dividends are paid out of profits which by virtue of Law of the State in which the payer is a resident, are exempt from company tax or subject to company tax at a rate that is lower than the normal rate in that State (365 days holding period).
[13]	Where the dividends are paid by a company which is a resident of Malta to a resident of Slovenia who is the beneficial owner thereof, Malta tax on the gross amount of the dividends shall not exceed that chargeable on the profits out of which the dividends are paid.
[14]	5% of the gross amount of the royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films or films or tapes used for radio or television broadcasting within the meaning of subparagraph. 10% of the gross amount of the royalties or the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.



Footnotes	
[15]	0% of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 15% of the capital of the company paying the dividends or in the case of Norway, 0% of the gross amount of the dividends if the beneficial owner is a resident of Norway who is a partner in a Norwegian partnership and alone or together with other such partners hold directly at least 15% of the capital of the company paying the dividends (365 days holding period).
[16]	5% of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends; in the case of a Slovak partnership, 5% of the gross amount of the dividends if the beneficial owner is a company – being a resident of Slovakia – which is a partner in a Slovak partnership, and which alone holds directly at least 25% of the capital of the company paying the dividends (365 days holding period).
[17]	Contracting State of which the company is a resident shall exempt from tax dividends paid by that company, if the beneficial owner of the dividends is: a) a company (other than a partnership) which is a resident of the other Contracting State and holds directly at least 25% of the capital in the company paying the dividends; or b) a pension scheme.
[18]	In addition to footnote [2] the following exemptions apply: interest arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner thereof shall be taxable only in that other State to the extent that such interest is paid by a company to a company of the other Contracting State where such company is affiliated with the company paying the interest by a direct minimum holding of 25% in the capital or where both companies are held by a third company (being a resident of any Member State of European Union or of Switzerland) which has directly a minimum holding of 25%, both in the capital of the first company and in the capital of the second company.
[19]	Interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10% of the gross amount of the interest if it is received by any financial institution (including an insurance company); 15% of the gross amount of the interest in other cases.
[20]	Royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10% of the gross amount of the royalties for the use of, or the right to use, any copyright of literary or artistic work including motion pictures, live broadcasting, film, tape or other means of the use or reproduction in connection with radio and television broadcasting, and for the use of, or the right to use industrial, commercial, or scientific equipment; 15% of the gross amount of the royalties in all other cases.
[21]	Dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a resident of the other Contracting State and is a company which holds directly at least 20 per cent of the capital of the company paying the dividends.
[22]	5% of the gross amount of the dividends if the beneficial owner is a company that owns directly at least 25% of the voting stock (or, in the case of Slovenia, if there is no voting stock, at least 25% of the statutory capital) of the company paying the dividends.
[23]	Further exceptions for dividends paid by a United States Regulated Investment Company (RIC) or a United States Real Estate Investment Trust (REIT).
[24]	Dividends may not be taxed in the Contracting State of which the payer is a resident if the beneficial owner of the dividends is a resident of the other Contracting State that is a qualified governmental entity that does not control the payer of the dividend.



17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Indication of tax advisers and responsible persons for the preparation / submission of tax returns, control and co-ordination of work related to taxes and tax planning.
2	Tax Due Diligence	General	Certificate by tax authority (FURS) of the taxes paid (last possible date).
3	Tax Due Diligence	General	All documentation relating to tax and other inspections (minutes, complaints, decisions, etc.) that have started, ended, or are ongoing in the last three years.
4	Tax Due Diligence	General	Any other correspondence with tax authorities or other authorities (e.g. customs).
5	Tax Due Diligence	General	Trial balance for five years (or other agreed period) and latest available.
6	Tax Due Diligence	General	A list of all types of transactions with associated persons.
7	Tax Due Diligence	General	Transfer pricing documentation local file and master file for five years (or other period of review).
8	Tax Due Diligence	General	Export from general ledger of the company, which shall include all transactions booked in the FYs under review and the latest available.
9	Tax Due Diligence	General	Extract from fixed assets register as of 31 December of each year under review and latest available in proper format which shall include at least the following information: asset description, depreciation rate, acquisition date, depreciation start date, retirement date, purchase value, depreciation amount, book value.
10	Tax Due Diligence	CIT	CIT returns with all annexes for years under review.
11	Tax Due Diligence	CIT	Supporting documentation / interpretation of items in the corporate income tax returns for the tax years under review, regarding the increase / decrease in revenues, expenditures, other adjustments to the tax base, tax relief, etc.
12	Tax Due Diligence	CIT	List of assets for which investment relief has been applied for the years under review.
13	Tax Due Diligence	CIT	Copies of invoices on acquisition and disposal of fixed assets, Investment property and assets available for sale.
14	Tax Due Diligence	CIT	List of formation / consumption / elimination of long-term provisions and their tax treatment in the years under review (unrecognised, 50% recognised, recognised).
15	Tax Due Diligence	CIT	List of value adjustments of receivables and their tax treatment for the years under review.
16	Tax Due Diligence	CIT	List of written-off receivables (when the value adjustments of receivables were formed, and what was their tax treatment) for the years under review.
17	Tax Due Diligence	CIT	Calculation of excessive depreciation in cases where the depreciation rate for business purposes is higher than the tax-allowed depreciation rate for the years under review.

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Nº.	Category	Sub-Category	Description of Request
18	Tax Due Diligence	CIT	Expenses relating to the private life (including the VAT): • Expenses relating to the private life of proprietors and associated persons (if the receiver did not refund the expenses). • Expenses relating to the private life of other persons (if the receiver did not refund the expenses). • Expenses relating to health promotion. • Benefits relating to employment, not under income tax, e.g. membership fees, parking spaces, benefits of small value, etc.
19	Tax Due Diligence	CIT	List of all expenses concerning previous periods, but which have been booked in P&L in the FY under review.
20	Tax Due Diligence	CIT	Costs for donations - a specification and supporting documentation on donation expense and tax relief for donations.
21	Tax Due Diligence	CIT	Expenses not in accordance with the regular business practice (expenses that are not regular or usual in operating business of the activity compared to former experiences and to other activities).
22	Tax Due Diligence	CIT	Cumulative receivables and payables turnover for individual associated person in the years under review (account cards).
23	Tax Due Diligence	CIT	Breakdown and supporting documentation to short-term accruals and provisions which are booked as of 31 December for each year under review and latest available.
24	Tax Due Diligence	CIT	Explanation and supporting documentation to other operating revenue for last two years.
25	Tax Due Diligence	VAT	Records of issued and received invoices for the years under review and latest available.
26	Tax Due Diligence	VAT	VAT forms (as well as PD and RP forms, if applicable) for the months Feb, June, and Nov of years under review for Feb, June and Aug of the current year.
27	Tax Due Diligence	VAT	Description of services sold to EU customers and non-EU customers and provision of two highest invoices for each year under review and the current period.
28	Tax Due Diligence	VAT	For three highest issued invoices for supplies of goods to the EU in the reviewed period: invoices and the corresponding CMR documents (= three invoices + three CMR documents), if applicable.
29	Tax Due Diligence	VAT	Two highest issued invoices with VAT (i.e. for domestic supplies) for each year of the reviewed period (= altogether 12 invoices).



Nº.	Category	Sub-Category	Description of Request
30	Tax Due Diligence	VAT	Two highest received invoices from the EU (i.e. for received services and/or goods from EU suppliers) for each year of the reviewed period (= altogether 12 invoices). For the received services: proof that services were really performed or confirmation of sufficient proof that the services received were in fact performed (i.e. that a third person not involved/part of the business is able to understand what kind of services were received etc.).
31	Tax Due Diligence	VAT	Two highest received invoices with VAT (i.e. for domestic purchases) for each year of the reviewed period (= altogether 12 invoices).
32	Tax Due Diligence	VAT	Does the company perform exempted supplies that do not allow input VAT deduction (e.g. financial, insurance transactions)? Description of the transactions and how are they treated for VAT purposes.
33	Tax Due Diligence	VAT	A list or extract from bookkeeping with information about the purchase of fixed assets - equipment for the last five years, and immovables for the last 20 years. The list should show what exactly was purchased and how much VAT was deducted and when (in which monthly VAT form).
34	Tax Due Diligence	VAT	Information as to whether the company has a full deduction of input VAT, or if it calculates the deductible proportion (pro-rata). In the latter case, information on the amount of the pro-rata for reviewed period (e.g. how it was calculated).
35	Tax Due Diligence	VAT	Confirmation that regular checks of VAT ID numbers of EU customers (goods and/or services) are confirmed and how.
36	Tax Due Diligence	VAT	Confirmation for private expenditure (e.g. of owners, directors etc.) that input VAT is not deducted. Confirmation that in cases of giving free-of-charge goods, for which the input VAT was deductible at the time of the purchase, the company calculates the output VAT.
37	Tax Due Diligence	PIT and SSC	Tax return forms (REK-1) for June and December with all attachments for the last five years.
38	Tax Due Diligence	PIT and SSC	List of the employees' benefits and example of calculation for the use of a company vehicle, and invoices for other benefits for the last five years (if any).
39	Tax Due Diligence	PIT and SSC	Employment contract for one employee and member of management board employed on the basis of individual agreement, and one employment contract on the basis of collective agreement including income tax and social security contributions assessment. Attach the salary lists of these two employees for June and December for the last five years.
40	Tax Due Diligence	PIT and SSC	Documentation on payment of holiday allowance with all annexes (REK-1 form, calculation and payment decision) in the last five years.



Nº.	Category	Sub-Category	Description of Request
41	Tax Due Diligence	PIT and SSC	Documentation of other payments to natural persons (labour contracts, payment of copyrights and royalties, rent, interest) and one sample of all types of payments and calculations of correlated taxes (REK forms) for the last five years.
42	Tax Due Diligence	PIT and SSC	List of sole proprietors who work for the company, and review of pay-outs over the last five years.
43	Tax Due Diligence	PIT and SSC	List of students and contract workers who work for the company and review of pay-outs over the last five years.
44	Tax Due Diligence	PIT and SSC	Sample calculation and supporting documentation for pay-out of part of salary for business performance in each year under review (including payslip, internal act and REK).
45	Tax Due Diligence	PIT and SSC	Has the company received any government support in the course of anti-COVID-19 measures?
46	Tax Due Diligence	PIT and SSC	Has the company paid out the crisis allowance (in the course of the adopted COVID-19 measures)? Payslip sample for March, April and May for one employee.
47	Tax Due Diligence	PIT and SSC	Sample calculation and supporting documentation for the reimbursement of travel-related costs: (1) travel order, travel expense report and payslip including reimbursement of business travel costs (samples of following reimbursements required: transport public/private, accommodation, per-diem allowances for travel in Slovenia and abroad. (2) transport to work (sample of supporting documentation and payslip).
48	Tax Due Diligence	PIT and SSC	Sample calculation and supporting documentation for severance payment calculation in each year under review (including payslip and REK Form).
49	Tax Due Diligence	Other	A list of all payments (e.g. dividends, interest, royalties, services, etc.) to non-residents, subject to withholding tax in the last five years, WHT return (i.e. ODO form) and DTT (i.e. KIDO forms).
50	Tax Due Diligence	Other	Calculation of tax on transactions with real estate for the two largest transactions with all the supporting documents (invoices, contracts, calculations) for each year under review.
51	Tax Due Diligence	Other	Documentation on any extraordinary transactions (restructuring, status changes) - reporting of transactions to financial authority, tax returns, etc. in the last five years.

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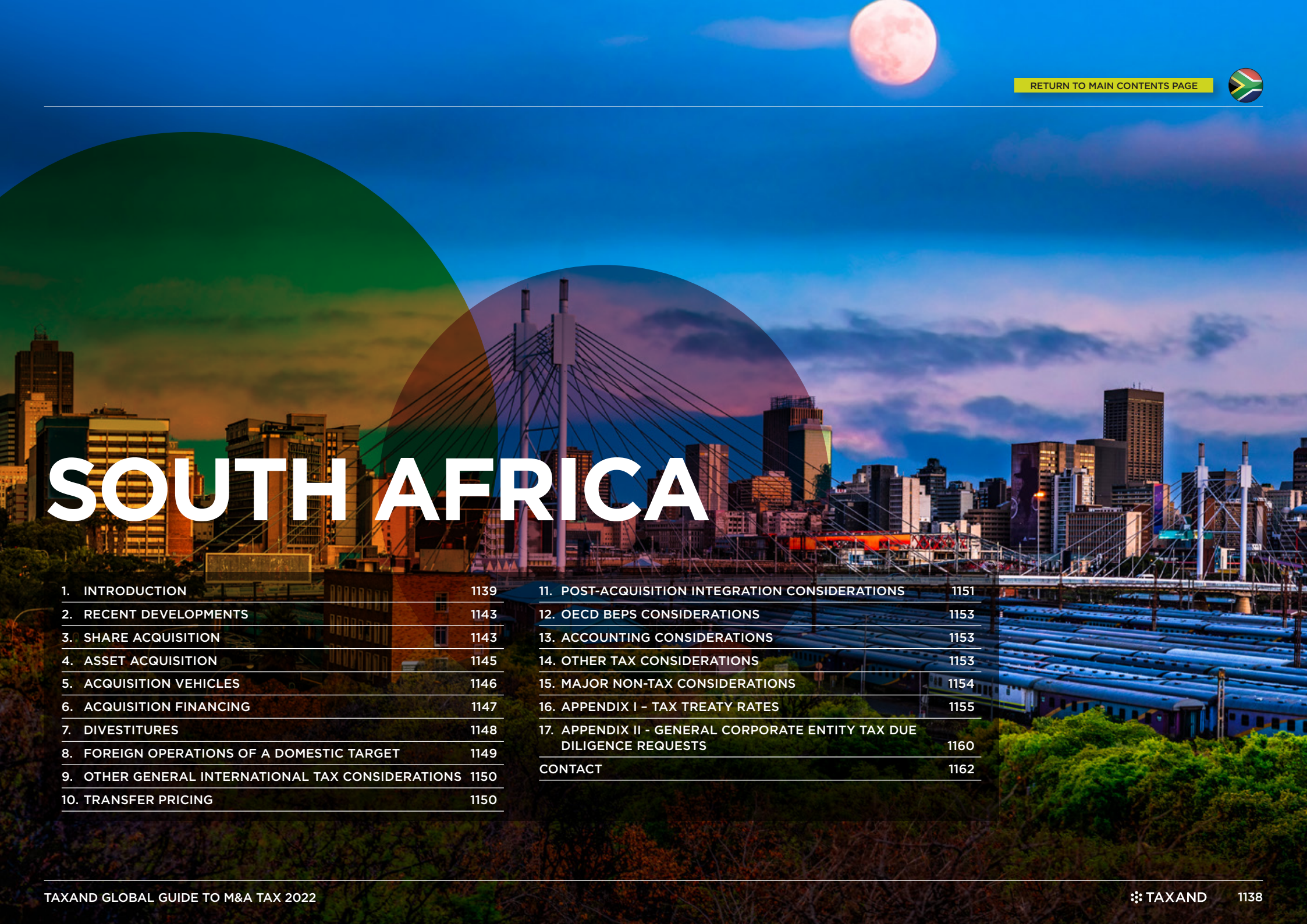
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1. INTRODUCTION

a. Forms of Legal Entity

There are various forms of legal entity available to investors interested in setting up a business in South Africa. The decision as to which is appropriate will depend on numerous factors. The main legal entities are:

- Personal liability company (incorporated).
- Private limited liability company (proprietary limited).
- External company (branch office).
- Public company (limited).
- Partnership.
- Sole trader; and
- Business / trading trust.

b. Taxes, Tax Rates

Taxes in South Africa are broadly classified as being either direct tax or indirect. Direct taxes are taxes paid by the taxpayer directly to the government, whereas indirect taxes are taxes levied on the supply of goods and services. Examples of direct taxes include income tax, estate duty, certain types of withholding taxes and donations tax. Examples of indirect taxes include value added tax ("VAT"), securities transfer tax ("STT"), transfer duty, and customs and exercise duty.

The South African Revenue Service ("SARS") administers a wide range of tax legislation, which includes the annually amended Income Tax Act,1962 ("Income Tax Act"), Value-Added Tax Act, 1991 ("VAT Act"), Securities Transfer Tax Act, 2007 ("STT Act"), Transfer Duty Act, 1949, Estate Duty Act, 1955, Tax Administration Act, 2011 ("TAA"), Customs and Excise Act, 1964 and Employment Tax Incentives Act, 2013, Mineral and Petroleum Resources Royalty Act, 2008, Mineral and Petroleum Resources Royalty (Administration) Act, 2008, as amended.

i Income tax

Income tax rates differ depending, inter alia, on the type of legal entity, for example:

- Individuals and special trusts are subject to progressive income tax at marginal rates of up to 45%;
- Most companies are subject to corporate income tax at the rate of 28%;
- Trusts (other than special trusts) are subject to income tax at the rate of 45%, unless vested in a beneficiary; and
- Partnerships are typically treated on a flow-through basis for tax purposes.



ii Dividends tax

Dividends tax is payable in respect of dividends paid by South African resident companies (as well as certain foreign dividends paid by non-resident companies in respect of shares listed on the Johannesburg Stock Exchange ("JSE") to the shareholders thereof. The rate is currently 20%, unless an exemption or reduced rate is applicable (for example under an applicable Double Taxation Agreement ("DTA")).

Dividends declared to beneficial owners who are South African resident companies are generally exempt from dividends tax.

iii Interest withholding tax

Withholding tax on interest is payable in respect of South African sourced interest paid to or for the benefit of a non-resident. The rate is currently 15%, unless an exemption or reduced rate is applicable (for example under an applicable DTA).

iv Royalties withholding tax

Withholding tax on royalties is payable in respect of South African sourced royalties paid to or for the benefit of a non-resident. The rate is currently 15%, unless an exemption or reduced rate is applicable (for example under an applicable DTA).

v Capital gains tax ("CGT")

This tax is generally payable on the disposal of any asset by a resident, and in respect of the disposal of certain assets by a non-resident, including, for example, immovable property and rights and interests therein. An asset is property of whatever nature (movable or immovable), including rights or interest of whatever nature to or in such property, tangible or intangible assets, excluding currency but including any coin made mainly from gold or platinum.

Non-residents will only be subject to CGT upon capital gains arising from the disposal of:

- Immovable property situated in South Africa;
- Any interest in or right to immovable property situated in South Africa, where more than 80% of the market value of the interest at the date of the disposal relates directly or indirectly to South African immovable property which is not trading stock (i.e. a "property rich company" – there are currently proposals to expand this category); or
- Any asset effectively connected with a permanent establishment of the non-resident in South Africa.

The deemed or actual proceeds received upon the disposal of assets in excess of the base cost of the assets will be included in the taxpayer's income and be taxable at the CGT rate applicable to the particular taxpayer. Individuals and special trusts are required to include 40% of their net capital gain in their taxable income, which results in a maximum effective CGT rate of 18%. Other legal entities (for example, companies and other trusts) are required to include 80% of their net capital gain in their taxable income. The maximum effective CGT rates as a result of these inclusions are 22.4% in respect of companies and 36% in respect of trusts.

There is no inflation indexation for CGT purposes in South Africa.



vi Donations tax

Donations tax is payable at a flat rate of 20% on the first R30 million and at a flat rate of 25% above R30 million of the value of property disposed of by donation (including disposals for inadequate or no consideration). Non-residents are not subject to this tax and exemptions exist inter alia in respect of donations by public companies as defined. Charitable donations per se are not deductible for tax purposes unless they are made to certain approved public benefit organisations and the requirements for claiming such exemption are met, or unless they can be brought within the ambit of the general deduction provisions of the Income Tax Act.

vii Employment tax

Employers are required to withhold and account for employees' tax Pay As You Earn ("PAYE") in respect of all remuneration payable to employees at their respective applicable progressive marginal income tax rates (up to 45%).

Whilst there is no social security payable, a skills development levy ("SDL") and unemployment insurance fund ("UIF") contributions are also payable on employees' remuneration, and must be withheld and paid over to SARS as follows (together with the PAYE described above):

- UIF: 2% payable by the employer (1% contributed by the employee and 1% contributed by the employer each capped at R17,712 per month); and
- SDL: 1% payable by the employer.

viii VAT

A person carrying on an enterprise in South Africa will be regarded as a vendor and required to register as such for VAT purposes at the earlier of their voluntary registration as such with SARS, or when the total value of their actual or estimated taxable supplies in a 12 month period exceeds R1 million. The supply of, inter alia, "electronic services" from abroad may also give rise to VAT registration requirements.

A VAT rate of either 0% or 15% is charged on the supply by any vendor of goods and/or services in the course or furtherance of any enterprise conducted by that vendor in South Africa (including the supply of electronic services) and also on imported goods and/or services.

Certain supplies are exempt from VAT, for example certain financial services such as the issue of debt or equity securities.

Certain supplies may be zero-rated for VAT purposes, for example the supply of certain goods or services to non-residents and the sale of businesses as a going concern, provided that the requirements for zero-rating are met.

In certain circumstances, the supply of "imported services" may give rise to a reverse VAT charge at the standard rate of 15%.

VAT costs incurred in relation to transactional advisory and related services may not be recoverable.

ix Securities Transfer Tax ("STT")

The STT Act provides for the levying of STT in respect of inter alia every transfer of any security issued by South African companies and non-resident companies listed on an exchange in South Africa.

STT is payable by the company which issued the share in the case of an unlisted share or the person who transfers the share in the case of a listed share, but may in both scenarios be recovered from the person to whom the share was transferred.



x Transfer Duty

Any acquisition of immovable property in South Africa (including inter alia land and fixtures as well as real rights in land, rights to minerals, a share or interest in any entity which constitutes a residential property company for purposes of the Transfer Duty Act 1949 and shares in a share-block company) is potentially subject to Transfer duty. Transfer duty is charged at a progressive rate of up to 13%. Transfer duty is not charged where the transfer of the property is subject to VAT (either at 0% or the standard 15%).

xi Customs Duty and customs management

Customs duty at various rates is payable on certain goods imported into South Africa.

There are currently various customs offices in South Africa, including sea, land and air ports, as well as centralised processing centres, with officers involved in a number of activities aimed at: facilitating legitimate trade and travel while ensuring compliance; controlling and accounting for all imports and exports; collecting all revenue due to the State; administering specific industry schemes, trade measures, international protocols and other international obligations; eradicating smuggling and other transgressions through enforcement action; and enforcing controls on the importation and exportation of prohibited and restricted goods on behalf of other authorities administering such laws. Subject to certain exclusions, any contravention or failure to comply with provisions of the Customs and Excise Act is regarded as an offence and could result in inter alia the imposition of penalties.

South Africa has free trade agreements with the European Union, European Free Trade Association and Southern African Development Community that offers preferential customs duty rates on goods originating in these territories. South Africa is also a member of the Southern African Customs Union.

The exact processes and requirements applicable to imports and exports depend on inter alia the nature of the item(s) being imported/exported. In certain instances, special permits/licences/certificates may be required.

xii Excise duty

Excise duty is charged on certain locally produced luxury or non-essential goods as well as on similar goods if imported, for example: alcohol and tobacco products.

xiii Mineral Royalties

A person that wins or recovers a mineral resource from within South Africa must pay a royalty in respect of the transfer of that mineral resource. The royalty liability is equal to the tax base (gross sales) multiplied by the relevant royalty percentage rate, the latter of which depends on the stage of processing at which the mineral is transferred and the nature of the mineral. Such royalty will be deductible for income tax purposes.

2. RECENT DEVELOPMENTS

There have been various recent developments in relation to South Africa's so-called "dividend stripping" anti-avoidance provisions which may be highly relevant to M&A deals. Dividend stripping inter alia involves stripping the value of the company through the declaration of exempt dividends, in order to minimise CGT to be incurred as a result of a subsequent disposal.

Pursuant to the 2022 Budget Review document ("2022 BR") published by National Treasury on 23 February 2022, a number of amendments have been proposed which may be relevant when considering an M&A deal. In this respect, it was proposed that the corporate income tax rate be reduced by 1% to 27% for years of assessment ending on or after 31 March 2023. Funding the reduction in the corporate income tax rate has been linked to a number of initiatives to broaden the tax base, including the limitation of loss set off (which will inter alia limit the deduction of assessed losses to 80% of the loss in a particular year of assessment) and the phasing out of certain tax incentives. In addition thereto, the 2022 BR proposes certain amendments to the intra-group transaction and debt forgiveness rules.

As regards tax administration, the 2022 BR proposes that the TAA be amended to make provision for the initiation and utilisation of joint audits with other tax administrations in an effort to improve the effective exchange of information under international tax agreements.

From an exchange control perspective, the 2022 BR proposes an overhaul of the existing exchange control framework as a measure to boost long-term investment. Implementation of this has already begun with a number of changes to the exchange control regulations applicable to both corporates and institutions having been published by the South African Reserve Bank ("SARB") on 23 February 2022.

Once drafted, the tax changes proposed in terms of the 2022 BR will be published for public comment during 2022.

3. SHARE ACQUISITION

a. General Comments

The entire corporate history of the entity is assumed within or along with the entity acquired, and the purchaser would typically therefore require an in depth due diligence review and/or comprehensive tax indemnities and warranties.

The supply of shares is typically an exempt supply for VAT purposes.

STT is payable upon the transfer of securities (which includes unlisted shares, shares listed on the JSE, as well as member's interests in close corporations) at a rate of 0.25% on the greater of the consideration given or the market value of the shares in the case of unlisted securities, and the greater of the consideration declared by the acquiror or the closing price in the case of listed shares.

b. Tax Attributes

The tax losses of the target company are assumed within or along with that target company. Anti-avoidance provisions limit losses if a transaction is entered into solely or mainly for the purpose of utilising an assessed loss.

c. Tax Grouping

South Africa has no "group tax provisions".



However, South Africa does have various corporate rollover relief provisions which may apply to companies which form part of the same "group of companies" for tax purposes, as discussed further below.

d. Tax Free Reorganisations

Various special rules are provided for in the Income Tax Act to allow for tax neutral mergers, acquisitions, and restructuring, which (if the applicable requirements are met) may provide relief for certain income tax, CGT, STT, Transfer duty and VAT implications which may otherwise have been triggered. The Income Tax Act specifically provides for asset-for-share transactions, amalgamation transactions, intragroup transactions, unbundling transactions and liquidation distributions (tax rollover provisions), each with specific requirements which must be met by the parties to the transactions before they will be applicable. Some of these provisions may only apply to companies which form part of the same "group of companies" for tax purposes.

e. Purchase Agreement

Consideration should be given to whether any exchange control approvals are required to be included as conditions precedent (and advisers should note that this area of regulation is currently under review).

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

STT must be paid:

- In respect of listed securities, by the 14th day of the month following the month during which the transfer occurred.
- In respect of unlisted securities, within two months from the end of the month in which the transfer occurred.

STT can only be accounted for and paid by electronic payment using the SARS e-STT system.

g. Share Purchase Advantages

The tax losses of the target company are assumed within or along with that target company. From a sellers perspective, the tax cost may potentially be less in comparison to an asset sale.

h. Share Purchase Disadvantages

The entire corporate history of the entity is assumed within or along with the entity acquired, and the purchaser would typically therefore require an in-depth due diligence review and/or comprehensive tax indemnities and warranties.

Assets are taken over at their existing tax base cost (i.e. not stepped up) and interest expenditure incurred in order to finance the acquisition may not be deductible by the purchaser.



4. ASSET ACQUISITION

a. General Comments

The existing tax liabilities of the target company are not assumed by the purchaser, except in very limited circumstances.

The amount allocated to the various assets would become the base cost of such assets in the purchaser's hands for capital gains tax ("CGT") purposes, which would, where such base cost is high, result in lower CGT implications upon the disposal of such assets (where the purchaser is subject to South African CGT).

The purchaser may be entitled to certain allowances or deductions on certain assets which are acquired, however, where the purchaser subsequently disposes of such assets, a recoupment of allowances or deductions claimed may arise.

VAT may be payable, thereby increasing the acquisition costs in the event that the VAT is not completely or partially recoverable by the purchaser. The purchaser may acquire only part of the target company's business.

Interest incurred on debt acquired to finance the acquisition of certain assets may be deductible.

b. Purchase Price Allocation

The purchase price must be allocated between assets being acquired.

c. Transfer Taxes, VAT

VAT (or transfer duty in the case of certain immovable property) may be payable, thereby increasing the acquisition cost in the event that the relevant amount is not completely or partially recoverable by the purchaser as a VAT input tax claim.

d. Tax Free Reorganisations

Various special rules are provided for in the Income Tax Act to allow for tax neutral mergers, acquisitions, and restructuring, which (if the applicable requirements are met) may provide relief for certain income tax, CGT, STT and VAT implications which may otherwise have been triggered. The Income Tax Act specifically provides for asset-for-share transactions, amalgamation transactions, intra-group transactions, unbundling transactions and liquidation distributions (tax roll-over provisions), each with specific requirements which must be met by the parties to the transactions before they will be applicable.

e. Purchase Agreement

If zero-rating is required from a VAT perspective in respect of the transfer of an enterprise as a going concern, particular wording may be required to be included in the acquisition agreement, in addition to further requirements which would need to be met.

f. Depreciation and Amortisation

No depreciation may be recognised in respect of goodwill for tax purposes, and the purchaser should therefore ensure that the purchase price is allocated as much as possible to other asset categories that qualify for tax deductions or allowances.



g. Asset Purchase Advantages

There should be no exposure to the corporate history of the entity from which the stock is acquired.

h. Asset Purchase Disadvantages

Tax losses will not be assumed.

5. ACQUISITION VEHICLES

a. General Comments

Whether or not a domestic or foreign acquisition vehicle may be appropriate is a fact-specific enquiry, which will depend on, inter alia:

- The legal nature, tax residence and presence of the acquiror;
- The proposed acquisition funding structure(s);
- Anticipated future cash flows; and
- The legal nature of and activities to be carried on by the target.

South Africa has general and specific anti-tax avoidance rules which should also be considered (for example, rules relating to hybrid debt and hybrid equity instruments, and provisions triggering deemed disposals when a person ceases to be a South African resident).

b. Domestic Acquisition Vehicle

The main entities available for foreign investment are:

- Co-operative;
- External company (branch office);
- Partnership;
- Personal liability company (Incorporated);
- Private limited liability company (Proprietary Limited);
- Public company (Limited);
- Sole trader; and
- Trading trust.



c. Foreign Acquisition Vehicle

Whether or not a domestic or foreign acquisition vehicle may be appropriate is a fact-specific enquiry, which will depend on, inter alia:

- The legal nature, tax residence and presence of the acquirer;
- The proposed acquisition funding structure(s);
- Anticipated future cash flows; and
- The legal nature of and activities to be carried on by the target.

d. Partnerships and joint ventures

Partnerships have a flow through treatment for tax purposes. Joint ventures may be structured in various ways. It would be necessary to consider the position specific to the circumstances on a given deal.

e. Strategic vs Private Equity Buyers

There are not particular differences to note tax wise between strategic and private equity buyers. It would be necessary to consider the position specific to the circumstances on a given deal.

6. ACQUISITION FINANCING

a. General Comments

Prior exchange control approval would be required in order to, inter alia, introduce loan funding into South Africa. Depending on the proposed terms of such funding, applications in this regard may take between two to eight weeks to be processed.

In order to ensure that share capital and disposal proceeds can be freely remitted, shares held by non-resident shareholders must be endorsed "non-resident" for exchange control purposes. In most instances, the "non-resident" endorsement may be considered and performed by an "Authorised Dealer".

b. Equity

In order to ensure that share capital (i.e. dividends) and disposal proceeds can be freely remitted, shares held by non-resident shareholders must be endorsed "non-resident" for exchange control purposes. There are various anti-avoidance provisions which should also be considered, such as hybrid equity rules and provisions triggering deemed disposals when a person ceases to be a South African tax resident.

c. Debt

There are no specific thin capitalisation rules applicable in South Africa. Thin capitalisation is to be dealt with as part of the general arm's length transfer pricing provisions. As regards the deductibility of interest, we note that National Treasury has proposed certain amendments to the existing interest deduction limitation rules contained in the Income Tax Act. These amendments will be detailed in the forthcoming amendment bills to be issued by National Treasury.



Asset deal:

- Interest will typically be deductible by the taxpayer where such interest is incurred for the purpose of earning taxable income in the course of trade. Where the purchaser is a trading entity and acquires the business/assets of the target company in order to derive taxable income from its operations, the interest would generally be deductible from its income.
- We note that specific rules should be considered having regard to the nature of the assets being acquired.

Share deal:

- Generally, interest incurred on debt acquired to fund the acquisition of shares would not be deductible as it would not be incurred for purposes of earning taxable income, as the dividend income earned by shareholders is generally exempt income. However, some exceptions are applicable in certain circumstances.

d. Hybrid Instruments

South Africa has hybrid debt and hybrid equity rules which would need to be considered in local and cross-border deals, particularly where preference shares and convertible loans are contemplated.

e. Other Instruments

This section is left intentionally blank.

f. Earn-outs

The tax and exchange control considerations relevant to earn-out arrangements are fact-specific and would depend on, inter alia, the proposed deal structure as well as the nature of the earn-out payment/s. There are general rules relating to management and employee incentives but non-specific to private equity "carry".

7. DIVESTITURES

a. Tax Free

Depending on the transaction structure, it should be possible to exit the same amount of funds originally invested without triggering tax.

In terms of the Eighth Schedule of the Income Tax Act, a person, other than a headquarter company must disregard any capital gain or loss determined in respect of the disposal of an equity share in a foreign company if that person (whether alone or together with any other person forming part of the same group of companies as that person) held an interest of at least 10% of the equity shares and voting rights in that foreign company and held that interest for at least 18 months prior to that disposal.

b. Taxable

Exiting amounts in excess of the original investment may trigger CGT, income tax or withholding taxes, depending on the transaction structure.

c. Cross Border

Please see 7.a. above.



8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

South Africa levies income tax on a residence basis. Accordingly, South African tax residents are subject to tax on their worldwide income.

b. Dividend participation exemption

The Income Tax Act provides for an exemption from the levy of any normal tax in respect of a foreign dividend received by a person who is a resident and who holds at least 10 per cent of the equity shares and voting rights (whether alone or together with any other company forming part of the same group of companies as that person) in the company declaring the dividend.

c. Capital gains participation exemption

In terms of the Eighth Schedule of the Income Tax Act, a person, other than a headquarter company must disregard any capital gain or loss determined in respect of the disposal of an equity share in a foreign company if that person (whether alone or together with any other person forming part of the same group of companies as that person) held an interest of at least 10% of the equity shares and voting rights in that foreign company and held that interest for at least 18 months prior to that disposal.

d. CFC Regime

In summary, a foreign company may constitute a controlled foreign company ("CFC") in relation to a South African resident:

- When more than 50% of its total participation rights are directly or indirectly held, or more than 50% of its voting rights are directly or indirectly exercisable, by one or more persons that are residents, other than persons that are headquarter companies; or
- When its financial results are reflected in the consolidated financial statements of any company that is a resident, other than a headquarter company, as required under IFRS 10.

South Africa has a complex set of rules relating to the taxation of CFCs, which require that a portion of a CFC's net income must be included in the income of any resident, other than a resident that is a headquarter company, who directly or indirectly holds any participation rights in that CFC. This is commonly referred to as "attribution".

The amount to be attributed to a particular resident is determined by applying the percentage of the resident's participation rights over the total participation rights in the company on the last day of the year of assessment to the CFC's net income, or the net percentage of that CFC's financial results that is included in the resident holding company's consolidated financial statements under IFRS 10, whichever is applicable.

Complex calculations are required in order to determine this attribution amount, as a large number of exceptions, exclusions and specific inclusions may apply.



e. Foreign branches and partnerships

Exchange control approval would be required for foreign investment or expansion by a South African resident.

Foreign branches and partnership interests of South African tax residents would typically remain subject to tax in South Africa, subject to any available relief in terms of an applicable DTA.

f. Cash Repatriation

The terms of the exchange control approval granted in respect of the relevant foreign operations would determine whether cash repatriation is required.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

The Income Tax Act contains special provisions relating to the taxation of Real Estate Investment Trusts ("REITs") and controlled companies which require careful consideration, if applicable.

Transfer duty or VAT may be due in respect of the transfer of immovable property or shares deriving significant value from certain types of immovable property. Disposal of such assets may also trigger CGT for non-residents.

b. CbC and Other Reporting Regimes

SARS has implemented a system that provides for the transmission of CbC reports to other tax jurisdictions in terms of the Multilateral Competent Authority Agreement ("MCAA") and the bilateral Competent Authority Agreement, as well as the exchange of transfer pricing documentation on request between the participating authorities.

10. TRANSFER PRICING

South Africa has a comprehensive set of "transfer pricing" rules which are applicable to cross-border transactions between related parties.

In terms of South Africa's transfer pricing rules, the onus is on the taxpayer to calculate its taxable income as if the cross-border related party transaction had been entered into on the terms and conditions that would have existed had the parties been independent persons dealing at arm's length. The rules do not distinguish between capital and revenue transactions.

South Africa's transfer pricing documentation requirements generally follow the three-tier approach recommended by the Organisation for Economic Cooperation and Development (OECD) (i.e CbC report, Local File and Master File).

Taxpayers whose cross-border related party transactions exceed or are expected to exceed R100 million in a year of assessment are required to submit a Local File. The Local File requirements include disclosure of any "business restructuring" transaction as contemplated in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. Taxpayers which are the ultimate parent of a group, or which are part of a group which prepares a Master File, are additionally required to submit a Master File.



It is noted that in addition to the Master File and Local File, South Africa has certain transfer pricing record keeping requirements which require particularly extensive documentation of any intragroup "financial assistance transaction".

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

South Africa does not have special rules addressing the use of hybrid entities.

b. Use of Hybrid Instruments

South Africa has hybrid debt and hybrid equity rules which would need to be considered in local and cross-border deals, particularly where preference shares and convertible loans are contemplated.

c. Principal/Limited Risk Distribution or Similar Structures

Please see 10. above.

d. Intellectual property

Please see 2.f. above and 16. below.

e. Special tax regimes

South Africa has special tax (and exchange control) regimes which apply to headquarter companies and domestic treasury management companies.

i Headquarter companies

In order to qualify as a "headquarter company" for income tax purposes, the relevant company must:

- Be a South African tax resident;
- Make an election to be a headquarter company for the relevant year of assessment (this election is effective from the date of commencement of the year of assessment in respect of which it is made);
- Be held for the whole year of assessment by a shareholder(s) that (alone or with any other group company) each hold at least 10% of its equity shares and voting rights ("qualifying foreign company"), provided that in making this determination, no regard must be had to any period prior to the commencement of trade;
- At the end of the year of assessment and all previous years of assessment, 80% or more of the cost of its assets must be any interest in equity shares, debt owed by or intellectual property ("IP") licensed to, a non-resident company that the headquarter company holds (alone or with another group company) at least 10% of the shares and voting rights in, provided that in determining total assets, cash and bank deposits payable on demand must be excluded and no regard must be had to any year of assessment during which the company at no point held assets with a market value in excess of R50,000; and
- If its gross income (excluding exchange gains and losses) exceeds R5 million, at least 50% of that income must consist of rental, dividend, interest, royalty or service fee income, or proceeds from the disposal of shares in or IP licensed to qualifying foreign companies.



Once qualified, the company must submit its annual financial statements and group structure via email to National Treasury on an annual basis. In addition, for income tax purposes, the company will, inter alia:

- Not be subject to the South African CFC rules (unless it has underlying South African interests);
- Be exempt from income tax on foreign dividends received from qualifying foreign companies;
- Not be subject to dividend withholding tax;
- Not be subject to transfer pricing rules on financial assistance and IP related flows which it does not use but passes on to qualifying foreign companies (e.g. where IP is licensed to the company, which the company does not use itself, but which it on-licenses to qualifying foreign companies);
- Be subject to more relaxed currency gains and losses rules than non-headquarter companies;
- Not be subject to CGT on the disposal of shares in qualifying foreign companies (unless those shares relate mainly to immoveable property in South Africa or constitute units in a collective investment scheme);
- Be subject to rules which limit the amount of deductions for interest and royalty expenses to the amounts of interest and royalty income received from qualifying foreign companies;
- Not be subject to interest withholding tax on financial assistance flows which the company itself does not use, but passes on to qualifying foreign companies;
- Not be subject to royalty withholding tax on IP flows which the company itself does not use, but passes on to qualifying foreign companies,
- Not qualify for South Africa's corporate group relief provisions, and
- Could qualify for relief in respect of foreign taxes paid, if applicable.

ii Domestic treasury management companies

In order to qualify as a "domestic treasury management company" for tax purposes, the relevant company must:

- Be incorporated or deemed to be incorporated (a) by or under any law in force in South Africa, or (b) by or under the law of any country other than South Africa, but still meet the requirement set out below by virtue of being registered before 1 January 2019 with the financial surveillance department of the South African Reserve Bank;
- Have its place of effective management in South Africa; and
- Not be subject to exchange control restrictions by virtue of being registered as a "domestic treasury management company" with the financial surveillance department of the South African Reserve Bank.



Once qualified, for income tax purposes, the company:

- May use their functional currency (where other than Rands) as a starting point for various calculations and must translate amounts to Rands by applying the average exchange rate for the relevant year of assessment; and
- For CGT and "exchange item" calculations, "local currency" is defined in relation to a domestic treasury management company, in respect of amounts and/or exchange items which are not attributable to a permanent establishment outside South Africa, as the functional currency of that domestic treasury management company.

12. OECD BEPS CONSIDERATIONS

South Africa is not a member of the OECD; however, it has a working relationship with the OECD, and collaborates with it on a variety of policy issues. South Africa is also party to various OECD instruments, including most recently, a Memorandum of Cooperation ("MoC").

In terms of this MoC, South Africa and the OECD have agreed to continue to work together in the area of taxation towards the achievement of the common objective of promoting fair and efficient tax systems and administrations, strengthening and modernising international taxation areas through the sharing of experiences between the South African Revenue Service ("SARS"), National Treasury and OECD member countries. The MoC is in place until December 2023.

13. ACCOUNTING CONSIDERATIONS

IFRS and IFRS for SMEs is applied in South Africa. South African GAAP has been discontinued.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Distributions declared in respect of shares in South African resident companies can take the form of either dividends or returns of capital (to the extent that the directors of the company declaring the distribution have specifically resolved that the distribution should reduce the contributed tax capital ("CTC") of that company, provided that each shareholder of the class of shares receiving the distribution shall only be entitled to their pro-rata share of the entire CTC balance attributable to that class of shares).

CTC is a tax concept and is not necessarily linked to the company's distributable reserves for accounting purposes.

b. Substance Requirements for Recipients

South Africa has general and specific anti tax-avoidance rules which should be considered.

c. Application of Regional Rules

Exchange controls do not apply to transactions within the Common Monetary Area (South Africa, Lesotho, Namibia, and eSwatini).



d. Tax Rulings and Clearances

Tax clearance certificates can be obtained from SARS on request but only provide an indication of administrative compliance (for example, that all outstanding tax returns have been submitted), i.e. do not guarantee substantive tax compliance.

Non-binding opinions as well as binding advance tax rulings can be applied for from SARS in respect of certain proposed transactions. Notably, advance tax rulings cannot be obtained on transfer pricing matters.

15. MAJOR NON-TAX CONSIDERATIONS

South Africa has exchange controls which are administered by the Financial Surveillance Department ("FinSurv") of the SARB and "Authorised Dealers". Authorised Dealers are generally commercial banks and some branches of foreign banks to whom the SARB has delegated power to oversee and regulate the inflow and outflow of capital in South Africa on its behalf and are the only entities permitted to inter alia effect a cross-border currency transaction for a South African resident.

Arguably the most notable exchange control regulation is the prohibition on the export of capital (including IP) without prior FinSurv approval.

Currently, South Africa operates a "negative list" system whereby the default position is to treat all foreign currency transactions not listed in the Currency and Exchanges Manual as being prohibited. In terms of the 2020 BR, it was proposed that the current system be replaced by a new "capital flow management system" in terms of which all foreign currency transactions will be allowed, with the exception of a risk-based list of capital flow measures. In terms of the 2022 BR, further announcements and progress was made in respect of the implementation of the new "capital flow management system".

In this regard, all cross-border foreign exchange activities conducted by South African residents will continue to be administered by Authorised Dealers.



16. APPENDIX I – TAX TREATY RATES

Jurisdiction	Dividend %	Interest %	Royalties %	Footnote Reference
Algeria	10 / 15	10	10	[1]
Australia	5 / 15	10	5	[4]
Austria	5 / 15	0	0	[1]
Belarus	5 / 15	5 / 10	5 / 10	[1] [10] [11]
Belgium	5 / 15	10	0	[1]
Botswana	10 / 15	10	10	[1]
Brazil	10 / 15	15	10 / 15	[1] [12]
Bulgaria	5 / 15	5	5 / 10	[1] [18] [19]
Cameroon	10 / 15	10	10	[1]
Canada	5 / 15	10	6 / 10	[3] [13]
Chile	5 / 15	5 / 15	5 / 10	[1] [11] [14]
China	5	10	7 / 10	[11]
Croatia	5 / 10	0	5	[1]
Cyprus	5 / 10	0	0	[4]
Czech Republic	5 / 15	0	10	[1]
Democratic Republic of Congo	5 / 15	10	10	[1]
Denmark	5 / 15	0	0	[1]
Egypt	15	12	15	
Ethiopia	10	8	20	
Finland	5 / 15	0	0	[4]
France	5 / 15	0	0	[4]
Germany	7.5 / 15	10	0	[5]
Ghana	5 / 10	5 / 10	10	[4] [10]
Greece	5 / 15	8	5 / 7	[1] [15]
Grenada	15	15	15	
Hong Kong	5 / 10	0 / 10	5	[4] [16]
Hungary	5 / 15	0	0	[1]
India	10	10	10	

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Jurisdiction	Dividend %	Interest %	Royalties %	Footnote Reference
Indonesia	10 / 15	10	10	[4]
Iran	10	5	10	
Ireland	5 / 10	0	0	[4]
Israel	25	25	0 / 15	[17]
Italy	5 / 15	10	6	[1]
Japan	5 / 15	10	10	[5]
Kenya	10	10	10	
Korea	5 / 15	10	10	[1]
Kuwait	0	0	10	
Lesotho	10 / 15	10	10	[4]
Luxembourg	5 / 15	0	0	[1]
Malawi	15	10	0	[9]
Malaysia	5 / 10	10	5	[4]
Malta	5 / 10	10	10	[4]
Mauritius	5 / 10	0 / 10	5	[4] [16]
Mexico	5 / 10	10	10	[4]
Mozambique	8 / 15	8	5	[1]
Namibia	5 / 15	10	10	[1]
Netherlands	0* /5 / 10	0	0	[4]
New Zealand	5 / 15	10	10	[1]
Nigeria	7.5 / 10	7.5	7.5	[4]
Norway	5 / 15	0	0	[4]
Oman	5 / 10	0	8	[4]
Pakistan	10 / 15	10	10	[1]
Poland	5 / 15	10	10	[1]
Portugal	10 / 15	10	10	[1]
Qatar	5 / 10	10	5	[4]
Romania	15	15	15	
Russian Federation	10 / 15	10	0	[6]

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Jurisdiction	Dividend %	Interest %	Royalties %	Footnote Reference
Rwanda	10 / 20	10	10	[1]
Saudi Arabia	5 / 10	5	10	[4]
Seychelles	5 / 10	0	0	[4]
Sierra Leone	15	15	15	
Singapore	5 / 10	7.5	5	[4]
Slovak Republic	5 / 15	0	10	[1]
Spain	5 / 15	5	5	[1]
Swaziland	10 / 15	10	10	[1]
Sweden	0 /5 / 15	0	0	[4]
Switzerland	5 / 15	5	0	[7]
Taiwan	5 / 15	10	10	[4]
Tanzania	10 / 20	10	10	[8]
Thailand	10 / 15	10 / 15	15	[1] [10]
Tunisia	10	5 / 12	10	[10]
Turkey	10 / 15	10	10	[1]
Uganda	10 / 15	10	10	[1]
Ukraine	5 / 15	10	10	[7]
United Arab Emirates	5 / 10	10	10	[4]
United Kingdom	5 / 10 / 15	0	0	[9]
United States of America	5 / 15	0	0	[2]
Zambia	15	0	0	
Zimbabwe	5 / 10	5	10	[1]



Footnotes:	
1	Dividends–The reduced rate is applicable if, inter alia, the beneficial owner is a company which holds at least 25% of the capital of the company paying the dividends. The greater of the two rates will be applicable in all other cases.
2	Dividends – The lower rate is applicable if, inter alia, the beneficial owner of those dividends is a company which holds directly at least 10% of the voting power in the company paying dividends. The greater of the two rates is applicable in all other cases.
3	Dividends – The reduced rate is applicable if, inter alia, the beneficial owner is a company which controls directly or indirectly at least 10% of the voting power in the company paying the dividends where that company is a resident of Canada, provided the dividends are not paid by a non-resident owned investment corporation resident in Canada; lower rate will also apply where the beneficial owner is a company that holds directly at least 10% of the capital of the company paying the dividends where that company is a resident of South Africa. The greater of the two rates will apply in all other cases.
4	Dividends – The reduced rate is applicable if, inter alia, the beneficial owner is a company which holds at least 10% of the capital of the company paying the dividends. The greater of the two rates will be applicable in all other cases.
5	Dividends - The reduced rate is applicable where, inter alia, the recipient of the dividends is a company which owns directly at least 25% of the voting shares of the company paying dividends. The greater of the two rates is applicable to all other cases, provided that such dividends are subject to tax in the other Contracting State.
6	Dividends - The reduced rate is applicable if residents of the other Contracting State hold at least 30% of the capital of the company paying the dividends and have directly invested in the equity share capital (authority fund) of that company an amount of not less than USD100, 000 or the equivalent thereof in the currency of the first - mentioned State. The greater of the two rates is applicable in all other cases.
7	Dividends - The lower of the two rates is applicable if the beneficial owner is a company (other than a partnership) which holds directly at least 20% of the capital of the company paying the dividends. The greater of the two rates is applicable in all other cases.
8	Dividends - The reduced rate is applicable if the beneficial owner is a company which holds at least 15% of the capital of the company paying the dividends. The greater of the two rates is applicable in all other cases.
9	Dividends - The lower of the three rates is applicable if the beneficial owner is a company which holds at least 10% of the company paying the dividends. The rate of 15% will be applicable in the case of qualifying dividends paid by a property investment company which is a resident of a Contracting State, and the rate of 10% is applicable in all other cases.
10	Interest - The lower rate will apply if the interest is derived by, inter alia, a bank which is resident of the other Contracting State.
11	Royalties - The lower rate will apply if, inter alia the royalty is paid for the use of or right to use, industrial, commercial or scientific equipment.
12	Royalties - The higher rate will apply to the use of trademarks.
13	Royalties - The lower rate will apply to inter alia, copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or other artistic work (but not including royalties in respect of motion picture films or royalties in respect of works on film or videotape or other means of reproduction for use in connection with television broadcasting); royalties for the use of, or the right to use, computer software; royalties for the use of, or the right to use, any patent or any information concerning industrial, commercial or scientific experience (but not including any such information provided in connection with a rental or franchise agreement).
14	Interest - The lower rate will apply to interest derived from: (i) loans granted by banks and insurance companies; (ii) bonds or securities that are regularly and substantially traded on a recognised securities market; and (iii) a sale on credit paid by the purchaser of machinery and equipment to a beneficial owner that is the seller of the machinery and equipment.



Footnotes:	
15	Royalties - The lower rate will apply to payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films, tapes or discs or any other media for television or radio broadcasting.
16	Interest - The lower rate will apply if the interest is derived by, inter alia, government or certain governmental institutions.
17	Royalties - The higher rate will apply in respect of cinematograph or television films.
18	Royalties – The 5% rate applies to royalties for the use of a copyright and similar payments in respect of the production or reproduction of any cultural, dramatic, musical or other artistic word (but not including royalties in respect of motion picture films and works on film or videotape or other means of reproduction for use in connection with television) as well as industrial, commercial or scientific equipment.
19	Royalties – The lower rate applies to any copyright royalties and other similar payments in respect of the production or reproduction of any cultural, dramatic, musical or other artistic work (but not including royalties in respect of motion picture films and works on film or videotape or other means of reproduction for use in connection with television) as well as industrial, commercial or scientific equipment. The higher rate applies in all other cases.



17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Tax contact person and all documents and information necessary to conduct a full tax due diligence in respect of each target, including but not limited to the items listed below.
2	Tax Due Diligence	Tax residence	A list indicating the jurisdiction(s) in which each company is tax resident and/or subject to tax.
3	Tax Due Diligence	Transfer pricing	Details of the transfer pricing policies in place within the group.
4	Tax Due Diligence	Calculations	Copies of all latest tax calculations, tax returns, assessments and statements of account for each target (for the avoidance of doubt, this includes all forms of taxes, e.g. income tax, value added tax, employees' tax, withholding taxes, securities transfer tax, transfer duty, etc.).
5	Tax Due Diligence	Capital gains tax	Capital gains tax valuations of properties held by each target, if available.
6	Tax Due Diligence	Share capital	Details of the share capital / contributed tax capital structure of each target.
7	Tax Due Diligence	Corporate restructures / reportable arrangements	Details of any transaction entered into by any target in terms of the corporate rollover relief provisions contained in section 42 to 47 of the Income Tax Act No. 58 of 1962 in the last 18 months, or six years in the case of an intra-group transaction as contemplated in section 45 transaction, or similar group relief provisions applicable outside of South Africa, or any "reportable arrangement" as contemplated in the Tax Administration Act No. 28 of 2011 or similar provisions applicable outside of South Africa.
8	Tax Due Diligence	VAT/payroll	All documents and information necessary to conduct a VAT and payroll review. Typically this would involve a review of (at least) sample VAT invoice and employees tax documentation over a five year period, as well as tax computations, returns, assessments and statements of account.
9	Tax Due Diligence	Deductions / allowances	Details of the material deductions and/or allowances which have been claimed by each target.
10	Tax Due Diligence	Compliance	Confirmation that each target has submitted all tax returns and other information, notices and returns as required by tax authorities timeously and accurately, and has maintained adequate records as required in terms of any applicable laws.
11	Tax Due Diligence	Payment	Confirmation that each target has paid and discharged when due all taxes payable (including, for the avoidance of doubt, all applicable withholding taxes).
12	Tax Due Diligence	Queries / audits / disputes	Details of any ongoing tax audits, enquiries (e.g. requests for information) or any threatened or actual disputes with tax authorities applicable to any target, and/or possible future audits, enquiries or disputes of which any target may be aware.

SOUTH AFRICA

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Nº.	Category	Sub-Category	Description of Request
13	Tax Due Diligence	Rulings	If any tax position of any target is reliant upon a ruling issued by a tax authority, confirmation that ruling is valid and binding, together with copies of the ruling(s).
14	Tax Due Diligence	Funding structures	Details of the funding arrangements in place within the group and how are these treated for tax purposes.
15	Tax Due Diligence	Incentives	Details of any special incentives relied upon by any target.
16	Tax Due Diligence	Exchange control	Details of all exchange control arrangements and approvals as applicable.

SOUTH AFRICA

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SPAIN

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1. INTRODUCTION

a. Forms of Legal Entity

The two main types of companies which can be incorporated under Spanish law are: (i) the sociedad limitada ("S.L."), or limited liability company and (ii) the sociedad anónima ("S.A."), or public limited company. S.L.s are the most common type of company in Spain. The minimum capital of an S.L. is EUR3,000, while the minimum capital of an S.A. is EUR60,000. The liability of shareholders in both types of companies is limited to their capital contributions. From a tax perspective, there are no differences between both types of legal entities.

b. Taxes, Tax Rates

The general Corporate Income Tax ("CIT") rate is 25%. A reduced rate of 15% applies to newly created entities, which are not part of a corporate group, in the first fiscal year in which a profit is made and in the subsequent fiscal year. Financial entities are subject to an increased rate of 30%.

Taxable income is determined on the basis of income shown on the local financial statements, which is adjusted following the CIT Act provisions. Amongst the most common types of expenses which are non-deductible are the penalties, the CIT expense, write downs of fixed assets (including the participation in other entities) or losses arising from intragroup transfers of fixed assets.

In addition, as of 1 January 2022, a minimum tax rate of 15% is applied to companies with net revenues over EUR20 million in the previous 12 months from the date in which the fiscal year began, or if they are taxed as groups. Some entities are exempt from this minimum tax rate, most notably, REIT type entities.

In general terms, the determination of said minimum tax rate is applied by comparing the due tax (total tax liability minus tax deductions and credits) with the so called "minimum tax due", which is 15% of the taxable base (comprised of the final taxable base, minus specific reductions related to the "reserva de nivelación", which is similar regime to a tax losses carryback, and an investment reserve regulated in the Canary Islands' special tax regime). The minimum due tax rate shall be 10% in the case of newly created entities that apply the aforementioned reduced rate of 15%.

Specific CIT legislation is applicable in the Basque Autonomous Community, which has autonomous legislative powers in tax matters. Companies subject to Basque autonomous regulations may benefit of significant tax advantages: the general CIT rate is 24%; write downs of fixed assets are tax deductible; dividends received and capital gains on transfers of participations are generally 100% exempt, while impairments and losses on the transfer of the participations can be deducted; goodwill embedded in the acquisition price of the participations may be deducted; losses of foreign permanent establishments may be deducted, while the income is exempt. We explain the main specialties of Basque tax regulations below.



2. RECENT DEVELOPMENTS

The most recent changes to CIT were introduced between 2014, with the approval of a new CIT Act which entered into force on 1 January 2015, and December 2016 when certain amendments to such CIT Act were approved, mainly aimed at broadening the scope of the CIT taxable base (e.g. limitations to the tax deductibility of losses on the transfers of shares qualifying for the participation exemption).

With effect as from July 2018, certain changes were introduced on the patent box regime, with the aim of aligning it with the BEPS Action 5 Report.

No more relevant developments have occurred since this last amendment of the CIT Act.

Other recent developments include a limitation to the Spanish participation exemption on capital gains and dividends, applying for fiscal years starting as of 1 January 2021. The enacted changes are:

- Previously to qualify the shares sold had to represent at least 5% of the target share capital or have an acquisition cost of EUR20 million. The Spanish participation exemption will no longer apply to a participation whose acquisition cost is at least EUR20 million unless grandfathering rules apply. Thus, the minimum 5% stake will be required for all investments.
- The dividend and gain exemption has been reduced by 5% from 100% to 95% for management expenses related to said participations.

This limitation does not apply under the Basque CIT legislation, where dividends and capital gains of qualifying participations are 100% exempt.

In March 2021, Spain approved its "hybrid mismatch" regulation, implementing "ATAD2".

The Spanish government approved a number of measures to alleviate the economic and social impact of COVID-19. The most relevant measures have been related to labour law aspects and the concession of financing (subsidised loans). The tax measures have not directly impacted M&A transactions since they basically aimed at providing taxpayers with short-term liquidity, extending legal terms of administrative and judicial procedures and for payment of certain taxes (focused on small and medium entities). The Autonomous Regions and City Councils approved measures in similar terms as well. However, the measures may of course be relevant in the context of tax due diligence processes linked to M&A transactions.

An extension of the statute of limitations period during the state of alarm was also established as part of the package of legal measures adopted in the context of the COVID-19 pandemic.

As of 1 January 2022, and for the following fiscal years, a minimum tax of 15% has been implemented. Under this regime, companies with a net revenue over EUR20 million in the 12 previous months from the date in which the fiscal year begins, as well as tax groups, will have to pay a minimum 15% tax rate, with some exceptions.



3. SHARE ACQUISITION

a. General Comments

Acquisitions of shares generally do not have immediate implications for the buyer. In share deals the acquired entity (target) remains in existence and any of its historical or contingent liabilities remain with it after the completion of the transaction.

b. Tax Attributes

The target is entitled to carry over its tax attributes (such as NOLs or tax credits). In Spain NOLs (i.e.. tax losses) can be carried forward with no time limit (carryback of losses is not permitted). However, the amount of NOLs which can be offset in each fiscal year is limited to certain percentages of the taxable base. Under certain circumstances, the right to offset NOLs can be limited ("anti-NOLS trafficking rules"). Under the Basque CIT legislation, the amount of NOLs that can be annually offset is limited to 50% of the taxable income and the period in which NOLs can be carried forward is 30 years.

Spanish corporate income tax law includes rules which limit the right to offset tax losses when a transfer of shares takes place and all of the following circumstances occur:

- The majority of the share capital of the target is obtained by a person or entity or group of persons or entities after the end of the fiscal year in which the tax losses were generated.
- The persons/entities stated above (i.e.. those taking control of the company) held less than 25% of the share capital in the company at the end of the fiscal year in which the tax loss was generated.
- The acquired entity falls into one of the following categories:
- It had not been carrying out an economic activity in the 3 months prior to the acquisition;
- It carries out an economic activity in the 2 years following the acquisition which is different from or additional to the one carried out before the acquisition, which implies a net revenue in the years following the acquisition which is 50% higher than the average net revenue obtained by the entity in the 2 years preceding the acquisition;
- It is qualified as an instrumental entity; or
- The entity has been de-registered from the tax entities' registry.

Under the Basque CIT legislation, restriction rules apply only if the acquired entity did not carry out an economic activity in the 6 months prior to the acquisition.

c. Tax Grouping

Spanish companies can form a group and apply a special tax unit regime for CIT purposes. In order to form part of the same tax unit, companies must be subject to same CIT Law (Basque or common territory). Certain formal requirements must be fulfilled the year before its application.



The tax group is formed by a dominant company and its dependent companies. The dominant company of the tax group must hold a 75% or higher interest, either directly or indirectly and the majority of the voting rights in the dependent companies at the beginning of the first tax year in which the tax unit regime is applied and this interest and voting rights must be maintained during the year unless the dependent company is dissolved. The interest requirement is reduced to 70% for companies listed on a stock exchange.

A non-resident company can also be the dominant company of a tax consolidation group, provided that it has legal personality, is subject and not exempt to a tax akin to Spanish CIT, and is not resident in a tax haven. In such cases, a representative company in Spain must be appointed.

d. Tax Free Reorganisations

Spain has implemented the provisions of the EU Merger Directive in its domestic system. Consequently, Spanish companies can reorganise their Spanish activities in a tax neutral manner. This is configured like the standard regime for restructuring transactions (under Basque CIT legislation, an election for the tax neutrality regime is required) and there is a general obligation to inform the tax authorities when transactions eligible for the regime are carried out. The main caveat to consider for tax neutral restructurings under the Spanish tax regime based on the EU Merger Directive is the specific anti-abuse provision that requires the transaction to be carried out under valid economic purposes and not with the sole purpose of obtaining a tax advantage.

This regime provides for a tax neutral treatment for restructuring transactions (both from a CIT and indirect tax perspective), by providing that:

- Capital gains or losses realised on the transferred assets are not included in the CIT taxable base of the transferor party;
- The acquiring entities receive a carryover basis in the assets acquired. The rules governing the qualification of a transaction for purposes of the mentioned regime are complex, and its applicability should be carefully analysed on a case by case basis.

e. Purchase Agreement

There are no special provisions beyond the typical requirements that are seen internationally that should be considered to protect against tax exposures specific to the jurisdiction. Notwithstanding the above, there are two aspects to bear in mind when negotiating the terms of the SPA:

- Companies which form part of a tax unit for CIT or VAT purposes are jointly and severally liable for tax liabilities of the tax group. Thus, this potential responsibility should be taken into consideration when a company which shall be excluded from a tax unit for CIT or VAT purposes is acquired.
- The statute of limitations in Spain is four years. Thus, a review of all tax obligations of the last four tax periods open to tax audit is required. Exceptionally in Spain, the right of the Spanish Tax Authorities to audit NOLS and tax credits which have been offset or which are carried forward prescribes 10 years, starting to count from the date after filing the CIT return corresponding to the fiscal year in which the tax loss or tax credit was generated. Once the 10 year period has expired, the Spanish Tax Authorities are not entitled to audit NOLS or tax credits; nevertheless, the taxpayer must be capable of demonstrating the origin of the tax losses or tax credit which it is wanting to offset with the ability to provide, for example the relevant tax return and accounting records.

Under Basque tax rules, Basque Tax Authorities can audit the reality, origin and amount of tax losses and tax credits which the taxpayer intends to offset, regardless of the year in which the tax loss or tax credit was generated.

The impact of the extension of administrative procedures due to the COVID-19 related measures should be taken into consideration to compute the statute of limitation term. As discussed above, the statute of limitation period was extended (i.e.. the term ceased to be computed) during the period of time in which the state of alarm for COVID-19 was in force.



f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

The sale of shares of a Spanish company is, generally speaking, not subject to any indirect tax, although TT (from 6% to 11%) or VAT can be levied if the purpose of the sale is to avoid the tax (i.e. TT or VAT) that would have been payable in the direct transfer of the real estate properties owned by the companies whose shares are transferred. It will be presumed that the purpose of the sale is to avoid tax in the following cases:

- When the transaction results in the buyer gaining control of an entity whose real estate assets located in Spain not destined to a particular economic activity are at least 50% of the total market value for all assets or, in the case that the buyer already has a controlling stake, when that stake is increased;
- When the transaction results in the buyer gaining control of an entity whose assets include a controlling stake in an entity with real estate assets which fit the previous description;
- When the shares received are the consequence of real estate contributed for the incorporation of entities or capital increases, if this real estate is not destined to an economic activity and three years have not elapsed between the date it was contributed and the transaction date.

g. "Purchase accounting" applicable to share acquisitions

Spanish accounting legislation was adapted to European legislation by Law 16/2007, which had the aim of reforming commercial accounting rules and harmonising them with EU rules. The General Accounting Plan was approved by Royal Decree 1514/2007.

For accounting purposes, an acquisition may be deemed as a business combination. In the business combinations, the investing company, in its individual annual accounts, will value the investment for the acquisition price (including transaction costs).

Distribution of pre-acquisition retained earnings of the acquired company should be recorded as a reduction in the value of the participation acquired (for both accounting and tax purposes).

h. Share Purchase Advantages

The main advantage of the share purchase alternative is that the target company can preserve its tax attributes (such as NOLs or tax credits). We refer to section 3.b. above.

The acquiror can request a certificate issued by the tax authorities attesting that the target is up to date on payment of taxes. However, this certificate does not limit acquiror's or target entity responsibility. Thus, the said responsibility must be covered in the SPA.



i. Share Purchase Disadvantages

In share deals the acquired entity (target) remains in existence and any of its historical or contingent liabilities remain with it after the completion of the transaction.

The basis in the target's underlying assets carries over and is not stepped up. Consequently, it is not possible for the buyer to benefit from the additional tax amortisation or depreciation of underlying assets, if any. Nor can they benefit from the additional price paid that should be attributable to the goodwill of the business carried out by the entity whose shares the buyer acquires. The rules foreseen in the previous CIT Act which allowed for the step up and deduction of merger goodwill have been abolished.

Under Basque CIT legislation, subject to certain requirements, difference between transaction price and equity of the target, reduced in the amount allocable to its assets or rights (i.e. financial goodwill) is CIT deductible up to a maximum annual limit of a 12.50%, via book to tax adjustment. Also, merger goodwill may be depreciated for tax purposes at a yearly rate of up to 12.5%.

4. ASSET ACQUISITION

a. General Comments

In asset deals, the acquiring entity is as a general rule a Spanish entity. If the acquiring entity is a non-resident entity the potential risk that the activities that it will perform in Spain determine the existence of a permanent establishment should be carefully reviewed.

The basis in the acquired assets can be stepped up based on the price paid. Consequently, the buyer can benefit from the additional tax amortisation or depreciation of underlying assets. It can also benefit from the additional price paid that should be attributable to the goodwill of the business carried (or any intangible assets not reflected on the seller's accounts) and depreciated for tax purposes.

On the other hand, the sale of assets normally produces a taxable capital gain for the selling company (25% CIT rate), which might be difficult to mitigate. This may have an impact on pricing.

The acquiror of isolated assets does not assume the tax risks of the selling company unless the acquisition is made by one or several persons or entities that continue a going concern. In this later scenario, the acquiror is jointly and severally liable for pre-closing tax liabilities. This responsibility can be limited if the acquiror obtains a certificate issued by the tax authorities confirming that the seller does not have pending liabilities.

b. Purchase Price Allocation

In a taxable asset acquisition the purchase price paid should be allocated to each asset and the resulting value will be regarded as its tax basis. Such allocation is often a contentious issue for parties to the transaction, as the buyer and seller's interests in this respect may differ. The tax basis of the assets acquired should be stepped up to represent the assets' fair market value and will be used as the basis to amortise and depreciate the asset for tax purposes.

c. Tax Attributes

The target's existing tax attributes, such as net operating losses ("NOLs") do not carry over to the buyer.



d. Tax Free Reorganisations

Spanish companies can reorganise their Spanish activities in a tax neutral manner. This is configured like the standard regime for restructuring transactions (under Basque CIT legislation, an election for the tax neutrality regime is required) and there is a general obligation to inform the tax authorities when transactions eligible for the regime are carried out. The main caveat to consider for tax neutral restructurings under the Spanish tax regime based on the EU Merger Directive is the specific anti-abuse provision that requires the transaction to be carried out under valid economic purposes and not with the sole purpose of obtaining a tax advantage. This regime provides for a tax neutral treatment for restructuring transactions (both from a CIT and indirect taxes). For more details see section 3.d. above.

e. Purchase Agreement

There are two relevant aspects to cover in the Purchase Agreement:

- The responsibility of the acquiror, particularly, in those cases where there may be a potential transfer of a going concern.
- The purchase price should be allocated to the acquired assets in order to determine the tax basis for their future deprecation or amortisation

and determine the resulting goodwill, if any.

f. Depreciation and Amortisation

The tax basis of the assets acquired would be stepped up to represent the assets' fair market value. This step-up may increase the amount of the future tax depreciation or amortisation deductions corresponding to the assets acquired. The portion of the purchase price not allocated to specific assets will be deemed to be attributable to goodwill in the case of the acquisition of a business from an accounting point of view which can be depreciated for tax purposes over 20 years (8 years under Basque CIT legislation).

g. Transfer Taxes, VAT

Asset sales may also be subject to Value Added tax ("VAT") at the applicable VAT rate (the general VAT rate is 21%). If what is being transferred is a going concern, VAT would not apply. If real estate property is transferred within the context of a going concern, the transfer would in principle be subject not to VAT but to Transfer Tax ("TT") at a rate that would vary between 6% and 11% (depending on the Spanish region that would be entitled to tax the transfer). Likewise, the transfer of real estate may lead to the accrual of local taxes such as the tax on the increase of the value of urban land.

h. Asset Purchase Advantages

From a buyer's perspective it is generally preferable to acquire business assets directly (to the extent the buyer can obtain a step-up in the assets' tax basis and could record amortisable goodwill). In Spain sellers are generally not inclined to structure sales transactions as asset deals, as a seller might prefer to avoid the double layer of taxes (at the level of seller and its shareholders if they are not exempt) that could result from an asset deal. However circumstances that might make the seller lean towards an asset deal include the existence of a pending offsetting of NOLs (although the potential limitations to offset them should be taken into consideration), or, from an economic perspective, when the seller can factor into the sale price the buyer's potential savings in connection with the step-up in tax basis of the assets transferred, among others.



i. Asset Purchase Disadvantages

Under Spain's general tax law rules an acquiror party (the buyer) may be deemed to be jointly liable for pre-closing tax liabilities of a target business if the transfer is deemed to constitute a transfer of an on-going concern. In such a case the buyer may be deemed to be the successor of the seller in the business acquired.

Consequently, it is crucial to analyse in detail the nature of assets acquired in every due diligence process. If the assets acquired are standalone assets not deemed to constitute an on-going concern the pre-closing tax liabilities related to such transferred assets, in principle, will remain with the seller unless there is a contractual agreement specifically providing for the transfer of such liabilities to the buyer.

To limit potential tax liabilities resulting from the asset acquisition the buyer may request from the Spanish tax authorities a certification in respect of the tax liabilities and pending penalties due by the seller. This certificate has a binding effect for the Spanish tax authorities and a tax audit could only demand payment for the amounts shown therein.

Asset purchases may also give rise to relevant non-tax issues. For instance from a corporate law perspective an asset purchase may sometimes not be advisable where licenses, agreements and contracts might not be transferred (or renegotiated) without incurring additional costs or resulting in a cumbersome administrative procedure.

5. ACQUISITION VEHICLES

a. General Comments

As a general rule, there are no restrictions to invest in Spain for foreign investors and there are several acquisition vehicles available to invest in Spain.

The most common investment structure consists on investing through a domestic regular company both under an asset deal or a share deal.

However, foreign investors can also invest through non-resident vehicles. In the framework of an asset deal, the potential existence of a permanent establishment in Spain should be carefully reviewed.

b. Domestic Acquisition Vehicle

There are two main types of limited liability companies: Sociedad Anónima ("S.A.") and Sociedad de Responsabilidad Limitada ("S.L.") and both have their own legal personality. They have the same tax treatment and will be subject to Spanish CIT at its general tax rate.

The Spanish company can be a venture capital company and apply a special tax regime. However, these entities are regulated and supervised by the Spanish Comisión Nacional del Mercado de Valores and have certain investment restrictions. The Spanish regime of these entities is harmonised as per EU Directives.



c. Foreign Acquisition Vehicle

There are no restrictions to invest in Spain through a foreign vehicle. Any foreign citizen or legal entity may freely be a shareholder of a Spanish company provided that he/she/it applies for a tax identification number ("N.I.E.." or "N.I.F".).

In our experience, in the framework of share deals, acquirors tend to invest in Spain through an EU holding entity. The substance and structure of the foreign holding as well as the business reasons to invest though the said jurisdiction should be duly reviewed. Otherwise, the foreign investor may suffer withholding taxes at source on Spanish source income. Conversely, assets deals are generally made by Spanish companies.

Assets or shares can be acquired through a branch. Although branches are taxed in a similar way to resident companies, they have the advantage of not attracting withholding taxes on remittance of profits abroad, provided the foreign company resides in a tax treaty country (with some exceptions) or in the EU.

d. Partnerships and joint ventures

Partnerships as such are not regulated under Spanish Civil Law or Spanish tax law. However, Spanish tax law foresees a special regime for "look-through" entities which applies to the following entities:

- Spanish partnership type entities (i.e. "sociedades civiles") under the Spanish Civil Code (as long as they do not have legal personality and do not have a commercial purpose); estates; joint property entities; and, in general, entities which, despite not having separate legal personality, constitute an economic unit or a separate set of assets capable of being taxed.
- Entities formed abroad whose legal nature is akin to that of "look through" entities formed in Spain.

The main feature of this regime is that these entities are treated as look-through vehicles and the income obtained by them is attributed to their members as stated in the Spanish regulations. Consequently, if Spanish resident or non-resident persons or entities invested in whichever type of assets through an entity formed abroad, whose legal nature is akin to that of said look-through entities formed in Spain and with no permanent economic presence in Spain (i.e. no permanent establishment), such entity would be disregarded for tax purposes and its members would be taxed on the entity's income according to the rules set forth in the Spanish Law.



6. ACQUISITION FINANCING

a. General Comments

There are no restrictions to bring funds into the country. Certain foreign investment should be communicated to the Spanish authorities. A Spanish company can be incorporated in two months.

b. Equity

No tax incentives exist for equity financing.

However, the CIT Law includes the so called "capitalisation reserve" as an incentive for the reinvestment and capitalisation of companies. Taxpayers subject to the standard tax rate can reduce their tax base by 10% of the increase in their equity provided that (i) this increase is maintained over a period of five years and (ii) a reserve is created for the amount of the reduction, duly separated and restricted (as non-distributable) over the five year period.

The reduction cannot exceed 10% of the positive tax base prior to the application of this reduction, the inclusion of adjustments for deferred tax assets and the offset of tax losses. If there is insufficient tax base, the outstanding amounts can be applied over the next two years, together with that of the year itself, subject to the same limit.

c. Debt

The use of a Spanish special purpose vehicle ("SPV") by a foreign buyer to carry out the acquisition of a Spanish target, coupled with the Spanish tax unit regime, has traditionally allowed for debt pushdown of the indebtedness relating to the acquisition of a Spanish target.

These strategies have to be carefully analysed to ensure that they are not challenged on the basis of the general anti-abuse provisions, as well as to comply with the transfer pricing rules and most significantly, with the requirements and limitations recently introduced regarding interest deductibility, which have substantially restricted the ability of companies to push down debt connected to acquisitions of equity interests by Spanish companies.

In this respect, a specific anti-debt pushdown restrictions are laid down in cases of acquisitions of holdings in other entities if, thereafter, the acquiring entity is included in a tax group or is subsequently merged, with a view to preventing the acquired activity from bearing the finance cost incurred on its acquisition. In this situation, borrowing costs related to the acquisition of these holdings over and above a ceiling equal to 30% of the operating income of the acquiror for the period are not deductible. For these purposes:

- The restriction is limited in the case of a merger or an inclusion in a consolidated tax group taking place within four years following the purchase.
- It is possible to offset the finance costs that are not deductible for this reason in the following years (according to the general rules on deductibility of finance costs).
- This limitation on the deduction of finance costs will not apply if the debt incurred to finance the transaction does not exceed 70% of the acquisition cost of the shares and the debt is repaid at the rate of at least 5% annually for eight years (until the debt reaches 30% of the acquisition price).



d. Hybrid Instruments

Spain has adapted the CIT regulations to the measures proposed under some of the OECD BEPS action plans, and certain new amendments have been be implemented in the short term. Spanish regulations set rules aimed at tackling hybrid instruments, as follows:

- An anti-abuse rule regarding "hybrid instruments", implemented by ATAD2, which limits the deductibility of certain expenses. The term "hybrid mismatches" refers to scenarios in which non-taxation or double deduction of expenses occurs as a result of legal characterisation differences in more than one country or territory. As the new royal decree mentions in its preamble, the purpose of transposition of the ATAD2 Directive is to prevent these scenarios in transactions between Spain and other member states, as well as between Spain and third countries or territories, (i) where between the parties acting in the transaction there is an associated entity relationship, significant influence is exerted or they act together with respect to voting rights or capital ownership; and (ii) where the mismatch takes place under a structured arrangement.
- A limitation on the ability to access to the participation exemption regime for hybrid instruments has been introduced, by which the participation exemption does not apply when dividends distributed by a non-resident subsidiary generate a deductible expense at the level thereof.
- Specific restrictions are laid down as regards the tax treatment of some hybrid instruments (i.e. participating loans, return on certain types of equity instruments, among others).

e. Other Instruments

Issuance of bonds may be used as a way to raise funds in Spain. The new tax regime in force since 2014 for qualifying bond traded in an organised secondary market sets forth a withholding tax exemption for non-resident investors.

f. Earn-outs

The acquiring entity shall register the investment applying provisional values. The provisional values will be adjusted in the period necessary to obtain the information required to complete the initial accounting (i.e. the valuation period). The said period shall in no case be greater than one year from the date of acquisition.

In any case, adjustments to provisional values shall only result from facts and circumstances that existed on the date of acquisition and that, if they were known, would have affected the amounts initially recognised on that date.

However, earn-outs resulting from events that occur after the acquisition date, such as reaching a determined price per share or a specific milestone in a research and development project, are not adjustments of the valuation period.

During the first year, adjustment of the valuation period shall be registered retroactively by the acquiring entity and modify the provisional values registered. After the first year period, they directly impact the P&L account.



7. DIVESTITURES

a. Tax Free

Capital gains obtained by Spanish residents from sales of shares are generally subject to a 25% CIT rate (24% CIT rate under Basque CIT law). However, a participation exemption regime may apply if the following requirements are met:

- The shares sold must represent at least 5% of the target share capital, (please note that for fiscal years starting from 1 January 2021 it is no longer possible to qualify if the acquisition cost is at least EUR20 million, as was the case previously, so unless specific grandfathering rules apply, the minimum 5% stake will now be required for all disposals of investments) and must have been acquired at least one year prior to the sale;
- If the target is a non-resident it must be subject to a tax similar to Spanish CIT with a tax rate of at least 10%. This requirement is deemed to be met if there is a tax treaty providing for an exchange of information clause in place between Spain and the target's country of residence. The exemption will not be applicable when the subsidiary is resident in a tax haven;
- The exemption will not be applicable to capital gains obtained on the sale of stake held directly or indirectly in instrumental entities.
- The exemption will not be applicable to capital gains obtained on the sale of stake held directly or indirectly in entities which fall under the scope of the Spanish CFC rules and the said regime applies, at least, to 15% of their income.

Until the amendments which took effect for fiscal years starting from 1 January 2021, the participation exemption was 100% and if the sale met the above criteria it was not taxable. However, following an amendment effective for fiscal years starting from 1 January 2021, the dividend and gain exemption has been reduced by 5% from 100% to 95% for management expenses related to said participations. This reduction does not apply under Basque CIT law, where a full exemption is available.

Taxable gains obtained by non-residents are taxed at a flat 19% rate. However an exemption might be available further to the provisions of a tax treaty or to domestic law. If the target is a holding company that benefits from the Spanish ("Entidad de Tenencia de Valores Extranjeros", or "ETVE") regime, the capital gain obtained by the seller derived from the sale of the target shares might not be taxed in Spain, to the extent of the amount of the target's accumulated tax exempt reserves (i.e. reserves that ultimately derive from tax exempt dividends and capital gains obtained by the target as a consequence of the applicability of the Spanish participation exemption regime) and hidden reserves attributable to foreign subsidiaries of the ETVE. For clarity, the Spanish ETVE regime applies to companies whose corporate objectives include managing and administrating shares in non-resident entities and meet certain requirements. The main benefit of said regime is a relief on gain and dividends obtained out of exempt profits on non-residents shares (dividends and gains that have access to the participation exemption).

Basque tax regulations provide for the exemption of dividends and gains derived by non-resident shareholders from their participation in Basque holding companies that are ultimately related to tax exempt reserves.



Domestic law foresees that capital gains resulting from the transfer of movable property, obtained without a permanent establishment, by residents in an EU member state or by EU permanent establishments of residents in EU member states, will be tax exempt. This exemption will not apply to capital gains obtained in the transfer of shares when one of the following circumstances occurs:

- When the assets of the company consist principally, directly or indirectly, in real estate situated in Spain.
- For individuals, when in the 12 months prior to the transfer, the taxpayer held, directly or indirectly, at least 25% of the stake in the transferred entity.
- In the case of non-resident companies, when the requirements to apply the participation exemption regime for CIT purposes are not met.

b. Taxable

In the case of asset sales, where the seller is a Spanish resident company, capital gains derived from asset sales are generally subject to CIT at a 25% rate (24% CIT rate under Basque CIT law). Any potential capital gain can be offset against NOLs and other negative income, considering the limitations already described. Additionally, the capitalisation reserve can be applied (see section 6.b. above).

c. Cross Border

Taxable gains obtained by non-residents are taxed at a flat rate of 19%. However an exemption might be available further to the provisions of a tax treaty or to domestic law. If the target is a holding company that benefits from the Spanish ETVE regime, which may apply to companies whose corporate objectives include managing and administrating shares in non-resident entities and meet certain requirement, the capital gain obtained by the seller derived from the sale of the target's shares might not be taxed in Spain, to the extent of the amount of the target's accumulated tax exempt reserves (i.e. reserves that ultimately derive from tax exempt dividends and capital gains obtained by the target as a consequence of the applicability of the Spanish participation exemption regime) and hidden reserves attributable to foreign subsidiaries of the ETVE. Basque tax regulations provide for the exemption of dividends and gains derived by non-resident shareholders from their participation in Basque holding companies that are ultimately related to tax exempt reserves. Domestic law foresees that capital gains resulting from the transfer of movable property, obtained without a permanent establishment, by residents in an EU member state or by EU permanent establishments of residents in EU member states, will be tax exempt (with certain exceptions). We also refer to comments in section 7.a. above.



8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

Spanish CIT is levied on Spanish tax resident entities' worldwide income. An exemption is applied to qualifying dividends and capital gains on shares (see section 6.a. above) and income derived through a foreign permanent establishment.

b. CFC Regime

Under the "international fiscal transparency" regime, which is the equivalent of a CFC regime, a Spanish resident company may be subject to CIT on certain types of passive income of certain non-resident entities. The Spanish CFC rules are, in general, rules in line with EU Directives and BEPS recommendations.

CFC rules are applicable to Spanish companies that alone or together with other related individuals or entities control 50% of more of the voting rights, capital, assets or profits of the CFC. For the CFC rules to apply, the CFC must be low taxed (i.e. the tax paid in the CFC jurisdiction is lower than 75% of the tax that would have been paid under Spanish CIT rules).

The passive income to which the regime applies is income obtained by entities from immovable property or rights thereon not used in business activities, from financial assets, from loans between related entities, derivatives, intangibles, certain insurance operations and capital gains from the disposal of such immovable property or assets and realised by the CFC.

c. Foreign branches and partnerships

Partnerships and other foreign entities without legal personality akin to Spanish "look though" entities are treated as look though entities and the full income of such entities is attributable to their Spanish members (see section 5.d.).

Income and capital gains obtained by a domestic company though foreign branches are exempt from Spanish CIT as far as the Spanish participation exemption requirements set forth in section 7.a. are met. The Spanish company can opt to apply the tax credit method and include income obtained through the foreign branch in its CIT taxable base and deduct tax paid by the branch with the limit of taxes paid in Spain (the excess should be considered as a deductible expense).

d. Cash Repatriation

There are no legal restrictions to repatriate cash and there is no need to obtain an authorisation.



9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Capital gains obtained by non-residents in connection with transfers of shares of companies whose main assets are directly or indirectly real estate located in Spain are deemed to be subject to tax in Spain, at a 19% rate. The domestic exemption on capital gains on the sale of qualifying subsidiaries obtained by EU tax residents does not apply if the main assets of the subsidiary are, directly or indirectly, Spanish real estate properties. In cases where a tax treaty is applicable, its provisions must be analysed to determine whether such gain should be subject to or exempt from Spanish taxes, though the vast majority of such treaties allow the source State to impose tax on those gains.

Capital gains obtained by resident entities in connection with transfers of Spanish companies whose main assets are real estate located in Spain are taxed in the same terms as capital gains on companies without real estate at the ordinary CIT rate. Thus, the capital gain may qualify for the participation exemption if the relevant requirements are met.

In either case, it is important to note that Spanish transfer tax (from 6% to 11%) may apply to transfers of shares where it is deemed that the transaction had the objective of avoiding the tax otherwise payable for the transfer of the real estate properties. We refer to our comments in section 3.f. above.

b. CbC and Other Reporting Regimes

Spain has aligned its domestic law to EU Directives and OECD guidelines.

Form 231 is the "Country by Country Report Return". This is the form through which entities obliged to submit this information ("Country by Country Report") must fulfil this obligation in Spain.

10. TRANSFER PRICING

Spanish transfer pricing rules (rules on related party transactions) are in line with OECD transfer pricing guidelines, whereby related party transactions are valued on an arm's length basis and are subject to certain documentation requirements.



11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

No specific rules exist in the CIT Act in relation to hybrid entities. Spain has implemented EU Directive "ATAD2" as regards "hybrid mismatches" (see below 11.b. for further information).

b. Use of Hybrid Instruments

Spain has adapted the CIT regulations to the measures proposed under some of the OECD BEPS action plans and certain new amendments have been be implemented in the short term. Spanish regulations set rules aimed at tackling hybrid instruments, are as follows:

- An anti-abuse rule regarding "hybrid instruments", implemented by ATAD2, which limits the deductibility of certain expenses. The term "hybrid mismatches" refers to scenarios in which non-taxation or double deduction of expenses occurs as a result of legal characterisation differences in more than one country or territory. As the new royal decree mentions in its preamble, the purpose of transposition of the ATAD2 Directive is to prevent these scenarios in transactions between Spain and other member states, as well as between Spain and third countries or territories, (i) where between the parties acting in the transaction there is an associated entity relationship, significant influence is exerted or they act together with respect to voting rights or capital ownership; and (ii) where the mismatch takes place under a structured arrangement.
- A limitation to the access to the participation exemption regime has been introduced for hybrid instruments, under this limitation, the participation exemption does not apply when dividends distributed by a non-resident subsidiary generate a deductible expense at the level thereof.
- Specific restrictions are laid down as regards the tax treatment of some hybrid instruments (i.e. participating loans, return on certain types of equity instruments, among others).

We refer also to comments in section 6.d. above with respect to the tax treatment under Spanish CIT Act of hybrid instruments.

c. Principal/Limited Risk Distribution or Similar Structures

Principal / limited risk distributor structures must follow Spanish transfer pricing rules.

The Spanish tax authorities have issued numerous rulings analysing restructurings of the activities of Spanish companies under the principal / limited risk distributor model which led to a substantial reduction of the Spanish CIT taxable base. The tax authorities (whose position has been supported by Spanish Courts) considered that the non-resident principal had a permanent establishment in Spain on the basis that its Spanish subsidiary was a dependent agent.

d. Intellectual property (licensing, transfers, etc.)

The Spanish patent box regime entitles Spanish companies to apply a reduction of 60% on net income that derives from the "granting of the right to use or exploit" certain intangibles. Gains on the disposal of the ownership of such intangibles are also eligible for the regime if the acquiror is a non-resident person. The applicable rules are compliant with the requirements set forth in the BEPS Report on Action 5.



The reduction applicable to income eligible for the patent box regime is computed as follows:

Reduction= Income x 60% x (Creation expenses x 1.3) / (Creation and acquisition expenses)

The Basque patent box regime, which is aligned with the OECD nexus approach, provides for a reduction of 70%.

e. Special tax regimes

Spanish companies with non-resident investors which invest in foreign vehicles can apply the Entidad de Tenencia de Valores, ("ETVE") regime. Spanish companies which apply for the ETVE regime are subject to the Spanish general CIT regime, but they can benefit from a special tax regime for dividends and gains on shares if certain requirements are met.

- In summary, the ETVE special regime provides for a special tax treatment for dividend distributions made by the ETVE itself, since it foresees that dividends distributed out of "exempt income" to the non-resident shareholders of the company (save if they are resident in a tax haven jurisdiction) are not subject to withholding taxes in Spain. Exempt income corresponds to dividends and capital gains out of participations in foreign companies held by the ETVE which are exempt from the Spanish CIT according to the general participation exemption regime.
- Likewise, the ETVE special regime foresees that capital gains derived from the transfer of the stake in the ETVE shall not be taxed in Spain provided that the capital gain can be assigned to accumulated reserves or to foreign subsidiaries which can benefit from the Spanish participation exemption.

Basque tax regulations provide for the exemption of dividends and gains derived by non-resident shareholders from their participation in Basque holding companies that are ultimately related to tax exempt reserves. Also, the deduction at a maximum 12.50% yearly rate of financial goodwill embedded in the acquisition price of the shares in the target, both in Spanish and non-resident companies, is allowed, subject to certain requirements. Accordingly, Basque holding companies are commonly used for the acquisition of the target.

12. OECD BEPS CONSIDERATIONS

Spain has partially adapted the CIT regulations to some of the measures proposed under some of the OECD BEPS action plans (and certain new amendments may be implemented in the short term) and Spanish regulations set forth a wide range of anti-abuse rules which are in line with the principles stemming from the OECD BEPS works. Reference is made to anti-hybrid rules (section 6.d. above).

The Spanish CFC rules, patent box and transfer pricing rules were modified as well to adapt them to the OECD BEPS recommendations. Spain has signed the Multilateral Instrument. Thus, the Spanish DTT network will be modified by the MLI, whose ratification entered into force on 1 January 2022.



13. ACCOUNTING CONSIDERATIONS

a. Combinations

For accounting purposes, an acquisition may be deemed to be a business combination. In business combinations, the investing company, in its individual annual accounts, will value the investment for the acquisition price (including transaction costs). Particular accounting rules apply to intragroup reorganisations.

b. Divestitures

The transferring entity must deregister its investment when it has actually transferred risks and obligations. The difference between the acquisition cost and the selling price minus cost directly related with the transaction must be registered in the P&L account.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

In general terms, dividends can be distributed if the following aspects are respected:

(i) Legal reserves should be covered; otherwise, a legal reserve of a minimum of 10% of the profits of the financial year should be applied, until said reserve represents at least 20% of the capital.

(ii) The legally obligatory reserves should be covered, where appropriate.

(iii) The value of net worth does not fall below the company's capital, as a consequence of the distribution of dividends.

(iv) The amount of available reserves, is, as a minimum, equal to the amount of the costs corresponding to research and development, as reflected in the assets on the balance sheet.

b. Substance Requirements for Recipients

There are not specific substance requirements set forth for regular resident companies, but the access to the domestic participation exemption when investing in companies deemed as purely instrumental as well as certain tax benefits (for instance, benefits for small and medium entities) can be denied based on domestic GAAR where an insufficient level of substance is deemed to exist. On the other hand, the ETVE regime will only be applied to holding companies whose activities (i.e. the management of the stake held in their subsidiaries) are carried out through an adequate organisation of human and material means.

As regards non-resident companies, the benefits of a domestic exemption or an applicable DTT may be denied if the foreign company does not have sufficient substance to evidence its effective tax residence in the foreign jurisdiction or if, as a consequence thereof, the relevant structure was regarded as purely tax driven (i.e. merely aimed at benefitting from the relevant DTT or domestic tax advantages) based on the domestic GAAR or on the specific anti-abuse provisions set forth either domestically or in the applicable DTT.



c. Application of Regional Rules

As regards the amendments to the EU Parent Subsidiary Directive, Spain already has an anti-abuse rule in place according to which the domestic exemption implementing the EU Parent-Subsidiary Directive does not apply if the parent company is located in a tax haven or if the majority of its voting rights are held, directly or indirectly, by an individual or legal entity not resident in the EU or a country in the European Economic Area with an effective exchange of information with Spain, unless the parent company has been established to operate on valid economic grounds and for substantive business reasons.

Finally, as a general rule, the Spanish tax regime has substantially implemented the measures which are proposed by the Anti-Tax Avoidance Directive and have recently adapted the following rules to fully align them with the said Directive:

- Implement new rules on hybrid entities ("ATAD2"); and
- Spanish exit tax and CFC rules.

Although the CIT Act rules limiting the deduction of borrowing costs allow the inclusion of (as part of the EBITDA) tax exempt dividends from qualified subsidiaries (not under Basque CIT rules), Spain will not modify its CIT Act in the short term, as it has been established that Spain has sufficiently effective measures to attain the objectives laid down in ATAD as regards the limitation to the deduction of excessive borrowing costs.

d. Tax Rulings and Clearances

Spanish taxpayers can request a binding ruling to gain certainty on the tax treatment of a particular transaction. Tax rulings should be answered within six months by the tax authorities. However, the tax authorities may take a longer period to answer. Obtaining a binding ruling is not compulsory, but it may be advisable for a restructuring transaction with no precedents or transactions whose tax treatment is uncertain.

15. MAJOR NON-TAX CONSIDERATIONS

This section is left intentionally blank.



16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends [1]			Interest [2]	Royalties [3]	Footnote
	General	Matrix- Subsidiary				
	(%)	(%)	Min. Part. %	(%)	(%)	
Albania	10	0 / 5	10 / 75	0 / 6	0	[6]
Algeria	15	5	10	0 / 5	7 / 14	[9] [10]
Andorra	15	5	10	0 / 5	5	[7]
Argentina	15	10	25	0 / 12	3 / 5 / 10 / 15	[11] [12]
Armenia	10	0	25	5	5 / 10	[13] [14]
Australia	15	15	-	10	10	
Austria	15	10	50	5	5	[15]
Azerbaijan	10	5	25	0 / 8	5 / 10	[121] [122] [123]
Barbados	5	0	25	0	0	
Belarus	18	18	-	0	0 / 5	[4] [17]
Belgium	15	0	25	0 / 10	5	[16]
Bolivia	15	10	25	0 / 15	0 / 15	[17] [18] [19]
Bosnia and Herzegovina	10	5	20	0 / 7	7	[20]
Brazil	15	10 / 15	25	0 / 10 / 15	10 / 15	[21] [22] [23]
Bulgaria	15	5	25	0	0	
Canada	15	5 / 0	10 / Pension Plan	0 / 10	0 / 10	[24] [25] [17]
Cape Verde	10	0	25	0 / 5	5	[124]
Chile	10	5	20	4 / 5 / 10 / 15	2 / 5 / 10	[26] [27]
China	10	10	-	10	10 / 60	[28]
Colombia	5	0	20	5 / 10	10	[29] [30]
Costa Rica	12	5	20	5 / 10	10	[32] [33] [34]
Croatia	15	0	25	0	0	[35] [35]
Cuba	15	5	25	0 / 10	0 / 5	[36] [17]
Cyprus	5	0	10	0	0	
Czech Republic	15	5	25	0	0 / 5	[5] [17]

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Jurisdiction	Dividends [1]			Interest [2]	Royalties [3]	Footnote
	General	Matrix- Subsidiary				
	(%)	(%)	Min. Part. %	(%)	(%)	
Dominican Republic	10	0	75	0 / 10	10	[86]
Ecuador	15	15	-	0 / 5 / 10	5 / 10	[37] [17]
Egypt	12	9	25	0 / 10	12	[38]
El Salvador	12	0	50	0 / 10	10	[89] [90] [91]
Estonia	15	5	25	0 / 10	0 / 5 / 10	[42] [43]
Finland	0 / 15	0 / 5	10	0	0	
France	15	0	10	0 / 10	0 / 5	[46] [47]
Georgia	10	0	10	0	0	
Germany	15	5	10	0	0	
Greece	10	5	25	0 / 8	6	[48]
Hong Kong	10	0	25	0 / 5	5	[49]
Hungary	15	5	25	0	0	
Iceland	15	5	25	0 / 5	5	[54]
India	15	15	-	0 / 15	10 / 20	[50]
Indonesia	15	10	25	0 / 10	10	[51]
Iran	10	5	20	0 / 7,5	5	[52]
Ireland	15	0	25	0	5 / 8 / 10	[53]
Israel	10	10	-	5 / 10	5 / 7	[55] [56]
Italy	15	15	-	0 / 12	4 / 8	[57] [17]
Jamaica	10	5	25	0 / 10	10	[58] [59] [60]
Japan	15	10	25	10	10	
Kazakhstan	15	5	10	0 / 10	10	[61]
Korea	15	10 / 15	25	0 / 10	10	[31]
Kuwait	5	0	10	0	5	
Kyrgyzstan	18	18	-	0	0 / 5	[4] [17]
Latvia	10	5	25	0 / 5 / 10	0 / 10 / 15	[62] [63]
Lithuania	15	5	25	0 / 10	0 / 5 / 10	[64] [65]

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Jurisdiction	Dividends [1]			Interest [2]	Royalties [3]	Footnote
	General	Matrix- Subsidiary				
	(%)	(%)	Min. Part. %	(%)	(%)	
Luxembourg	15	10	25	0 / 10	10	
Malaysia	5	0	5	0 / 10	5 / 7	[67] [68]
Malta	5	0	25	0	0	
Mexico	10	0	10 / Pension Plan	4,9 / 10	0 / 10	[70] [71]
Moldova	10	0 / 5	25 / 50	0 / 5	8	[72]
Morocco	15	10	25	10	5 / 10	[69]
Netherlands	15	10 or 5 (Spain) / 5 (Netherlands)	50 (or 25+25)	10	6	[81]
New Zealand	15	15	-	0 / 10	10	[77] [78] [79]
Nigeria	10	7.5	10	0 / 7,5	3,75 / 7,5	[73] [74] [75]
North Macedonia	15	5	10	0 / 5	5	[66]
Norway	15	10	25	0 / 10	5	[76]
Oman	10	0	20	0 / 5	8	[80]
Pakistan	10	5 / 7,5	25 / 50	10	7.5	[82]
Panama	10	0 / 5	40 / 80 (or Pension Plan)	0 / 5	5	[83] [84]
Philippines	15	10	10	0 / 10 / 15	15 / 20	[44] [45]
Poland	15	5	25	0	0 / 10	[17]
Portugal	15	10	25	15	5	
Qatar	5	0	10 / 5 / 1	0	0	[116]
Romania	15	10	25	0 / 10	10	[117]
Russia	15	5 / 10	Value of Investment	0 / 5	5	[87] [88]
Saudi Arabia	5	0	25	0 / 5	8	[8]
Senegal	10	10	-	0 / 10	10	[92]
Serbia	10	5	25	0 / 10	5 / 10	[93] [94] [95]
Singapore	5	0	10	0 / 5	5	[96] [97]
Slovakia	15	5	25	0	0 / 5	[5] [17]
Slovenia	15	5	25	0 / 5	5	[39]

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Jurisdiction	Dividends [1]			Interest [2]	Royalties [3]	Footnote
	General	Matrix- Subsidiary				
	(%)	(%)	Min. Part. %	(%)	(%)	
South Africa	15	5	25	0 / 5	5	[98]
Sweden	15	10	50	0 / 15	10	[118]
Switzerland	15	0	10 / Fund Pension	0	0 / 5	[119]
Tajikistan	18	18	-	0	0 / 5	[4] [17]
Thailand	10	10	-	0 / 10 / 15	5 / 8 / 15	[101] [102] [103]
Trinidad and Tobago	10	0 / 5	25 / 50	0 / 8	5	[104]
Tunisia	15	5	50	5 / 10	10	[105]
Turkey	15	5	25	10 / 15	10	[106]
Turkmenistan	18	18	-	0	0 / 5	[4] [17]
Ukraine	18	18	-	0	0 / 5	[4] [17]
United Arab Emirates	15	5	10	0	0	
United Kingdom	10 / 15	0	10 (or Pension Plan)	0	0	[85]
United States	15	0 / 5	10	0 / 10	0	[40] [41] [115]
Uruguay	5	0	75	0 / 10	5 / 10	[107] [108]
Uzbekistan	10	0 / 5	25	0 / 5	5	[109] [110]
Venezuela	10	0	25	0 / 4,95 / 10	5	[111]
Vietnam	10 / 15	5 / 7 / 10	25 / 50 / 70	10	5 / 10	[112] [113] [114]

Footnotes	
0	The Multilateral Instrument will modify the provision of some of the Tax Treaties of the Spanish Tax Treaty network after its entry into force and applicability.
1	See, in general, article 10, section 2, of the corresponding Tax Treaty.
2	See, in general, article 11, sections 2 and 3, of the corresponding Tax Treaty.
3	See, in general, article 12, section 2, of the corresponding Tax Treaty.
4	The Tax Treaty between Spain and the USSR is in force for the former member countries of the USSR, except for those with which a new Tax Treaty already exists, and for some other country with which it has ceased to be in force and for which at the moment there is no other Tax Treaty in force. In particular, it is only applied to Belarus, Kyrgyzstan, Tajikistan, Turkmenistan, and Ukraine.



Footnotes	
5	The Tax Treaty with the former Czechoslovakia is applied to both the Czech republic and Slovakia.
6	The exemption applies in relation to: interest paid, received, or guaranteed by the Public Administrations; financial institutions; credit sales of any equipment or material, merchandise or service; pension funds are exempt.
7	The exemption applies in relation to: interest paid and received by the Public Administrations.
8	The exemption applies in relation to: interest paid and received by the Public Administrations (including public financial institutions).
9	The exemption applies in relation to: interest paid or received by the Public Administrations; credit sales of merchandise or equipment; loans granted by banks or credit institutions.
10	The highest rate is applied to copyrights, including films.
11	The exemption applies in relation to: interest paid or received by Public Administrations; loans concluded between States with a term equal to or greater than 5 years; credit sales of industrial, commercial or scientific equipment.
12	The applicable rates are: 3% (news); 5% (copyright); 10% (patents, designs and models, blueprints, formulas or secret procedures, computer programs, commercial, industrial or scientific equipment, information relating to industrial, commercial or scientific experiences, provision of technical assistance services); 15% in other cases.
13	The application of the exemption requires a minimum participation of 25% during at least the 2 years prior to the payment of the dividend and that the aforementioned dividends are not subject to the tax on benefits in the beneficial owner's Contracting State of residence.
14	The lowest rate is applied to copyrights, including films.
15	The application of the 10% rate requires a minimum participation of 50% during at least the year prior to the payment of the dividend.
16	The exemption applies in relation to: commercial loan interest, guaranteed by Public Administrations, certain interests between banks.
17	The lowest rate is applied to copyrights, not including films..
18	The exemption applies in relation to: interest paid or received by Public Administrations; loans concluded between States with a term equal to or greater than 5 years; credit sales of industrial, commercial or scientific equipment
19	Protocol 2 of the Tax Treaty contains a More Favoured Nation Clause (MFNC) for fees that has not been activated for the time being.
20	The exemption is applied in relation to: interest paid, received, or guaranteed by the Public Administrations; public financial institutions; pension funds are exempt.
21	Protocol 3 of the Tax Treaty with Brazil contains a MFNC under which applicable tax rates have been modified
22	The exemption applies in relation to: interest paid or received by the Public Administrations; the reduced rate of 10% is applied in relation to bank loans with a minimum term of 10 years in order to finance the acquisition of capital goods and equipment; otherwise the general rate of 15% is applied.
23	According to the Tax Treaty with Brazil, a rate of 10% is applied to royalty payments, including films, and 15% for the rest of the fees (which logically includes trademarks). However, under the MFNC for fees provided for in Protocol 4 of the Tax Treaty, applicable tax rates have been modified.



Footnotes	
24	Withholding taxes applicable to dividends are: 15% in general; 5% if the beneficial owner is a company (other than a partnership) that directly holds at least 10% of the capital; the application of the 0% rate requires that the effective beneficiary is a pension plan or a retirement plan that meets certain requirements.
25	The interest exemption applies when the beneficial owner of the interest is a resident of the other Contracting State and operates under full competition conditions with its debtor; and in relation to interests guaranteed by the Public Administrations related to export activities.
26	According to the Tax Treaty with Chile, the interest rate of 5% is applied to interest on bank loans or insurance companies, interest on bonds and listed securities, and interest on credit sales of machinery or equipment, and 15% is applied to the rest of the cases. However, under Protocol X of the Tax Treaty, which contains a MFNC under which applicable tax rates have been modified.
27	The lowest rate (5%) is applied in relation to industrial, commercial or scientific equipment. However, under Protocol X of the Tax Treaty, which contains a MFNC for royalties applicable tax rates have been modified.
28	The lowest type is applied in relation to industrial, commercial or scientific equipment.
29	According to the Tax Treaty with Colombia, the 0% rate is applied in relation to interests whose beneficiary is a Public Administration, in credit sales of merchandise or equipment and in bank loans, and 10% in other cases. However, under Protocol VII. 2 of the Tax Treaty, which contains a MFNC for interest, rates have been modified.
30	Protocol VIII. 3 of the Tax Treaty contains a MFNC for fees, which for the moment has not been activated.
31	The exemption is applied in relation to: interest received or guaranteed by Public Administrations; credit sales of equipment and merchandise.
32	Protocol XIV of the Tax Treaty contains a MFNC for dividends, which for the moment has not been activated.
33	According to the Tax Treaty with Costa Rica, the 0% rate is applied in relation to interest received by Public Administrations, credit sales of merchandise or equipment and bank loans; 5% in relation to interest on loans with a term equal to or greater than 5 years; and 10% for the rest of cases. However, under Protocol XIV of the Tax Treaty, which contains a MFNC, applicable tax rates have been modified.
34	Protocol XIV of the Tax Treaty contains a MFNC for royalties, which for the moment has not been activated.
35	After the period of 5 years referred to in the Protocol has elapsed, all interest and royalties are exempt.
36	The exemption is applied in relation to: interest received by the Public Administrations, credit sales of equipment and merchandise, or loans with a minimum term of 5 years.
37	The applicable rates are: 0% for interest on loans with a term equal to or greater than 5 years; 5% for credit sale interests on merchandise or equipment, and construction, installation or assembly projects; 10% in the rest of the cases,
38	The exemption applies in relation to: interest received by Public Administrations.
39	The exemption applies in relation to: interest paid or received by Public Administrations.
40	Contingent interest not qualifying as portfolio interest under the United States law may be taxed at the rate of 10%.
41	The 5% rate applies to certain copyrights, excluding films; the 8% rate applies in relation to films, equipment, and certain copyrights; in the other cases, 10% is applied.



Footnotes	
42	According to the Tax Treaty with Estonia, the exemption applies in relation to: interest received by the Public Administrations or loans guaranteed by Public Administrations (including public financial institutions), credit sales (not linked) of equipment and merchandise; for the rest of the cases, 10% is applied. However, by virtue of Protocol VII of the Tax Treaty, which contains a MFNC for interest, applicable tax rates have been modified.
43	Under the Tax Treaty with Estonia, the lowest rate (5%) is applied in relation to the use or concession of use of industrial, commercial or scientific equipment, and the rest of royalties are taxed at 10%. However, under Protocol VIII of the Tax Treaty, which contains a MFNC for royalties, applicable tax rates have been modified.
44	The applicable rates are: 0% (public debt, interest or guaranteed by Public Administrations); 10% (credit sale of equipment, bonds, obligations or similar securities); 15% in other cases.
45	The 10% rate applies to royalties paid by a company registered with the Philippine Investment Council; 20% in relation to films; 15% in the rest of the cases.
46	The exemption applies in relation to: interest paid by Public Administrations, by a company within the framework of an industrial or commercial activity, by credit sales of equipment, by loans from credit institutions.
47	The exemption in royalties applies to copyright in literary or artistic work (excluding cinematographic films and recorded sound or visual works) and also, in accordance with Protocol 10, to royalties paid for the use or concession of use of containers, ships or bareboat aircraft, operated in international traffic.
48	The exemption applies in relation to: interest paid or received by Public Administrations; loans concluded between States.
49	The exemption is applied in relation to: interest paid, received, or guaranteed by Public Administrations; financial institutions; pension funds are exempt.
50	According to the 1993 Tax Treaty with India, the royalties for the use or concession of use of industrial, commercial or scientific equipment are taxed at 10%, while the rest of royalties, and all technical services, are taxed at 20%. However, under Protocol 7 of the Tax Treaty, which contains a MFNC for royalties and technical services, applicable tax rates have been modified.
51	The exemption applies in relation to interest received by Public Administrations.
52	The exemption applies in relation to: interest received by Public Administrations, credit sales of merchandise and equipment, bank loans.
53	The applicable rates are: 5% (copyright on literary, theatre, musical or artistic works); 8% (cinematographic films or films, tapes and other means of transmission or reproduction of the image or sound, industrial, commercial or scientific equipment, and copyright on scientific works); 10% in other cases.
54	The exemption applies in relation to: interest received by Public Administrations.
55	The applicable rates are: 0% (interest on loans granted or guaranteed by Public Administrations); 5% (credit sales of merchandise and equipment, bank loans); 10% in the rest of the cases.
56	The lowest rate is applied for copyrights, including films, and industrial, commercial or scientific equipment.
57	The exemption applies in relation to: interest paid or received by Public Administrations; loans concluded between States.
58	Protocol II of the Tax Treaty contains a MFNC for dividends and consignments, that has not been activated for the moment.



Footnotes	
59	The exemption applies in relation to: interest paid, received, or guaranteed by the Public Administrations; public financial institutions; pension funds are exempt. Protocol II of the Tax Treaty contains a MFNC for interest, that has not been activated for the moment.
60	Protocol II of the Tax Treaty contains a MFNC for royalties, that has not been activated for the moment.
61	The exemption applies in relation to: interest paid, received, or guaranteed by Public Administrations, public financial institutions.
62	According to the Tax Treaty with Latvia, the exemption is applied in relation to: interest received or guaranteed by the Public Administrations (including public financial institutions), credit sales (not linked) of equipment and merchandise, and the rest of the interest would in principle be taxed at the general rate of 10%. However, under Protocol VIII of the Tax Treaty, which contains a MFNC for interest, withholding tax rates have been modified.
63	According to the Tax Treaty, a rate of 5% is applied in relation to industrial, commercial or scientific equipment, and 10% in the rest of the cases. However, under Protocol IX of the Tax Treaty, which contains a MFNC for royalties the said rates have been modified.
64	The exemption is applied in relation to: interest received or guaranteed by Public Administrations (including public financial institutions), credit sales (not linked) of equipment and merchandise. Protocol VIII of the Tax Treaty contains a MFNC for interest, which for the moment has not been activated.
65	The lowest rate is applied in relation to industrial, commercial or scientific equipment. Protocol IX of the Tax Treaty contains a MFNC for royalties, which for the moment has not been activated.
66	The exemption applies in relation to: credit sales of equipment and merchandise; 5 year minimum bank loans.
67	The exemption applies in relation to: interest received by Public Administrations. Protocol 3 of the Tax Treaty contains a MFNC for interest, which for the moment has not been activated.
68	The highest rate is applicable to royalties, the lowest rate is applied to technical services.
69	The lowest rate applies in relation to copyrights, excluding films; the highest rate applies in relation to patents, designs and models, blueprints, secret formulas or procedures, trademarks, films, information referring to experiments, technical or economic studies, agricultural, industrial, portray, commercial or scientific equipment.
70	According to the 2017 modification Protocol of the Tax Treaty with Mexico, the following withholding tax rates are applied: 0% in relation to interest paid or received by Public Administrations, interest on loans for a term greater than or equal to 3 years guaranteed by Public Administrations related to exports, and interest received by exempt pension funds; 4.9% for interest received by banks or financial institutions or insurance institutions, and interest on bonds and other listed credit instruments; and 10% residual. Clause 6 of the Tax Treaty Protocol contains a MFNC for interest, which has not been activated for the moment.
71	The lowest rate applies to copyrights, excluding films. Clause 6 of the Tax Treaty Protocol contains a MFNC for royalties, which for the moment has not been activated.
72	The exemption applies in relation to: interest paid, received, or guaranteed by Public Administrations; public financial institutions; pension funds are exempt.
73	Protocol III of the Tax Treaty contains a MFNC for dividends which for the moment has not been activated.
74	The exemption applies in relation to: interest paid to Public Administrations (including public financial institutions). Protocol III of the Tax Treaty contains a MFNC for interest which for the moment has not been activated.



Footnotes	
75	The 7,5% applies when the royalties receiver is a company; 3,75% is applied otherwise. Protocol III of the Tax Treaty contains a MFNC for royalties which for the moment has not been activated.
76	The exemption applies in relation to: interest paid, received or guaranteed by Public Administrations; long term loans (at least 5 years) granted by financial institutions; credit sales of equipment.
77	Protocol IV of the Tax Treaty contains a MFNC for dividends which for the moment has not been activated.
78	Protocol IV of the Tax Treaty contains a MFNC for interest which for the moment has not been activated.
79	Protocol IV of the Tax Treaty contains a MFNC for royalties which for the moment has not been activated.
80	The exemption applies in relation to interest paid to Public Administrations.
81	The reference included in the table means that when the Netherlands applies the Tax Treaty, it can withhold up to 5% if the participation in the capital is equal to or greater than 50% (although this percentage is allowed jointly by two companies resident in Spain, with at least 25% each); whereas when Spain is the one applying the Tax Treaty, it can retain up to 10% if the share in the capital is equal to or greater than 50% (although that percentage is allowed to be jointly reached by two companies resident in the Netherlands, with at least 25% each of them). Notwithstanding the above, article VII of the Protocol to the Treaty foresees that Spanish tax on dividends shall be reduced to 5% if the receiving company does not suffer company dividends on those dividends.
82	The exemption applies in relation to: interest paid, received or guaranteed by Public Administrations; public financial institutions.
83	The withholding tax rates applicable to distributed dividends are: 10% in general; the application of the 5% rate requires a participation greater than 40%; the application of the 0% rate requires a participation greater than 80% and the fulfilment of a series of conditions, or that it is a pension fund. See article 10 of the Tax Treaty.
84	The exemption is applied in relation to: interest paid, received, or guaranteed by Public Administrations; public financial institutions; credit sales of any equipment, merchandise or service; pension funds are exempt.
85	The withholding tax rates applicable to distributed dividends are: 10% in general (see in Article 10 of the Tax Treaty special regime applicable to REIT type entities). The application of the 0% rate requires a participation greater than 10%, or that its recipient is a pension plan. 15% when dividends are paid out of income (including gains) derived directly or indirectly from immovable property within the meaning of Article 6 by an investment vehicle which distributes most of this income annually and whose income from such immovable property is exempted from tax.
86	The exemption applies in relation to: interest paid, received or guaranteed by Public Administrations; pension funds are exempt; credit sales of any equipment, merchandise or service.
87	The application of the reduced rate does not require of the existence of a minimum percentage of participation but of a certain minimum investment volume. See article 10 of the Tax Treaty.
88	The exemption applies in relation to: interest paid or received by Public Administrations; long term loans (at least 7 years) granted by financial institutions.
89	The application of the 0% rate requires a minimum participation of 50% and that the profits of the subsidiary have been taxed. Protocol X.1 of the Tax Treaty contains a MFNC for dividends, which for the moment has not been activated.
90	The exemption is applied in relation to: interest paid, received, or guaranteed by Public Administrations; public financial institutions; pension funds are exempt. Protocol X.1 of the Tax Treaty contains a MFNC for interest, which has not been activated for the moment.



Footnotes	
91	Protocol X.1 of the Tax Treaty contains a MFNC for royalties, which for the moment has not been activated.
92	The exemption applies in relation to: interest paid or received by Public Administrations.
93	Protocol II of the Tax Treaty contains a MFNC for dividends which for the moment has not been activated.
94	The exemption is applied in relation to: interest received by Public Administrations (including public financial institutions). Protocol II of the Tax Treaty contains a MFNC for interest, which has not been activated for the moment.
95	The lowest rate applies to copyrights, including films; the highest rate applies in relation to patents, trademarks, designs, blueprints, formulas or secret procedures and computer programs, equipment, information relating to industrial, commercial or scientific experiences. Protocol II of the Tax Treaty contains a MFNC for royalties, which for the moment has not been activated.
96	See art 10 of the Tax Treaty special regime applicable to REITs.
97	The exemption is applied in relation to: interest paid, received, or guaranteed by Public Administrations; financial institutions; pension funds are exempt; Government of Singapore Investment Corporation Pte. Ltd.
98	The exemption is applied in relation to: interest received by Public Administrations; credit sales of merchandise or equipment; long term loans (minimum 7 years) granted by financial institutions.
99	The application of the 0% rate requires that the dividends be paid to a recognised pension fund or pension plan. See art. 10 of the Tax Treaty wording given by the Protocol signed in 2011.
100	The withholding tax rate applicable to royalties is 5% in general; however, royalties paid between associated companies are not subject to taxation in the State of the source (see article 12.7 of the Tax Treaty).
101	Protocol VII of the Tax Treaty contains a MFNC for the taxation of remittances of the Permanent Establishment referred to in Article 10.5 of the Tax Treaty, which has not been activated for the moment.
102	The applicable rates are: 0% (interest received by Public Administrations); 10% (interest received by financial institutions, including insurance companies); 15% in other cases.
103	The applicable rates are: 5% (copyright, excluding films and videotapes or audio); 8% ("financial leasing" relative to the use or concession of use of industrial, commercial or scientific equipment); 15% in other cases.
104	The exemption is applied in relation to: interest paid, received, or guaranteed by Public Administrations; public financial institutions; pension funds are exempt; credit sales of any equipment or material, merchandise or service.
105	The 5% rate applies when the interest comes from loans whose duration exceeds 7 years.
106	The 10% rate applies in relation to: bank loans, credit sales of merchandise or equipment.
107	The exemption is applied in relation to: interest paid, received, granted or guaranteed by Public Administrations; long term loans (minimum 3 years) granted by financial institutions; credit sales of any equipment, merchandise or service; pension funds are exempt.
108	The 5% rate applies to copyrights, including films; in the other cases, 10% is applied.
109	Under Protocol III, the 5% dividend withholding tax rate will be reduced to 0% when dividends received by a company that is a resident of Spain from a company resident in Uzbekistan are not taxed under Spanish Corporate Income Tax.
110	The exemption applies in relation to: interest paid, received or guaranteed by Public Administrations.



Footnotes	
111	According to the Tax Treaty with Venezuela, the exemption is applied in relation to: interest paid, received, granted or guaranteed by Public Administrations; pension funds are exempt; credit sales of industrial, commercial or scientific equipment; the 4.95% rate applies when the beneficial owners are financial institutions; and in the other cases a 10% rate is applied. However, under Protocol VII of the Tax Treaty, which contains a MFNC for interest, tax rates have been modified.
112	According to the Tax Treaty with Vietnam, if the beneficial owner is a company (other than a partnership) that directly owns at least 50% of the capital of the company that pays the dividends, the withholding tax rate applicable to the dividends is 7%; if the beneficial owner is a company (other than a partnership) that owns directly at least 25% but less than 50% of the capital of the company that pays the dividends, the rate will be 10%; and in all other cases 15% will be applied (participations of up to 25%, or of any percentage but held by partnerships or by individuals). However, Protocol VI of the Tax Treaty with Vietnam contains a MFNC for dividends according to which applicable rates have been modified.
113	The exemption applies in relation to: interest received or guaranteed by Public Administrations (including public financial institutions). Protocol VI of the Tax Treaty contains a MFNC for interest, which for the moment has not been activated.
114	According to the Tax Treaty with Vietnam, the withholding tax rate for royalties in the country of the source may not exceed 10%. However, Protocol VI of the Tax Treaty contains a MFNC for royalties, under which the applicable rates have been modified.
115	According to the Tax Treaty with USA, the withholding tax rate for interests coming from USA will be taxable in Spain if the beneficial owner is a Spanish resident (not applying to portfolio interests). REMIC interests will only be taxable in USA.
116	This rate applies if the recipient company holds directly at least the following percentage of the capital of the company paying the dividend: (i) 1% if the dividends are paid by a company the shares of which are substantially and regularly traded on a stock exchange; (ii) 5% if the beneficial owner of the dividends is a public body; and (iii) 10% in other cases.
117	Tax Treaty with Romania has been renegotiated but not yet in force. Withholding tax for dividends 5% or 0% when beneficial owner holds 10% of participations or pension plan. Withholding tax for interests and royalties maximum of 3%.
118	The zero rate applies to interest on government securities.
119	The dividends exemption applies if the recipient company has held directly at least 10% of the capital in the Spanish company, during 1 year prior to the distribution. The zero rate applies if royalties are paid between associated companies, provided that: (i) the companies are affiliated by a direct holding of at least 25% for at least 2 years or are both held by a third company which has directly a minimum holding of 25% in the capital of both companies for at least 2 years, (ii) under any tax treaty with a third state none of the companies is resident in that third state, and (iii) all companies are subject to corporation tax without being exempted on royalty payments and each adopts the form of a limited company.
120	Dividends: The 5% rate applies if the recipient company holds directly at least 10% of the capital in the Spanish entity. The zero rate applies if the recipient company receives dividends by a pension fund or by a company that has owned at least 80% of the capital of the Spanish entity that distributes them for a period of 12 months prior to the date on which the right to receive the dividends arises and that is not adversely affected by the new limitation on benefits ("LOB") clause (article 17 of the treaty).
121	The 5% rate is levied if the beneficial owner is a company that directly holds at least 25% of the capital of the company paying the dividends and has invested more than EUR 250,000 or the equivalent amount in any other currency, in the company paying the dividends. Otherwise, a 10% rate is levied.



Footnotes	
122	No WHT is levied on interest if the recipient is the beneficial owner and: (i) it is the other contracting state, its central bank, or its political subdivisions or local entities; (ii) the payer is a contracting state or its political subdivisions or local entities; (iii) the interest arises from a loan or credit granted by a contracting state, its political subdivisions, local entities, or export credit agency or it is granted, guaranteed, or insured by them; or (iv) the recipient is a public financial institution. An 8% WHT rate is levied if the beneficial owner is a resident of the other contracting state.
123	A 5% WHT rate is levied if the beneficiary owner is resident in the other state and the gross amount of the fees paid for the use or concession of use of computer programs, patents, trademarks, designs, plans, secret formulas or procedures, or for information relating to industrial, commercial, or scientific experience. Otherwise, if the beneficiary owner is resident in the other state a 10% rate is levied.
124	No WHT is levied on interest if the recipient of the other contracting state is the beneficial owner and: (i) it is the other contracting state, its central bank, or one of its political subdivisions or local entities; (ii) the payer is a contracting state or one of its political subdivisions or local entities or public organsations; (iii) the interest arises from a loan or credit granted or guaranteed by a contracting state or one of its political subdivisions, or export credit agencies or granted, guaranteed, or insured by any of them; (iv) the recipient is a financial institution; (v) the interest is paid in relation to the credit acquisition of any equipment, goods, or services; or (v) the recipient is a qualifying pension fund in a contracting state. Otherwise, the WHT rate is 5%, provided that the beneficial owner is a resident of the other contracting state.



17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Sub-Category	Description of Request
Financial Statements	Balance sheet and income statement for the years open to review by the tax authorities.
Financial Statements	Trial balance with the greatest amount of detail available for the years open to review.
Financial Statements	Annual accounts for the years open to review by the tax authorities.
Corporate Income Tax	Corporate income tax returns for the fiscal years open to review (forms 200 and/or 201).
Corporate Income Tax	Self-assessment returns for prepayments (forms 202 or 218) for the fiscal years open to review.
Corporate Income Tax	Proposed corporate income tax self-assessment for the fiscal years open to review.
Corporate Income Tax	Detail of the adjustments made to the tax base and the corporate income tax withholdings made in the fiscal years open to review.
Corporate Income Tax	Detail of the procedures for calculation and settlement of corporate income tax in the fiscal years open to review.
Corporate Income Tax	Table of past timing adjustments available for recovery, indicating the applicable period.
Corporate Income Tax	Plans or agreements executed with the public authorities: advance pricing proposals for transactions performed between related persons or entities; R&D expenses, management fees and thin capitalisation ratio; special depreciation plans; extraordinary repair plans; and applications for specific timing of recognition methods.
Personal Income Tax/ Nonresident Income Tax	Tax payment document for withholdings and prepayments made on earned income (form 111) in the fiscal years open to review.
Personal Income Tax/ Nonresident Income Tax	Annual summary returns on withholdings and prepayments (form 190) in the fiscal years open to review; disk or electronic format of the aforementioned form 190.
Personal Income Tax/ Nonresident Income Tax	Tax payment documents in relation to the self-assessment returns for withholdings made from income from movable capital in the fiscal years open to review (form 123).
Personal Income Tax/ Nonresident Income Tax	Annual summary self-assessment returns for withholdings from income from movable capital in the fiscal years open to review (form 193 or 194).
Personal Income Tax/ Nonresident Income Tax	Tax payment documents in relation to the self-assessment returns for withholdings made from lease payments in the fiscal years open to review (form 115).
Personal Income Tax/ Nonresident Income Tax	Annual summary self-assessment returns for withholdings made from lease payments in the fiscal years open to review (form 180).
Personal Income Tax/ Nonresident Income Tax	Pay statements relating to some of the Company employees, as well as the notifications of their family situation in the fiscal years open to review.
Personal Income Tax/ Nonresident Income Tax	Detail of compensation in kind granted to Company employees, including the valuation and calculation procedure for the purposes of calculating the withholdings.
Sub-Category	Description of Request



Sub-Category	Description of Request
Personal Income Tax/ Nonresident Income Tax	Tax payment documents in relation to the self-assessment returns for withholdings made from payments to non-resident employees in the fiscal years open to review (forms 210, 215 and 216).
Personal Income Tax/ Nonresident Income Tax	Annual summary self-assessment returns for withholdings made from payments to non-resident employees in the fiscal years open to review (form 296).
VAT	Annual VAT returns for the fiscal years open to review (forms 390).
VAT	Tax payment documents in relation to the relevant VAT returns (forms 300, 303, 320, 330 or 332, and, where applicable, 322 and 353) in the fiscal years open to review.
VAT	Ten (10) invoices issued by the Company and ten (10) invoices received by the Company.
VAT	Ten (10) self-charge tax invoices issued by the Company relating to intra-Community acquisitions of goods or the reverse-charge mechanism.
VAT	Annual statements of transactions with third parties in the fiscal years open to review (form 347).
Transfer and Stamp Tax	Transfer and stamp tax assessments in the fiscal years open to review.
Real Estate Tax	Real estate tax receipts for the current year and supporting documents for payment in the fiscal years open to review.
Tax on Business Activities	Notification of registration, removal from the register, and modifications for the purposes of the tax on business activities payable by the Company in relation to its centres of activity.
Tax on Business Activities	Receipts for the tax on business activities for the current year and documents for payment in the fiscal years open to review.
Tax on Business Activities	Tax on business activities form 848 for notification of net revenue in the fiscal years open to review.
Group of Companies (for parent companies of a consolidated tax group)	Notification to the public authorities of the option to take the consolidated tax treatment; form 036 for election to take the consolidated tax treatment.
Group of Companies (for parent companies of a consolidated tax group)	Notification to the public authorities of the members of the tax group in the fiscal years open to review.
Group of Companies (for parent companies of a consolidated tax group)	Consolidated corporate income tax returns in the fiscal years open to review (form 220).
Group of Companies (for parent companies of a consolidated tax group)	Consolidated self-assessment returns for consolidated prepayments in respect of corporate income tax (form 222) in the fiscal years open to review.
Miscellaneous	List of all of the Company's outstanding tax debts of which it is aware.
Sub-Category	Description of Request



Sub-Category	Description of Request
Miscellaneous	Annual statements of contributions to plans, pension funds and welfare mutual insurance companies (form 345) in the fiscal years open to review.
Miscellaneous	Notices of audit by the tax authorities; the relevant official notices in connection with the audit.
Miscellaneous	Most recent notices of assessment by auditors received for each tax.
Miscellaneous	Opinion of the Company's tax advisors on proceedings awaiting a final ruling.
Miscellaneous	Judgments, agreements; orders, rulings handed down in relation to the Company as a result of audits (agreements to stay tax debts, etc.).

SPAIN

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SWEDEN

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SWEDEN

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1. INTRODUCTION

a. Forms of Legal Entity

The main legal entities used are limited liability companies ("aktiebolag") or limited liability partnerships ("handelsbolag" or "kommanditbolag"). Limited liability companies are fully taxable legal persons (opaque) while partnerships are tax transparent.

b. Taxes, Tax Rates

The corporate income tax rate is currently 20.6% (from 2021). For individuals, the tax rate differs for salary income and capital income. The tax on salary income is progressive (municipal and state tax up to approx. 57%) while the tax rate on capital income is 25/30%.

As a starting point, the income on the tax return follows the financial statements. However, separate tax rules apply and thus there are differences between the profit according to the accounts and the taxable result.

It should be noted that there are special types of entities, subject to specific kind of taxation (e.g. yield tax). This includes insurance companies, pension companies and certain investment companies.

2. RECENT DEVELOPMENTS

Sweden has implemented the EU's Anti-Tax Avoidance Directive ("ATAD2") meaning an introduction of, for example, general interest limitation rules (EBITDA model) and rules on hybrid mismatches.

There are also several Governmental committees working on new tax reforms. For instance, a new Withholding Tax Act was proposed during 2020 and is expected to enter into force in 2024. While mostly formal changes are proposed, one significant proposal is that exemption from withholding tax is examined in relation to the beneficial owner, not the registered owner (i.e. adjustment to tax treaties).

a. Covid-19 aid and reliefs

The Swedish Government has introduced several measures, both reliefs and direct aid, due to the Covid-19 pandemic. Due to the removal of many restrictions in February 2022, some of these measures are being phased out. The major remaining measures are:

- A possibility to delay some payments of withheld wage tax, social security contributions and VAT. A respite of payment may be granted for up to one year initially, depending on application date, with the possibility of an additional one-year extension. A further extension of up to 36 months (maximum total of 60 months) can be granted but will require an instalment plan.
- Cash support to companies with a significant revenue drop in the period December 2021 to February 2022. The last day to apply is 31 March 2022 for December-January and 13 April 2022 for February.
- Employers can receive partial reimbursement for their costs for sick pay in the period December 2021 through March 2022.

3. SHARE ACQUISITION

a. General Comments

An acquisition in Sweden is more often a share purchase rather than a purchase of the company's assets, since capital gains on the sale of shares may be tax exempt (participation exemption).

b. Tax Attributes

A change of ownership to a company with losses carried forward may trigger certain limitations in relation to the losses, namely:

- The amount of losses carried forward that will survive (the "amount limitation");
- The right to deduct losses carried forward against group contributions from companies within the acquiring group (the "group contribution limitation"); and
- A new restriction will apply under which losses carried forward will forfeit if acquisition of the losses has been the predominant reason for the change in ownership. Note that this restriction has not yet been formally enacted, but through a special exemption in the Swedish constitution will have retroactive effect from 10 June 2021 once enacted. The Swedish parliament is expected to enact the restriction during the spring of 2022.

It should be noted that the limitations only apply to tax losses carried forward. Thus, a tax loss incurred during the year in which the change in ownership takes place is not affected by these rules.

c. Tax Grouping

Each company within a group constitutes a separate taxable entity. There is no taxation on the consolidated level of a Swedish group of companies.

However, specific rules permit the transfer of profits between companies within wholly owned domestic groups ("group contributions") which have the effect that taxation of a consolidated income is effectively achievable. Group contributions are tax-deductible for the payer and taxable for the recipient provided the requirements are met.

An important requirement for group contributions is that the group holds more than 90% of the shares during the entire financial year (or since the relevant subsidiary commenced business operations). Furthermore, the receiving company must be liable for tax in Sweden, or at least the income to which the group contribution corresponds must be liable to tax in Sweden.

The group contribution rules admit transfer of profits between two group companies; a transfer that is deductible for the transferring company and taxable for the receiving company. Such transfers are reflected as year-end accruals in the annual accounts of both companies and are executed by a transfer of funds. Note that an upwards group contribution requires sufficient distributable reserves in the sending company.

d. Tax Free Reorganisations

There are several methods for tax free reorganisations, (e.g. share-for-share exchange); transfer of a business or line of business at a price below fair market value; and mergers and demergers. The rules are subject to several requirements which must be assessed in detail on a case by case basis.



e. Purchase Agreement

A limited liability company's historical tax liabilities will remain with the company and accordingly, from a practical perspective, be transferred from the Seller to the Buyer group in case of a transfer of shares. According to market practice tax representations and warranties, tax indemnities, and purchase price reductions are negotiated between the Seller and Buyer depending on the extent and result of any tax due diligence work carried out. Terms relating to tax matters in most cases only extend for the two previous fiscal years, equal to the Swedish Tax Agency's initial period of reassessment. Terms relating to tax exposures may extend to six years, equal to the ultimate statute of limitation in tax matters which applies if, for example incorrect or insufficient information has been provided in a tax return.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

Sweden does not levy transfer taxes on shares.

g. "Purchase accounting" applicable to share acquisitions

This section is left intentionally blank.

h. Share Purchase Advantages

Shares qualifying as capital assets in both Swedish and equivalent non-Swedish limited liability companies are covered by the Swedish participation exemption regime, provided the shares are held by another Swedish limited liability company (or a non-Swedish equivalent based within the EEA) and the shares are unlisted, or, if listed, the total stake in the company exceeds 10% of the total votes in the company or is due to organisational reasons. Listed shares must be held for at least 12 months. The participation exemption effectively means that shares can be transferred below the shares' fair market value, which may be advantageous in a restructuring process.

Furthermore, a reduced tax rate of 25% applies to capital gains or dividends distributions to natural persons on unlisted shares instead of the statutory tax rate of 30%.

i. Share Purchase Disadvantages

By acquiring shares instead of assets, a tax step-up is normally not granted for the Buyer if the shares qualify under the participation exemption. Additionally, according to market practice incorporated real property is usually sold at a discount of the market value to compensate for the loss of the tax step-up.

4. ASSET ACQUISITION

a. General Comments

A purchase of business (assets) usually results in an increase of the tax base of those assets for income tax and depreciation purposes, (i.e step-up in value), although a corresponding income is likely to be taxable for the seller. In addition, historical tax liabilities generally remain with the selling company and are not transferred with the assets. If the company selling the assets (or a group company) has tax losses carried forward, a gain following the transfer of assets may be utilised against the tax losses either directly or through group contributions.



b. Purchase Price Allocation

There are no statutory rules on how the purchase price should be allocated between the purchased assets, although it is recommended that the total consideration be apportioned among the assets acquired to the greatest extent possible. The remaining part of the consideration that cannot be allocated is generally booked as goodwill for the acquiror. Depreciation on asset goodwill is generally tax deductible.

c. Tax Attributes

Classification of assets (fixed assets, current assets, etc) are generally made in the hands of the acquiring entity, regardless of the classification in the hands of the selling entity.

d. Tax Free Reorganisations

Assets may be transferred below fair market value within a group (if requirements for group contributions are met) or if the assets constitute the selling entity's entire business or a separate line of business. In such a transfer, the tax value of the assets in the hands of the Seller is taken over by the acquiring company (assuming the consideration amounts to the asset's tax base value).

e. Purchase Agreement

Assets may be transferred below fair market value (usually correlating to the book value) if the asset qualifies and if the entire business or a separate business line is transferred. An advance tax ruling can be received from the Swedish Board of Advance Tax Rulings. Special terms relating to an advance tax ruling are sometimes included in the purchase agreement.

f. Depreciation and Amortisation

Goodwill paid for a business in an asset deal may be depreciated. The rules for depreciation of such "asset goodwill" are the same as for depreciation of machinery and equipment.

The two main depreciation methods are the declining-balance method, where a maximum depreciation allowance of 30% of the aggregated book value is allowed, and the straight-line method, where assets are depreciated by 20% annually.

Most tangible and intangible assets may be depreciated for tax purposes under the same rules as machinery and equipment. However, land and shares, etc. are non-depreciable from a tax perspective.

Buildings are depreciated straightline by approximately 2-5% annually, depending on the nature of the building.

g. Transfer Taxes, VAT

Normal VAT rules apply in an asset deal. However, if all assets are transferred (or an independent part of a business) the rules on transfer of a business as a going concern may apply which has the effect that no VAT is due on the assets sold even if the assets would have been subject to VAT if sold separately.

Direct transfers of real property are subject to stamp duty, which varies depending on the type of Buyer (4.25% for legal persons).



h. Asset Purchase Advantages

Asset purchases typically result in a step-up in the depreciable value of the assets for the Buyer, provided that the assets are not transferred below fair market value. Furthermore, an asset purchase does not transfer historical tax liabilities from the Seller to the Buyer.

i. Asset Purchase Disadvantages

An asset acquisition does not release the Seller from historical tax liabilities associated with the transferred assets. Asset purchases at fair market value also result in taxable income for the Seller.

As noted above, a direct transfer of real property is subject to stamp duty which varies depending on the type of Buyer (4.25% for legal persons).

5. ACQUISITION VEHICLES

Acquisition vehicle depends on the case by case analysis but acquisition through a Swedish limited liability company is most common.

6. ACQUISITION FINANCING

a. General Comments

Bringing funds into Sweden is normally uncomplicated, e.g. no currency restrictions.

b. Equity

Equity financing is repatriated through dividends (non-deductible) or share buy-back, etc.

c. Debt

No limitation on use of debt, e.g. no specific thin capitalisation rules from a tax perspective. Note that certain minimum requirements apply with respect to statutory equity from a company law perspective.

Somewhat simplified net interest expenses are deductible up to 30% of tax adjusted EBITDA (de minimis rule of SEK5 million of net interest deductions, calculated on a Swedish group level). In addition, interest to related parties is as a main rule non-deductible although certain exceptions apply.

d. Hybrid Instruments and Entities

Sweden has specific rules on certain so called hybrid instruments and hybrid entities in accordance with ATAD2.

According to these rules deduction of costs relating to such instruments or entities may be denied in certain situations, inter alia, if the corresponding income for the recipient is not taxable due to a difference of classification on the instrument or entity. The rules apply to a variety of situations and an assessment is required on a case by case basis.



e. Earn-outs

Depending on the specific context, an earn-out may be subject to salary taxation for the Sellers, (e.g. if active Sellers are given a higher price than passive).

7. DIVESTITURES

Divestitures can arise in a number of situations, e.g. sale of shares or businesses, swap agreements, repayment of loans, etc. Sweden applies a uniform taxation of capital incomes, meaning that capital gains (including dividend distributions) are normally taxed with the same tax rates for the same kind of subjects. In relation to shares, etc. a divestiture may be tax exempt under the participation exemption regime.

Shares qualifying as capital assets in both Swedish and equivalent non-Swedish limited liability companies are covered by the Swedish participation exemption regime, provided the shares are held by another Swedish limited liability company (or a non-Swedish equivalent based within the EEA) and the shares are unlisted, or, if listed, the total stake in the company exceeds 10% of the total votes in the company or is due to organisational reasons. Listed shares must be held for at least 12 months. The participation exemption effectively means that shares can be transferred below the shares' fair market value, which may be advantageous in a restructuring process.

Sweden does only impose WHT on cross-border dividends (at a rate of 30% gross). However, there are several exemptions and or lower rates to WHT, e.g. under domestic law, EU-law, and tax treaties.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

Sweden operates a worldwide system of taxation.

b. CFC Regime

The Swedish Controlled Foreign Company ("CFC") regime applies if foreign-held entities are low-taxed (certain exceptions according to a so called white list and for entities within the EEA).

c. Foreign branches and partnerships

Foreign partnerships (tax transparent) are in many ways taxed in the same way as Swedish partnerships (certain exceptions apply). Income in foreign branches also taxable in Sweden in general.

d. Cash Repatriation

Cash can be repatriated through e.g. dividend distributions, capital gains and upstream loans. Only dividend distributions are subject to WHT. Dividends are normally tax exempt for corporate shareholders covered by the participation exemption (assuming absence of abuse).

Interest expenses on loans are subject to both EBITDA based and targeted interest limitation restrictions, which may limit the deductible interest costs. . The EBITDA based interest limitation limits tax deductions of net interest expenses to 30% of a company's EBITDA calculated for tax purposes. The targeted rules apply to all intragroup interest bearing debt and limits deductions e.g. where debt was allocated to a Swedish entity in order to exclusively or almost exclusively ensure a tax advantage on group level. Upstream loans with beneficial owners outside of the EEA is subject to stricter restrictions. All upstream loans need to be assessed on a case by case basis.

It should be noted that the Court of Justice of the European Union has in a recent case (C-484-19) ruled that the Swedish former targeted interest limitation rules (in force from 2013 to 2018) constitute non-justified restriction on freedom of establishment.

Sweden also has specific rules on certain so called hybrid instruments and hybrid entities in accordance with ATAD2. According to these rules deduction of costs relating to such instruments or entities may be denied in certain situations, inter alia, if the corresponding income for the recipient is not taxable due to a difference of classification on the instrument or entity. The rules apply to a variety of situations and an assessment is required on a case by case basis.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special rules for real property, including shares of real property trading companies

There are specific rules for so called real property trading companies. For example, shares in a real property trading company do not qualify under the Swedish participation exemption.

b. CbC and Other Reporting Regimes

The Swedish Country by Country reporting ("CbCr") rules are based on the OECD standards and EU directives. Multinational groups with a total turnover of at least SEK7 billion, or a corresponding amount in foreign currency, are subject to the CbCr rules. Generally, this means that the ultimate parent entity is required to file a CbC report for the entire group in the jurisdiction where it resides. Swedish parent companies of groups exceeding the threshold are required to file the CbCr report with the Swedish Tax Agency within 12 months of the end of the financial year covered by the report, the "reporting year". If the ultimate parent entity resides in a jurisdiction that has not adopted CbCr filing requirements or has, but is not exchanging information with the Swedish Tax Agency, a Swedish entity or permanent establishment or branch may be obligated to file the report in Sweden.

All Swedish companies that are part of a group that is obliged to submit a CbCr in Sweden or in another country must annually notify the Swedish Tax Agency ("STA"). The accounting principles of the parent company determine whether a Swedish company is part of the multinational group. Swedish companies include unlimited taxable companies, trading companies and foreign companies with a permanent establishment {"PE") in Sweden. The notification (that a Swedish company is required to report or which a foreign company in the group is required to report) must be submitted to the STA before the end of the reported financial year. If the CbC report and notification is not submitted to the STA within the time limit, sanctions and fines may apply until submission.

In Sweden, there is an obligation to prepare transfer pricing ("TP") documentation consisting of a Master file and a Local file. The Swedish rules are adapted to the OECD standards in Chapter V of the TP Guidelines. However, there are exceptions for small and medium-sized enterprises. The exemption applies to companies that the year before the tax year are part of a group with less than 250 employees and either have a turnover of no more than SEK450 million or a balance sheet total not exceeding SEK400 million. The TP documentation requirements should be calculated based on consolidated financial data for the entire group. Please note that even if the exemption is applied, the companies must follow the arm's length principle.



In addition, there is an exception for including detailed documentation of so called insignificant transactions in the Local file. Transactions below SEK5 million are always considered insignificant. However, this exception generally does not apply to transactions involving intangible assets.

The Master file must be prepared no later than when the parent company of the group must submit the income tax return. The Local file shall be prepared when the Swedish company must submit its income tax return. The TP documentation shall be prepared in Swedish, Danish, Norwegian or English and shall be submitted to the STA upon request. Generally, the taxpayer is granted 30 days to submit the documentation. The TP documentation must be kept for seven years. There are no specific TP penalties, however, general penalties apply. Generally, a tax surcharge at a rate of 40% on the additional tax imposed is applied. TP documentation can however affect whether incorrect information has been deemed to have been submitted and if there are reasons for full or partial tax surcharge reduction.

10. TRANSFER PRICING

Sweden generally follows OECD transfer pricing guidelines. In Sweden, cross-border transactions with related parties must comply with the arm's length principle, i.e. prices and other terms between related companies must correspond to what independent companies had agreed on in a corresponding situation. The OECD Guidelines serve as a guide to establish whether a price between related parties is arm's length. All of the transfer pricing methods described in the Guidelines are approved.

The arm's length principle is expressed in the Swedish so called correction rule. The rule means that the business result is corrected if the result has become lower due to terms deviating from terms that would have been agreed between independent parties. To be covered by the correction rule, the parties must be related and the party receiving the higher result not be taxable in Sweden. The STA bears the burden of proof that a transaction is not arm's length.

See Section 9.b. above for further information regarding documentation requirements.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

There are no specific rules in connection with post-acquisition integration in Sweden. However, Sweden has a fairly generous participation exemption regime and has implemented, e.g. the EU Merger Directive. Subject to certain requirements assets and business operations can also be transferred within a group at tax base values (as opposed to at fair market value) which can be advantageous in terms of integrating an acquired business into an existing group.

12. OECD BEPS CONSIDERATIONS

Several BEPS Action Points have been implemented in Swedish tax law. The definition of permanent establishment has however not been changed or broadened.

It should be noted that the Swedish Tax Agency and courts generally follow the OECD Model Commentary very closely in the interpretation of tax treaties. This includes commentaries made after the tax treaty in question was entered into.

13. ACCOUNTING CONSIDERATIONS

This section is left intentionally blank.



14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Cash is distributed either as dividends or repayment of debt or payment of interest. Repatriation of cash is also possible through redemption of shares (from a legal perspective treated the same as dividends).

b. Substance Requirements for Recipients

Exemption from dividend withholding tax requires certain substance at the level of the recipient (although the level and definition of substance is not clear due to lack of case law).

c. Application of Regional Rules

Sweden is part of the EU and thus EU directives have been implemented in Sweden. EU case law is relevant for Swedish tax purposes.

d. Tax Rulings and Clearances

Potential exposures can be confirmed in a binding tax ruling from an independent board. As an alternative, a non-binding letter response can be requested from the Swedish Tax Agency.

15. MAJOR NON-TAX CONSIDERATIONS

This section is left intentionally blank.

16. APPENDIX I – TAX TREATY RATES

Jurisdiction	Dividends %	Interest* %	Royalties** %	Footnote Reference
Albania	5 / 15	5	5	[1]
Argentina	10 / 15	12.5	3 / 5 / 10 / 15	[2]
Armenia	0 / 5 / 15	5	5	[3]
Australia	15	10	10	
Austria	0 / 5 / 10	0	0 / 10	[4] [5]
Azerbaijan	5 / 15	8	5 / 10	[6] [7]
Bangladesh	10 / 15	10 / 15	10	[8] [9]
Barbados	5 / 15	5	0 / 5	[10]
Belarus	0 / 5 / 10	5	3 / 5 / 10	[11] [12]
Belgium	0 / 5 / 15	10	0	[13]
Bolivia	0 / 15	15	15	[14] [15]
Bosnia and Herzegovina	5 / 15	0	0	[16]
Botswana	15	15	15	
Brazil	15 / 25	15 / 25	15 / 25	[17] [18] [19]
Bulgaria	0 / 10	0	0 / 5	[20]
Canada	5 / 10 / 15	0 / 10	0 / 10	[21] [22] [23]
Chile	5 / 10	5 / 15	5 / 10	[24] [25] [26]
China	5 / 10	10	10	[27]
Croatia	5 / 15	0	0	[28]
Cyprus	0 / 5 / 15	10	0	[29]
Czech Republic	0 / 10	0	0 / 5	[30] [31]
Denmark	0 / 15	0	0	[32]
Egypt	5 / 20	15	14	[33]
Estonia	0 / 5 / 15	0 / 10	5 / 10	[34] [35] [36]
Faroe Islands	0 / 15	0	0	[37]
Finland	0 / 15	0	0	[38]
France	0 / 15	0	0	[39]
Gambia	0 / 5 / 15	5 / 15	5 / 12.5	[40] [41] [42]

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Jurisdiction	Dividends %	Interest* %	Royalties** %	Footnote Reference
Georgia	0 / 10	0	0	[43]
Germany	0 / 15	0	0	[44]
Hungary	5 / 15	0	0	[45]
Iceland	0 / 15	0	0	[46]
India	10	10	10	
Indonesia	10 / 15	10	10 / 15	[47] [48]
Ireland	0 / 5 / 15	0	0	[49]
Israel	5 / 15	25	0	[50]
Italy	0 / 10 / 15	15	5	[51]
Jamaica	10 / 22.5	12.5	10	[52]
Japan	0 / 10	0	0	[53]
Kazakhstan	5 / 15	10	10	[54]
Kenya	15 / 25	15	20	[55]
Korea, Republic of	10 / 15	10 / 15	10 / 15	[56] [57] [58]
Latvia	0 / 5 / 15	0 / 10	5 / 10	[59] [60] [61]
Lithuania	0 / 5 / 15	0 / 10	5 / 10	[62] [63] [64]
Luxembourg	0 / 15	0	0	[65]
Macedonia	0 / 15	10	0	[66]
Malaysia	0 / 15	10	8	[67]
Malta	0 / 15	0	0	[68]
Mauritius	0 / 15	0	0	[69]
Mexico	5 / 15	10 / 15	10	[70] [71]
Montenegro	5 / 15	0	0	[72]
Namibia	0 / 5 / 15	0 / 10	5 / 15	[73] [74] [75]
Netherlands	0 / 15	0	0	[76]
New Zealand	15	10	10	
Nigeria	7.5 / 10	7.5	7.5	[77]]
Norway	0 / 15	0	0	[78]
Pakistan	15	15	10	[79]

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Jurisdiction	Dividends %	Interest* %	Royalties** %	Footnote Reference
Philippines	10 / 15	10	15	[80]
Poland	0 / 5 / 15	0	5	[81]
Romania	0 / 10	10	10	[82]
Russia	5 / 15	0	0	[83]
Saudi Arabia	5 / 10	0	5 / 7	[84][85]
Serbia	5 / 15	0	0	[86]
Singapore	10 / 15	10 / 15	0	[87] [88]
Slovakia	0 / 10	0	0 / 5	[89] [90]
Slovenia	0 / 5 / 15	0	0	[91]
South Africa	5 / 15	0	0	[92]
Spain	0 / 10 / 15	15	10	[93]
Sri Lanka	15	10	10	
Switzerland	0 / 15	0	0	[94]
Taiwan	10	10	10	[95]
Tanzania	15 / 25	15	20	[96]
Thailand	15 / 20	10 / 25	15	[97] [98]
Trinidad and Tobago	10 / 20	10 / 15	20	[99]
Tunisia	15 / 20	12	5 / 15	[100] [101]
Turkey	15 / 20	15	10	[102]
Ukraine	0 / 5 / 10	0 / 10	0 / 10	[103] [104] [105]
United Kingdom	0 / 5 / 15	0	0	[106]
United States	5 / 15	0	0	[107]
Venezuela	5 / 10	10	7 / 10	[108] [109]
Vietnam	5 / 10 / 15	10	5 / 15	[110] [111]
Zambia	5 / 15	10	10	[112]
Zimbabwe	15 / 20	10	10	[113]

* Sweden does not impose any withholding tax (WHT) on interest payments. Many treaties contain provisions regarding beneficial ownership or ownership thresholds in order to qualify for lower tax rates. When surveying this list, note that the treaties often state that unless the beneficial ownership or ownership thresholds criteria are met, the local rate applies.

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** Sweden does not impose any WHT on royalty payments. However, royalty payments from tangible or intangible assets may constitute a PE in Sweden regardless of any other business activities and royalty payments can therefore be liable to Swedish corporate income tax. No taxation will take place if the recipient company is resident in another EU member state, in accordance with the Interest and Royalties Directive (2003/49/EC) (the "Directive") and one of the companies hold at least 25% of the capital in the other or, if two companies are concerned, at least 25% of the capital in both companies are held by a third company within the European Union. Indirect participations do not benefit from the legislation. Note that both the payer and the recipient must be legal entities covered by the Directive, that the payer must be subject to tax in Sweden and that the recipient must be subject to one of the taxes covered by the Directive (or a similar tax introduced after 26 June 2003) and receive the payment for its own benefit. Note also that many treaties contain provisions regarding beneficial ownership to qualify for lower tax rates. When surveying this list, note that the treaties often state that unless the beneficial ownership criteria is met, local rate applies.

Footnotes	
1	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.
2	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.
3	Dividends – The 0% rate applies if a foreign company (except for partnerships) owns at least 25% of voting rights in the paying company for at least two years and the dividends are tax exempt in the hands of a foreign company. The 5% rate applies if a foreign company (except for partnerships) owns at least 10% of the paying company's capital or voting rights.
4	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital. Full exemption from WHT may be applicable under the EU Parent Subsidiary Directive (2011/96/EU).
5	Royalty – The 10% rate applies only to royalty payments paid to a recipient that holds more than 50% of the capital of the payer company.
6	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum stake of 20% in the paying company's capital and the participation exceeds €200,000 or the equivalent in SEK or Azerbaijani manat.
7	Royalty – The lower rate applies to royalties payable for the use of any patent, trademark, design or model, plan, secret formula or process, or for industrial, commercial, or scientific information.
8	Dividends – The lower rate applies if a foreign company (except for partnerships) owns directly or indirectly at least 10% of the paying company's capital.
9	Interest – The lower rate applies if the interest is received by a bank or other credit institution, including insurance companies.
10	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 10% of the paying company's capital.
11	Dividends – The 0% rate applies if a foreign company (except for partnerships) owns directly 100% of the paying company's capital, and the profits out of which the dividends are paid have been derived from industrial or manufacturing activities or from agriculture, forestry, fishing or tourism (including restaurants and hotels). The 5% rate applies if a foreign company (except for partnerships) directly holds a minimum of 30% of the paying company's capital.
12	Interest – The lower rate applies to interest paid in a bank loan if the objective of the loan is to promote exports or development in the other contracting state, or paid in connection with the sale of merchandise or industrial, commercial or scientific equipment to an enterprise on credit.



Footnotes	
13	Dividends – The 5% rate applies if a foreign company directly holds a minimum of 25% of the paying company's capital. Full exemption from WHT may be applicable under the EU Parent Subsidiary Directive (2011/96/EU).
14	Dividends – The lower rate applies if a foreign company (except for partnerships) owns directly or indirectly at least 25% of the paying company's capital.
15	Interest – The lower rate applies to interest paid in connection with the sale of merchandise or industrial, commercial, or scientific equipment by an enterprise to another enterprise on credit.
16	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the voting rights in the paying company.
17	Dividends – The lower rate applies if the recipient is a company (excluding a partnership). The tax treaty between Brazil and Sweden has been renegotiated but is not in force.
18	Interest – The higher rate applies when the recipient is either a partnership or a physical person. The tax treaty between Brazil and Sweden has been renegotiated but is not in force.
19	Royalty – The higher rate applies for royalty payments for trademarks. The tax treaty between Brazil and Sweden has been renegotiated but is not in force.
20	Dividends – Full exemption from WHT applicable in accordance with the EU Parent Subsidiary Directive (2011/96/EU).
21	Dividends – The lower rate of 5% applies if a foreign company directly holds a minimum of 25% of the paying company's capital, or at least 10% of the voting rights in the paying company. The 10% rate applies in certain cases of dividends paid by non-resident owned investment corporations.
22	Interest – The lower rate applies to interest paid on loans connected to the sale or furnishing of equipment, merchandise or services on credit, and interest paid to certain types of pension. The lower rate does not apply to interest between associated companies.
23	Royalty – The lower rate applies to copyright royalties and similar payments for literary, dramatic, or other artistic work, excluding film royalties, and commercial or scientific experience.
24	Dividends – The lower rate applies if a foreign company owns directly or indirectly at least 20% of the voting rights in the paying company.
25	Interest – Interest paid to a bank or insurance company and interest on trade receivables for machinery and equipment is charged a 4% WHT. A 5% rate applies if such interest is paid as part of an arrangement involving back-to-back loans or a similar arrangement. A 4% rate also applies t0 interest paid to certain other companies primarily engaged in a lending or finance business, and to interest paid to other enterprises if in the three taxable years preceding the taxable year in which the interest is paid – (i) the enterprise derives more than half of its liabilities from the issuance of bonds in the financial markets or from taking deposits at interest, and (ii) more than half of the assets of the enterprise consist of debt-claims against non-associated company or person. A 10% rate applies if such interest is paid as part of an arrangement involving back-to- back loans or a similar arrangement. A 5% rate applies to interest derived from bonds or securities that are regularly and substantially traded on a recognized securities market.
26	Royalties – The lower rate applies to royalties on industrial, commercial, or scientific equipment.
27	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.
28	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the voting rights in the paying company. Full exemption from WHT may be applicable under the EU Parent Subsidiary Directive (2011/96/EU).



Footnotes	
29	Dividends – The 5% rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital. Full exemption from WHT may be applicable under the EU Parent Subsidiary Directive (2011/96/EU).
30	Dividends – The lower rate applies if a foreign company directly holds a minimum of 25% of the paying company's capital, or under the EU Parent Subsidiary Directive (2011/96/EU).
31	Royalties – The lower rate applies to royalties from copyrights of literary, artistic or scientific work.
32	Dividends – The lower rate applies to recipients which are companies (except for partnerships). Full exemption from WHT is also applicable in accordance with the EU Parent Subsidiary Directive (2011/96/EU).
33	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.
34	Dividends – The 5% rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital. Full exemption from WHT may be applicable under the EU Parent Subsidiary Directive (2011/96/EU).
35	Interest – The lower rate applies to interest paid in connection with the sale of merchandise or industrial, commercial, or scientific equipment by an enterprise to another enterprise on credit. The lower rate does not apply to sales or loans/debts between related persons.
36	Royalties – If the receiver is the beneficial owner of the royalty, the withholding tax may not exceed 5% in the case of royalties from the rights to use industrial, commercial or scientific equipment
37	Dividends – The lower rate applies if a foreign company directly holds a minimum of 10% of the paying company's capital.
38	Dividends – The lower rate applies if a foreign company directly holds a minimum of 10% of the paying company's capital. Full exemption from WHT is also applicable in accordance with the EU Parent Subsidiary Directive (2011/96/EU).
39	Dividends – The lower rate applies if a foreign company (except for partnerships) owns directly or indirectly at least 10% of the paying company's capital. Full exemption from WHT is also applicable in accordance with the EU Parent Subsidiary Directive (2011/96/EU).
40	Dividends – The 0% rate applies if a foreign company (except for partnerships) owns directly or indirectly at least 80% of the paying company's capital. The 5% rate applies if a foreign company (except for partnerships) owns directly or indirectly at least 15% of the voting rights in the paying company.
41	Interest – Lower rate applies if the interest is derived from sales on credit of industrial, commercial or scientific equipment unless the sale is conducted between closely related persons/entities.
42	Royalties – Lower rate applies if the royalty is derived from patent, secret recipes or method of production or for information of industrial, commercial or scientific experience.
43	Dividends – 0% rate applies if the beneficial owner of the dividends owns 10% or more of the capital or voting rights of the payer.
44	Dividends – The lower rate applies if a foreign company (except for partnerships) owns directly or indirectly at least 10% of the capital or voting rights in the paying company. Full exemption from WHT may be applicable under the EU Parent Subsidiary Directive (2011/96/EU).
45	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital. Full exemption from WHT may be applicable under the EU Parent Subsidiary Directive (2011/96/EU).
46	Dividends – The lower rate applies if a foreign company directly holds a minimum of 10% of the paying company's capital.



Footnotes	
47	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.
48	Royalties – If the receiver is the beneficial owner, the 10% tax rate applies in cases where the royalties are derived from the right to use industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience. The 15% rate applies for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process.
49	Dividends – The 5% rate applies if a foreign company directly holds a minimum of 10% of the voting rights in the paying company. Full exemption from WHT may be applicable under the EU Parent Subsidiary Directive (2011/96/EU).
50	Dividends – The lower rate applies if a foreign company owns directly or indirectly at least 50% of the voting rights in the paying company.
51	Dividends – The 10% rate applies if a foreign company (except for partnerships) directly holds a minimum of 51% of the paying company's capital. Full exemption from WHT may be applicable under the EU Parent Subsidiary Directive (2011/96/EU).
52	Dividends – The lower rate applies if a foreign company (except for partnerships) owns directly or indirectly at least 25% of the voting rights in the paying company.
53	Dividends – The lower rate applies if a foreign company (except for partnerships) owns directly or indirectly at least 10% of the voting rights in the paying company for at least six months prior to payment of the dividend.
54	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 10% of the voting rights in the paying company
55	Dividends – The lower rate applies if a foreign company owns directly or indirectly at least 25% of the voting rights in the paying company for at least six months prior to payment of the dividend.
56	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.
57	Interest – The lower rate applies on interest paid to a bank on a loan made for a period of more than seven years.
58	Royalty – The lower rate applies on royalties for a patent, trademark, design or model, plan, secret formula or process, or for the use of industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.
59	Dividends – The 5% rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital. Full exemption from WHT may be applicable under the EU Parent Subsidiary Directive (2011/96/EU).
60	Interest – The lower rate applies to interest paid in connection with the sale of merchandise or industrial, commercial or scientific equipment by an enterprise to another enterprise on credit. The lower rate does not apply to sales or loans/debts between related persons.
61	Royalty – The lower rate applies on royalties for the use of industrial, commercial or scientific equipment.
62	Dividends – The 5% rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital. Full exemption from WHT may be applicable under the EU Parent Subsidiary Directive (2011/96/EU).
63	Interest – The lower rate applies to interest paid in connection with the sale of merchandise or industrial, commercial, or scientific equipment by an enterprise to another enterprise on credit. The lower rate does not apply to sales or loans/debts between related persons.
64	Royalty – The lower rate applies on royalties for the use of industrial, commercial, or scientific equipment.



Footnotes	
65	Dividends – The lower rate applies on dividends paid to a company (except for partnerships) that has held directly at least 10% of the capital of the payer company continuously for the past twelve months preceding the date the dividends are paid. Full exemption from WHT applicable in accordance with the EU Parent Subsidiary Directive (2011/96/EU).
66	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.
67	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 10% of the voting rights in the paying company.
68	Dividends – The lower rate applies if a foreign company owns directly or indirectly at least 10% of the voting rights in the paying company, or under the EU Parent Subsidiary Directive (2011/96/EU).
69	Dividends – The lower rate applies if a foreign company (except for partnerships) owns directly or indirectly at least 10% of the voting rights in the paying company.
70	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 10% of the voting rights in the paying company.
71	Interest – Lower rate applies if receiver of the interest is a bank.
72	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the voting rights in the paying company.
73	Dividends – The 0% rate applies if a foreign company (except for partnerships) owns directly more than 50% of the paying company's capital, and residents of Namibia own directly or indirectly more than 50% of the capital of a foreign company that is the beneficial owner of the dividends. The 5% rate applies if a foreign company (except for partnerships) directly holds a minimum of 10% of the paying company's capital.
74	Interest – If the interest is paid to a bank only the country of residence of the beneficial owner may apply withholding tax.
75	Royalties – The lower rate applies if the royalty is derived from any patent, secret formula or process, or for information concerning industrial or scientific experience.
76	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital, or under the EU Parent Subsidiary Directive (2011/96/EU).
77	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 10% of the paying company's capital.
78	Dividends – The lower rate applies if a foreign company directly holds a minimum of 10% of the paying company's capital.
79	Dividends – The lower rate applies if a foreign company owns directly or indirectly at least 25% of the paying company's capital.
80	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.
81	Dividends – The 5% rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital. Full exemption from WHT may be applicable under the EU Parent Subsidiary Directive (2011/96/EU).
82	Dividends – Full exemption from WHT applicable in accordance with the EU Parent Subsidiary Directive (2011/96/EU).



Footnotes	
83	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 10% of, and has invested at least
84	Dividends – The lower rate applies if a foreign company (except for partnerships) owns directly or indirectly at least 10% of the voting rights in the paying company.
85	Royalties – The lower rate applies for the use of, or the right to use, industrial, commercial or scientific equipment.
86	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the voting rights in the paying company.
87	Dividends – The lower rate applies if a foreign company is the parent of the paying company according to the domestic participation exemption.
88	Interest – The lower rate applies on interest paid to a financial institution if the payer is engaged in industrial undertakings.
89	Dividends – The lower rate applies if a foreign company directly holds a minimum of 25% of the paying company's capital, or under the EU Parent Subsidiary Directive (2011/96/EU).
90	Royalty – The lower rate applies on royalties from a copyright of literary, artistic or scientific work.
91	Dividends – The 5% rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the voting rights in the paying company. Full exemption from WHT may be applicable under the EU Parent Subsidiary Directive (2011/96/EU).
92	Dividends – The 5% rate applies if a foreign company (except for partnerships) owns directly or indirectly at least 10% of the paying company's capital; furthermore, if South Africa enters into an agreement with a third country whereby the rate of WHT on all or any category of dividends is below 5%, then the rate applicable with the third country will automatically apply as the lower rate in this agreement.
93	Dividends – The 10% rate applies if a foreign company (except for partnerships) directly holds a minimum of 50% of the paying company's capital for at least 12 months prior to payment of the dividend. Full exemption from WHT may be applicable under the EU Parent Subsidiary Directive (2011/96/EU).
94	Dividends – The lower rate applies (i) if a foreign company (except for partnerships) owns directly or indirectly at least 10% of the voting rights in the paying company, (ii) if paid to a pension fund, or (iii) under the EU Parent Subsidiary Directive (2011/96/EU).
95	Dividends – The 10% tax rate applies if the receiver of the dividends is the beneficial owner. Otherwise, local rates apply.
96	Dividends – The lower rate applies if a foreign company (except for partnerships) owns directly or indirectly at least 25% of the paying company's capital. Dividends paid from a company resident in Tanzania to a company resident in Sweden will be exempt from tax in Sweden to the extent that the dividends would have been exempt under Swedish law if both companies had been Swedish companies. This exemption shall not apply unless the profits out of which the dividends are paid have been subjected in Tanzania to the normal income tax which applies at the date of signature of the DTC or an income tax comparable thereto, or the principal part of the profits of the company paying the dividends arises, directly or indirectly, from business activities other than the management of securities and other similar property and such activities are carried on within Tanzania by the company paying the dividends or by a company in which it owns at least 25 per cent of the voting power.
97	Interest – The lower rate applies on interest paid to financial institutions and insurance companies.
98	Dividends – The lower rate applies if a foreign company directly holds a minimum of 25% of the paying company's capital.
99	Interest – The lower rate applies if the beneficial owner of the interest with domicile in the other contracting state is a bank.
100	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.

Footnotes	
101	Royalty – The lower rate applies to copyright royalties and similar payments for literary, dramatic or other artistic work (excluding film and television royalties), and scientific work.
102	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.
103	Dividends – The 0% rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the voting rights in the paying company, and residents of Ukraine own directly or indirectly at least 50% of the voting rights in the capital of a foreign company. The 5% rate applies if a foreign company (except for partnerships) directly holds a minimum stake of 20% in the paying company's capital.
104	Interest – The lower rate applies on interest connected to sale of merchandise or industrial, commercial or scientific equipment by an enterprise to another enterprise on credit. The lower rate does not apply if the sale or loan/debt was between associated enterprises.
105	Royalty – The lower rate applies to royalties for patents concerning industrial/manufacturing know-how or process, agriculture, pharmaceutical, computers, software and building constructions, a secret formula or process, or for information concerning industrial, commercial or scientific experience.
106	Dividends – The 0% rate applies if a foreign company owns directly or indirectly at least 10% of the voting rights in the paying company. The 5% rate generally applies if the beneficial owner of the dividends is a resident of the other contracting state. Notwithstanding the above, the 15% rate applies in certain cases where dividends are paid out of income (including gains) derived directly or indirectly from immovable property.
107	Dividends – The lower rate applies if a foreign company owns directly or indirectly at least 10% of the voting rights in the paying company.
108	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.
109	Royalty – The higher rate applies to copyright royalties for literary, artistic or scientific work, including cinematograph films and films or tapes for radio or television broadcasting.
110	Dividends – The 5% rate applies if a foreign company (except for partnerships) directly holds a minimum of 70% of, or has invested at least US$12 million in, the paying company's capital; the 10% rate applies if a foreign company (except for partnerships) owns directly or indirectly at least 25% of the paying company's capital.
111	Royalty – The lower rate applies to royalties for patents concerning industrial/manufacturing information or process, agriculture, pharmaceutical, computers, software and building constructions, a secret formula or process, or for information concerning industrial, commercial or scientific experience.
112	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.
113	Dividends – The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.

17. APPENDIX II – GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

The Swedish Tax Agency may review and reassess a filed tax return for up to two previous financial years without cause. The period of review may extend to six years if, for example, incorrect or insufficient information has been provided in a filed tax return. In the case of fraudulent information being provided in a tax return, returns may be reassessed for up to ten years.

Nº	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General company information	Organisational chart of Target/Target Group by legal entity, including any connected business entity, e.g. sales or rep. offices, sales agents, or personnel.
2	Tax Due Diligence	General company information	Summary of all loans or other interest-bearing debt.
3	Tax Due Diligence	General company information	Pro forma balance sheet and income statement for the current fiscal year.
4	Tax Due Diligence	General company information	Account summaries (Sw. *resultat- och balansrapporter*) of balance sheets and P&Ls.
5	Tax Due Diligence	General company information	Audit memorandums (Sw. *revisionsrapport*) and other reporting from the auditors.
6	Tax Due Diligence	General company information	Please state who js responsible for the Target's/ the Target Group's tax affairs in general and who is responsible for filing CIT, VAT and PAYE returns.
7	Tax Due Diligence	General company information	Information and documents relating to the tax treatment of any foreign exchange hedging instruments other securities involving foreign currencies.
8	Tax Due Diligence	Reorganisations	Due diligence reports and other documents relating to any external acquisitions or divestments.
9	Tax Due Diligence	Reorganisations	List of with dates of any acquisitions, mergers, changes in ownership, or other reorganisations, including all such events prior for the previous two fiscal years and the current fiscal year, if applicable, that might impact Target's/Target Group's ability to give or receive group contributions.
10	Tax Due Diligence	Reorganisations	Merger plans and other related documents to any other restructurings or transfers of businesses (including lines of businesses).
11	Tax Due Diligence	Corporate income tax	Income tax returns for the previous two fiscal years and the current financial year, if applicable, including appendices and/or open disclosures.
12	Tax Due Diligence	Corporate income tax	Notices of preliminary tax (Sw. *beslut om preliminär skatt*) and notice of final assessments (Sw. *slutskattebesked*) from Swedish Tax Agency for the previous two financial years and the current fiscal year, if applicable.
13	Tax Due Diligence	Corporate income tax	Statement from tax account (Sw. *skattekonto*) from the Swedish Tax Agency.
14	Tax Due Diligence	Corporate income tax	Tax calculations for the previous two fiscal years and the current financial year, if applicable, including tax calculation based on pro forma accounts.

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Nº	Category	Sub-Category	Description of Request
15	Tax Due Diligence	Corporate income tax	Calculation of deductible interest expenses according to the general interest limitation rule, i.e the EBITDA rule, for the previous two financial years and the current fiscal year, if applicable.
16	Tax Due Diligence	Corporate income tax	Specifications of all tax adjustments made in the income tax returns.
17	Tax Due Diligence	Corporate income tax	Calculation of accelerated tax depreciation based on 20/30% rules for machinery, equipment and intangible assets.
18	Tax Due Diligence	Corporate income tax	Information on any pending, ongoing, or finalised tax litigations.
19	Tax Due Diligence	Corporate income tax	Correspondence with tax authorities (including requests, decisions, considerations, audits, advance rulings, etc.)
20	Tax Due Diligence	Corporate income tax	Correspondence with auditors or tax advisers regarding tax related issues (tax compliance, tax return reports, memos, opinions, structure reports, internal notes, emails, etc.)
21	Tax Due Diligence	Corporate income tax	Description/calculation of paid and received group contributions (Sw. *koncernbidrag*).
22	Tax Due Diligence	Corporate income tax	Has any external party, e.g. tax advisers assisted in the preparation of the income tax returns, or been engaged to review the income tax returns?
23	Tax Due Diligence	Corporate income tax	Confirmation that all tax returns have been submitted in time and that all taxes have been paid on time.
24	Tax Due Diligence	VAT	VAT returns including appendices for the past 12 months.
25	Tax Due Diligence	VAT	Submitted EU sales lists for reviewed years.
26	Tax Due Diligence	VAT	Copy of the company's internal VAT manuals (if any).
27	Tax Due Diligence	VAT	The three largest output invoices per year, i.e. invoices related to sales.
28	Tax Due Diligence	VAT	The three largest input invoices per year, i.e. invoices related to purchases.
29	Tax Due Diligence	VAT	The three largest invoices on VAT exempt sales per year, i.e. sales made without VAT.
30	Tax Due Diligence	VAT	The three largest invoices related to import of goods per year, i.e. purchase of goods when the goods are transported from a country outside of the EU into the EU.
31	Tax Due Diligence	VAT	The three largest invoices related to export of goods per year, i.e. sales of goods when the goods are transported from an EU-country to a country outside of the EU).
32	Tax Due Diligence	VAT	The three largest invoices with regards to EU-acquisitions of goods per year, i.e. purchases of goods when the goods are transported from an EU-country to another EU-country.
33	Tax Due Diligence	VAT	The three largest invoices with regards to EU-sales of goods per year, i.e. sales of goods when the goods are transported from an EU-country to another EU-country.

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Nº	Category	Sub-Category	Description of Request
34	Tax Due Diligence	VAT	The three largest invoices with regard to import of services per year, i.e. purchase of services from a country outside of the EU to a country in the EU.
35	Tax Due Diligence	VAT	The three largest invoices related to export of services per year, i.e. sales of services from an EU-country to a country outside of the EU.
36	Tax Due Diligence	VAT	The three largest invoices with regard to EU-sales of services per year, i.e. sales of services from an EU-country to another EU-country.
37	Tax Due Diligence	VAT	The three largest invoices with regards to EU-acquisition of services per year, i.e. purchases of services from an EU-country to another EU-country.
38	Tax Due Diligence	VAT	Does [Target/ the Target Group] limit its deduction of input VAT with a pro-rata? If yes, please provide information on the pro-rata used.
39	Tax Due Diligence	VAT	Does [Target/ the Target Group] have VAT registrations in other countries? If yes, please provide the VAT registration numbers as well as a short summary of the background to the VAT registration.
40	Tax Due Diligence	VAT	Does [Target/ the Target Group] hold any stock or inventory outside of Sweden?
41	Tax Due Diligence	Transfer pricing	Transfer pricing documentation, such as master file, local file, agreements, benchmarks, policies, etc.
42	Tax Due Diligence	Transfer pricing	Information on volume, terms and price methodology of any other material transactions with related parties.
43	Tax Due Diligence	Transfer pricing	Information on any other funding to/from related parties (parties, loan amount, interest level), including restructuring of funding.
44	Tax Due Diligence	Other	List of provisions and reserves (Sw. *avsättningar och reserver*).
45	Tax Due Diligence	Other	Has [Target/ the Target Group] carried out or been a part of any transactions in order to lower the [Target/ the Target Group]'s tax burden or the [Target/ the Target Group]'s tax burden?
46	Tax Due Diligence	Other	Information on incentive programmes for employees, including employees acquisition of financial instruments, etc. from the group and shareholders

contact

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1. INTRODUCTION

a. Forms of Legal Entity

Swiss entities whose legal personality is recognised under Swiss private or public law are considered as legal entities and are subject to Swiss corporate tax. Legal entities are stock companies, limited liability companies, stock companies with unlimited partners, cooperatives, associations and foundations, and exceptionally, investment trusts with direct ownership of immovable property.

b. Taxes, Tax Rates

Legal entities are subject to corporate tax at federal, cantonal and communal level. Depending on the tax domicile the effective and ordinary corporate tax rate before tax is currently between 12%-21% (tax rates for 2022).

The statutory financial statements are prepared in accordance with the general accounting provisions of the Swiss Code of Obligations. They are basically decisive to calculate the taxable profit (so-called authoritative principle).

2. RECENT DEVELOPMENTS

a. Implementation in Switzerland of OECD minimal taxation ("Pillar Two")

Pillar Two of the OECD/G 20 project aims to introduce a global minimum corporate income tax rate of 15% and shall apply to MNEs with an annual turnover exceeding EUR750 million. The Federal Council plans to ensure minimum taxation in accordance with Pillar Two in Switzerland by means of the supplementary tax model. The concerned MNEs will pay a supplementary tax in addition to the ordinary corporate income tax (plus the other covered taxes) in order to reach an effective tax rate of 15% on the GloBE tax base. For all other companies, namely SMEs, the tax rates shall be the same and no supplementary tax shall be due. The supplementary tax shall be assessed by the cantons.

The OECD/G20 minimum taxation leads to a different treatment of affected and non-affected companies. For this reason, a new constitutional provision is to give the Confederation the authority to implement the OECD/G20 project with different tax rates for companies. In order to achieve an entry into force on 1 January 2024 the Federal Council is to be authorised with a transitional provision to temporarily regulate the minimum taxation by ordinance. This temporary ordinance is to be replaced by a federal law, passed by parliament as soon as there is sufficient clarity about the application of the international rules. The Federal Council intends to submit the dispatch on the constitutional amendment to parliament in June 2022. If the parliament approves the bill in the winter session of 2022, the mandatory referendum about the constitutional amendment shall take place in June 2023.

b. Withholding tax reform

In December 2021 the parliament approved a tax reform regarding the amendment of the withholding tax act. In order to strengthen the Swiss debt capital market, the withholding tax on bonds will be abolished. For interest payments, withholding tax will only be levied on bank interest paid to Swiss resident individuals in the future. Dividends will continue to be subject to withholding tax. The securities transfer stamp tax on Swiss bonds will also be abolished. The amended withholding tax act shall come into force beginning of 2023. It will only apply to bonds issued as of 1 January 2023. This means that all interest on existing bonds will continue to be subject to withholding tax. A referendum is announced against the tax reform, thus the voters will probably have to approve the amendment of the withholding tax act.

c. Coronavirus Aid Relief

i Cross border commuters with some neighbouring countries

Switzerland concluded consultation agreements with some neighbouring countries for cross border commuters due to the Covid situation in 2020 which are still in force.

According to the agreement between Switzerland and France on the taxation of cross border commuters working from their home office, the days on which cross border commuters benefiting from the agreement have to stay in their place of residence because of measures to combat COVID-19 are not considered in the 45 non-return days. It is accepted that days worked in their State of Residence, at home and for an employer domiciled in the other Contracting State as a result of measures to combat the spread of COVID-19 shall be regarded as working days in the State in which the person would have pursued his employment if there had been no such measures. The provisions entered into force with effect from 14 March 2020 and applied until 31 March 2021. Unless terminated by either party, the provisions remain in force until 30 June 2022.

The consultation agreement between Switzerland and Germany explains in particular how the working days are to be calculated if a cross border worker has not been able to return to his or her State of Residence as a result of the Covid-19 pandemic. The return to the place of residence on each working day is assumed. It is further agreed that the short-time work compensation paid in Switzerland as well as similar compensation which is reimbursed by the Swiss government either directly or through the employer as a result of the measures taken to combat the Covid-19 pandemic are qualified as compensation for employment within the meaning of Articles 15 and 15a of the Agreement and are taxed only by Switzerland. The agreement is still in effect and no notice of termination has been given to date.

According to the a memorandum of understanding between Switzerland and Italy concerning Covid-19 measures it is recognised that, for the purposes of applying Article 15, paragraphs 1 and 4, of the Convention and Article 1 of the Convention of 3 October 1974, days worked in the State of Residence, at home and for the account of an employer resident in the other Contracting State as a result of measures to combat the spread of COVID-19 shall be regarded as working days in the State in which the person would have worked in the absence of such measures and would have received wages, salaries and other similar remuneration (“income”) in return. The agreement is still in effect and no notice of termination has been given to date.

ii Guaranteed COVID bridging loans

To help SMEs (sole proprietorships, partnerships, legal entities) suffering from the COVID-19 fallout to obtain bridging loans from the banks, the Federal Council launched a CHF20 billion credit guarantee program (which has since been increased up to CHF40 million). Affected businesses are able to gain access to fast credit of up to 10% of their sales, but no more than CHF20 million. The program provides that the banks pay out amounts of up to CHF0.5 million immediately, which will be 100% guaranteed by the Swiss government. Loans exceeding this threshold are to be guaranteed by the Swiss government at 85% of the amount, subject to a brief examination by the banks.

There are some limitations associated with the use of the bridge loans: for example, it is prohibited to distribute dividends; the granting of new loans or the repayment of loans from shareholders or related parties is prohibited; deposits by the borrower in cash pools structured as loans are prohibited; a group loan may not be replaced with a COVID-19 loan.

3. SHARE ACQUISITION

a. General Comments

The share acquisition (share deal) is usually preferred by the seller. In a share deal the seller as a corporation may reduce the corporate taxation on the realised capital gain under the participation exemption and as an individual person may achieve a tax-free capital gain.

b. Tax Attributes

The target company's carried forward tax losses can generally be used within the maximum offset period of seven years, even after the transfer of the target company's shares. The transfer of ownership in the target company does not generally impact the carried forward tax losses. In the case of an acquisition of a shell company (a mostly liquidated company holding cash) the tax losses may not be used.

A change of control within five years after a tax neutral intragroup transfer of assets may lead to a breach of restriction period and lead to taxation on hidden reserves. Please see Section 3.d.

c. Tax Grouping

Fiscal unity/tax grouping is not available in Switzerland.

d. Tax Free Reorganisations

A company reorganisation can qualify as a tax neutral reorganisation. Reorganisations mainly include:

Legal mergers: A legal merger qualifies as tax-neutral reorganisation if the assets and liabilities are transferred at book value and the entity continues to be liable to tax in Switzerland. The tax neutrality covers corporation taxes, real estate gains taxes, transfer stamp duty, issue stamp duty and dividend withholding tax. The merger is basically also tax neutral for the shareholders. However, for shareholders holding the shares of the merged entity as their private assets, any cash consideration and increase in nominal value is subject to dividend withholding tax and subject to income tax.

Spin-offs: A spin-off is tax neutral if the demerging company carries on at least two businesses, one of which is transferred to another company, the book values remain unchanged and the businesses concerned remain subject to taxation in Switzerland.

There is no disposal restriction period imposed on a tax neutral spin-off. Spin-offs of holding, finance, licensing and real estate companies are possible, but these types of companies must meet certain requirements regarding their business activities and employees to qualify as a business.

Share for share exchanges (quasi-merger): A share for share exchange is tax neutral if a company exchanges its own shares for shares in a different company and immediately after the transaction controls at least 50% of the voting rights in this company and issues formally new shares by way of an increase of the nominal capital. The use of consideration other than its shares does not prevent the transaction from being tax neutral, provided the consideration does not exceed 50% of the value of the total consideration, including the shares.

Hive-downs: A company can transfer a trade or business or a fixed asset tax neutrally at book value to a newly established or an existing subsidiary in Switzerland. A disposal restriction period of five years applies. A company can transfer participations of at least 20%, tax neutrally at book value, to subsidiaries in Switzerland or abroad without having to observe a disposal restriction period.

Intra-group transfer of assets: A company can transfer tax neutrally at book value a participation of at least 20%, a trade or business or a fixed asset to a group company within Switzerland. Group companies are defined as companies that are ultimately controlled by the same entity with at least 50% of the voting rights. A disposal restriction period of five years applies both to the asset transferred and the group membership. The transfer is only tax neutral if the acquiring entity is subject to tax in Switzerland.

e. Purchase Agreement

For historical tax risks and issues the buyer requires to include a tax representation/warranty clause and/or indemnity clause in the Share Purchase Agreement ("SPA").

If the seller is a Swiss individual person and intends to achieve a tax-free capital gain, usually an indemnity clause for a potential indirect partial liquidation is included in the SPA. According to such a clause the buyer refrains from any action for a period of five years that could lead to an indirect partial liquidation, for example dividend distribution of existing distributable reserves, granting loans that are not at arm's length or dissolution of the target company by way of merger or liquidation. Please see comments under Section 7.b.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

Transfer stamp duty (or security transfer tax) is due if taxable securities are transferred for consideration and if a securities dealer, as defined in the Swiss Federal Stamp Tax Act, is involved, either as a party or as an intermediary. Certain types of transactions or parties are exempt.

Security dealers are banks, actual dealers in securities and, among others, Swiss companies that hold securities with a book value of more than CHF10 million according to their latest balance sheet. A new company should not be liable for stamp duty until six months after the first balance sheet showing taxable securities of at least CHF10 million.

Taxable securities are in particular shares, bonds and participations in mutual funds. The rate of transfer stamp duty is 0.15% for Swiss securities levied on the consideration. If foreign securities are transferred, the transfer stamp duty is 0.3%. Transfer stamp duty is payable by the security dealers but usually paid by the parties to the transaction.

g. "Purchase accounting" applicable to share acquisitions

The purchase price of the shares of the target company is booked as acquisition costs in the statutory financial statements. No purchase accounting adjustments are applicable.

h. Share Purchase Advantages

For corporations the capital gain on the sale of a qualifying participation is tax exempt to the extent that it qualifies for the participation exemption (minimal participation of 10%, holding period of at least one year and no recaptured depreciation on the participation).

For individuals holding shares as part of their private wealth, the gain is in general considered as tax free capital gain. In specific cases the tax authorities re-qualify a capital gain as taxable income. Please see further comments under Section 7.a. and b.

The buyer can generally use the target company's carried forward tax losses in Switzerland, even after the transfer of the target company's shares.

i. Share Purchase Disadvantages

The buyer may not be able to offset financing costs against future profits of the target company. No tax consolidation is possible in Switzerland. In a share deal, the tax base for the shares in the purchaser's books is equal to the purchase price. Except in exceptional cases (e.g. if the acquired company encounters serious financial difficulties), it is not possible to write off the goodwill component on shares for tax purposes.

4. ASSET ACQUISITION

a. General Comments

The asset acquisition (asset deal) is usually preferred by the buyer. Tax risks remain with the target company and are not transferred to the buyer. The buyer may amortise the acquired assets tax effectively, including goodwill.

b. Purchase Price Allocation

A purchase price allocation is necessary in order to support the booking of the assets and liabilities acquired and to apply depreciation rates correctly.

c. Tax Free Reorganisations

An asset deal can qualify as a tax neutral reorganisation, in particular in case of an intra-group transfer of assets. Please see further comments under Section 3.d.

d. Purchase Agreement

Basically, in an asset deal tax risks remain with the seller. However, for limited tax risks the buyer requires to include a tax representation/warranty clause and/or an indemnity clause in the Asset Purchase Agreement ("APA"), in particular in the field of real estate transfer tax and the VAT.

e. Depreciation and Amortisation

The goodwill and other intangibles may be recorded separately and depreciated against taxable income. The goodwill/other intangibles may generally be depreciated over a period of five years or longer.

f. Transfer Taxes, VAT

From a VAT perspective the transfer of assets is basically subject to VAT. Depending on the transaction, the VAT due may be notified to the VAT authorities (i.e. no cash flow).

g. Asset Purchase Advantages

The buyer may be able to amortise the acquired assets, including goodwill, tax effectively. The buyer may be able to offset financing costs against future profits of the transferred business. However, the buyer cannot use any losses carried forward by the seller.

Losses carried forward of the seller can be set off by the buyer against a capital gain from the sale of the assets. A potential loss from the sale of assets can be offset against profits of the seller.

h. Asset Purchase Disadvantages

For the seller the realised capital gain is subject to corporate taxation (unless the consideration is reinvested in a new fixed asset and the taxation can be carried over under certain conditions).

The buyer cannot use the tax losses carried forward of the target company.

5. ACQUISITION VEHICLES

a. Domestic Acquisition Vehicle

If a Swiss special acquisition vehicle ("SPV") purchases the shares of the Swiss target company and the SPV and the target company are then merged, the SPV's debts will be taken up into the operating company. However, the Swiss tax authorities usually qualify this as an abuse, with the result that the interest paid on debt is not tax deductible (cannot be offset with profit of the target business). If the SPV is not merged with the target company, dividends paid out by the target company may serve to finance the acquisition debt (participation exemption could be applied on the dividend distributed). In an acquisition by an operational company followed by a merger of the operational company with the target, Swiss tax authorities in general do not treat such debt pushdown as abusive.

b. Foreign Acquisition Vehicle

Dividends from a Swiss target company are basically subject to Swiss withholding tax of 35%. Switzerland has concluded tax treaties with numerous countries which provide a full or at least a partial reduction of the withholding tax on dividends. In addition, for EU countries, Article 9 of the Agreement between the European Union and the Swiss Confederation regarding the automatic exchange of information on financial accounts provides for a 0% rate on dividend payments from a Swiss participation to an EU parent company, if the participation amounts to at least 25% and a holding period of at least two years is met.

According to the tax practice of the Swiss Federal Tax Administration the 0% rate is granted provided that the conditions according to the corresponding treaty is fulfilled (minimal interest, minimal holding period), the acquiring company has physical substance (office, employees, board members), can be regarded as the beneficial owner of the dividend distributions from the Swiss target (no conduit company) and a tax treaty abuse can be excluded.

c. Strategic vs Private Equity Buyers

In case of a foreign private equity acquiror the Swiss Federal Tax Administration examines the conditions for a reduction of the withholding tax of 35% (in particular the aspect of a tax treaty abuse) based on the double tax treaty more carefully.

6. ACQUISITION FINANCING

a. General Comments

There are basically no challenges or administrative issues for bringing funds into Switzerland.

b. Equity

The increase of equity of a Swiss corporation (for example increase of nominal capital or capital surplus) is subject to issuance stamp tax of 1%. The first CHF1 million and a tax-neutral merger are exempt, like a quasi-merger or a contribution of qualifying participations.

Capital surplus paid by the direct shareholder and booked separately and shown in the statutory financial statements qualify as tax-free capital contribution reserves whose repayment is not subject to Swiss income tax at the level of private investors and not subject to Swiss withholding tax.

With the tax reform certain cantons (for example the canton of Zurich) may introduce a deduction for equity financing (notional interest deduction) which would reduce the taxable income.

c. Debt

i Limitations on use of debt and interest

Under the federal thin capitalisation guidelines, the minimum capitalisation is calculated based on the maximum indebtedness of all of the assets. For each type of asset only a specified percentage may be financed with debt from related parties (directly or indirectly).

According to the practice of the Swiss Federal Tax Administration, the maximum percentage of debt authorised for each type of asset is as follows:

- Liquidity – 100%.
- Receivables on supplies and services – 85%.
- Other receivables – 85%.
- Stock – 85%.
- Other circulating assets – 85%.
- Swiss bonds and foreign bonds in Swiss francs (CHF) – 90%.
- Foreign bonds in foreign currency – 80%.
- Swiss and foreign quoted shares – 60%.
- Other shares and investments in limited liability companies – 50%.
- Participations – 70%.
- Loans – 85%.

- Installations, machines, tools, etc. – 50%.
- Operating real estate – 70%.
- Villas, parts of real estate, vacation houses and building land – 70%.
- Other real estate – 80%.
- Cost of foundation, increase of capital and organisation – 0%.
- Other tangible assets – 70%.

The required equity is calculated on the basis of the fair market value of all assets as stated in the balance sheet at the end of the business year.

The federal tax authorities publish maximum interest rates on borrowings from related parties annually. For the fiscal year 2022, the maximum interest on loans between related parties denominated in CHF for trading/ manufacturing entities amounts to 3% for loans up to CHF1 million respectively 1% for loans above CHF1 million and for holding/ asset management entities to 2.5% for loans up to CHF1 million respectively 0.75% for loans above CHF1 million. For loans denominated in other currencies the maximum allowed interest rates for the most important currencies are also published by the federal tax authorities. However different interest rates are applicable if the taxpayer can prove that the financing is at arm's length.

Should the interest rates not meet the above requirements, the exceeding interest is qualified as deemed dividend distribution and is not deductible for tax reasons. Furthermore, Swiss withholding tax is levied on the deemed dividend distribution.

ii Swiss withholding tax on interest on bonds and bank deposits

Interest from bonds issued by Swiss debtors and on deposits with Swiss banks are subject to 35% Swiss withholding tax which then can be refunded based on domestic tax law or the relevant corresponding double tax treaty depending on the lender. The definition of a bond is broader and includes also debt-interest bearing instruments which are issued to at least 10 non-bank creditors with identical conditions or to at least 20 non-bank creditors with different conditions and if the total financing amount exceeds CHF500,000 (10/20 non-bank lender rule). Furthermore, a deposit with Swiss banks includes also any Swiss corporation which have more than 100 interest-bearing non-bank customer deposits with a total financing amount exceeding CHF5 million. Cash pooling and intercompany financing does basically not fall under these rules with the exemption when a foreign company issues a bond on the market with a guarantee of the Swiss parent company and the loans granted to Swiss companies exceed a certain amount.

As from 1 January 2023 the Swiss withholding tax on interest on bonds shall be abolished according a tax reform approved by the parliament in December 2021 and being subject to a possible referendum and the approval by the voters.

d. Hybrid Instruments

For qualification of financial instruments debt and equity is basically based commercial law. However, participation exemption is not granted for dividend income which is tax deductible at the level of the distributing entity.

e. Other Instruments

The acquiror can issue shares as a consideration to the seller. If the conditions for a tax neutral share for share exchanges (quasi-merger) are met, the increase of capital is tax exempt from the issuance stamp tax. Please see further comments under Section 3.d.

f. Earn-outs

Earn-outs paid by the buyer to the seller are part of the sale price of the share in the target company. A corporate seller may apply for the participation exemption on the earn-outs in the tax year when it is booked in the financial statements.

7. DIVESTITURES

a. Tax Free

For corporations capital gain from the disposal of qualifying participations is tax exempt to the extent that it qualifies for the participation exemption. The requirement to qualify for participation exemption is a participation of at least 10% and a holding period of at least one year. Recaptured depreciations on a participation are not subject to participation exemption.

Participation exemption does not lead to an exemption of the capital gain from the tax base but is rather a tax abatement mechanism. From the gross participation income, administration costs and financing costs need to be deducted. The percentage of the net participation income calculated in this way to the total taxable income determines the taxable abatement for the total income tax.

The participation exemption does not lead to an exemption of the capital gain from the tax base but to a reduction of the corporate income tax. From the gross participation income, administration costs and financing costs need to be deducted. The percentage of the net participation income calculated in this way to the total taxable income determines the reduction of the total corporate income tax.

b. Taxable

For individuals holding shares as part of their private wealth, in specific cases the tax authorities requalify a capital gain as taxable income, for example:

- Securities dealer: If the seller qualifies as a professional securities dealer or, according to the Swiss Supreme Court, he/she regularly and systematically deals with securities, the capital gain is subject to Swiss income tax and social security contributions.
- Indirect partial liquidation: The purchase price is financed with the assets of the acquired company. An indirect partial liquidation will be assumed if shares representing at least 20% of the share capital of a company are sold from the private assets of an individual investor to the business assets of a corporate or an individual buyer, and the target company distributes current assets not needed for business operations out of distributable profits or reserves within a period of five years after the sale of shares with the cooperation of the seller.

- Transformations: The individual sells his/her shares to a company he/she controls. The consideration qualifies under certain circumstances as taxable income.
- Shell company: A sale of a company, whose assets are in liquid form, is considered as a liquidation which leads to a taxation of the payment of the liquidation proceeds.
- Real estate company: A sale of shares of a real estate company may trigger real estate capital gains taxes.

For individuals holding their assets as business assets, a reduction of 30% - 50% is granted on the taxable capital gain for qualifying participations (participation of at least 10% and a holding period of at least one year) depending on the canton involved.

c. Cross Border

In case that the target company is held by shareholders resident in countries where no double tax treaty with Switzerland is in place or only limited reduction of the Swiss withholding is granted and the buyer will have a lower non-recoverable Swiss withholding tax or even a zero rate, the so-called "old reserve practice" of the Swiss Federal Tax Administration needs to be considered. Existing distributable liquid assets that are not required for business operations are considered as old reserves ("tainted reserves"; based on the last statutory financial statements). The "contaminated" distributable reserves under the so-called "old-reserves" doctrine will be subject to a non-refundable withholding tax (between 5% - 35% depending on the previous shareholders) upon distribution or post transaction as if the seller would have distributed them pre transaction.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

Switzerland applies the worldwide tax system: Swiss resident companies are subject to corporate income tax on their worldwide income, with the exception of income from a business, permanent establishment or immovable property located abroad.

b. CFC Regime

Switzerland does not have any CFC Regimes.

c. Foreign branches and partnerships

The income of a Swiss company which is to be attributed to its foreign branches or partnership (which qualifies as a foreign branch or foreign enterprise) is exempted from income tax (exemption method).

d. Cash Repatriation

Dividend distributions from a qualifying foreign participation (minimal interest of 10% or minimal fair market value of CHF1 million) are tax-exempt to the extent that it qualifies for the participation exemption. Participation exemption under Swiss tax law does not require a minimal taxation at the level of then foreign participation.

Interest income or intercompany payments like management fees are subject to ordinary corporate taxation.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

A capital gain on immovable property as a business asset is subject to ordinary income tax at federal level, and depending on the canton subject to income tax at cantonal level or subject to a separate real estate capital gains tax.

A transfer of shares of a company whose main assets are real estate may be subject to real estate capital gains tax. This is dependent on the canton where the real estate property is located. Depending on the cantonal laws at the location of the property, the transfer of shares may also attract a real estate transfer tax on the property's transaction price (the tax is normally due by the buyer). In general, an economic transfer of real estate property in a sale of shares is deemed taxable if all of the following conditions are met:

- The owner holds real estate property in Switzerland indirectly through a corporation.
- The owner transfers major parts of the shares in the real estate corporation (i.e. generally more than 50%) to a new shareholder.
- The new shareholder obtains by the acquisition of the shares the economic power of control on the real estate.

In international transactions some of the double tax treaties provide for treaty protection for real estate capital gains in share deals with a Swiss real estate corporation.

b. CbC and Other Reporting Regimes

The legal framework for the implementation of the exchange of the Country-by-Country Report, including the Competent Authority Agreement on the Exchange of Country-by-Country Reports ("CbC MCAA") and the respective Federal Act on the International Automatic Exchange of Country-by-Country Reports of Multinationals, entered into force on 1 December 2017. In Switzerland, multinationals with consolidated group revenues of more than CHF900 million are required to file a CbC report with respect to the fiscal year beginning on or after 1 January 2018 within 12 months after fiscal year end. The first exchange of CbC reports between Switzerland and its partner states took place during the first half of 2020.

10. TRANSFER PRICING

Switzerland has not implemented specific transfer pricing provisions in Swiss tax law. Swiss tax practice usually follows the relevant OECD transfer pricing guidelines. The arm's length principle is recognised and has been confirmed in several court decisions.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

In Swiss tax practice, hybrid entities are rarely used.

b. Use of Hybrid Instruments

In Swiss tax practice, hybrid instruments are rarely used. In particular, participation exemption is not granted for dividend income which is tax deductible at the level of the distribution entity.

c. Principal/Limited Risk Distribution or Similar Structures

Also after the tax reform and the abolishment of certain tax regimes Switzerland is an attractive location for the centralisation of business and functions. In order to be competitive, the cantons have reduced their ordinary corporate income tax rates. In most of the cantons the effective corporate income tax rate are between 12% - 15%.

d. Intellectual property (licensing, transfers, etc.)

Also after the tax reform and the abolishment of certain tax regimes Switzerland is an attractive location for the centralisation of intellectual property. In order to be competitive, the cantons have reduced their ordinary corporate income tax rates. In most of the cantons the effective corporate income tax rate are between 12% - 15%. With the patent box the effective corporate income tax rate can be further reduced. Please see the following Section 11.e.

e. Special tax regimes

With the tax reform a patent box has been introduced at cantonal level. With this patent box, the net profit attributable to patents and comparable rights will be taxed at the ratio of the qualifying research and development expenditure to the overall research and development expenditure per patent or comparable right (nexus quotient) with a maximum reduction of 90%.

12. OECD BEPS CONSIDERATIONS

Switzerland implements the minimal standards according to the OECD BEPS Project (i.e. nexus approach for IP boxes, abolishment of harmful tax practice, exchange of information on tax rulings, anti-abuse provisions in double taxation agreements and Country-by-Country-Report) as well as optional recommendations if they are implemented by a large number of countries.

Switzerland introduced into domestic legislation the mandatory minimum standard for a spontaneous exchange of information on tax rulings as per 1 January 2017. The implementation has taken place by way of a revision of the Federal Act on International Administrative Assistance in Tax Matters, together with a revision of the Federal Ordinance on International Administrative Assistance in Tax Matters. The information exchange began a year later on 1 January 2018 and covers tax rulings issued after 1 January 2010 and still be applicable on 1 January 2018 or afterwards.

Regarding the minimal standard for Treaty Abuse according to BEPS Action 6, Switzerland supports the principal purposes test ("PPT" rule). Double tax treaties being recently signed by Switzerland already include the PPT rule in accordance with BEPS Action 6. In the future, Switzerland will implement the new anti-abuse rules either by the new multilateral instrument according to BEPS Action 15 or by a revision of the existing double tax treaties.

Switzerland signed the multilateral instrument according to BEPS Action 15 (BEPS convention) on 7 June 2017, and the Parliament approved it on 22 March 2019. The BEPS convention entered into force on 1 December 2019. With the BEPS convention, Switzerland will implement the BEPS minimum standards only. This includes the preamble of the double taxation agreement in terms of purpose, the application of the PPT rule and the dispute settlement provisions.

13. ACCOUNTING CONSIDERATIONS

a. Combinations

For a tax neutral combination the assets and liabilities need to be transferred at book value in accordance with the general accounting provisions of the Swiss Code of Obligations. The combination is retroactively accepted provided that the application for the entry of the combination is filed with the register of commerce within six months after the balance closing date.

b. Divestitures

For a tax neutral divestiture the assets and liabilities need to be transferred at book value in accordance with the general accounting provisions of the Swiss Code of Obligations. The divestiture is retroactively accepted provided that the application for the entry of the combination is filed with the register of commerce within six months after the balance closing date.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Additional distributable reserves can be generated with an intragroup transfer of a participation at fair market value for which the realised capital gain benefits from the participation exemption. The reserves can then be distributed to the acquisition vehicle.

b. Substance Requirements for Recipients

In order to qualify for treaty relief on outbound dividends (reduction of the Swiss withholding tax on dividends), the Swiss Federal Tax Administration ("SFTA") developed certain criteria which are to be met. For a foreign holding company, the SFTA requires that the equity capitalisation of the direct foreign parent company should be at least 30% of the book value of the participations held. Furthermore, in general, the foreign parent company should hold further investments in addition to the Swiss company and have minimal physical substance at its place of residence (e.g. office, employees, board members with local residence). Ultimately, the SFTA bases its judgment on the overall facts and circumstances.



c. Application of Regional Rules

Article 9 of the Agreement between the European Union and the Swiss Confederation regarding the automatic exchange of information on financial accounts provides for a 0% rate on dividend payments from a Swiss participation to an EU parent company and a 0% rate on interest payments between associated companies, if the participation respectively the associated company amounts to at least 25% and a holding period of at least two years is met.

d. Tax Rulings and Clearances

Advance rulings are playing an important role in Swiss tax practice, in particular with respect to tax neutral reorganisations or tax-free capital gains. An advance ruling is binding for the tax authorities provided all the relevant facts have been disclosed.

15. MAJOR NON-TAX CONSIDERATIONS

Switzerland offers legal certainty and a business friendly environment and thus is an attractive place for business.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
Albania	15 / 5	5	0	[1] [2]
Algeria	15 / 5	10	0	[1] [2]
Argentina	15 / 10	12	0	[1] [2]
Armenia	15 / 5	10	0	[1] [2]
Australia	15 / 5 / 0	10 / 0	0	[1] [2]
Austria	15 / 0	0	0	[1] [2] [3]
Azerbaijan	15 / 5	10	0	[1] [2]
Bangladesh	15 / 10	10	0	[1] [2]
Belarus	15 / 5	8	0	[1] [2]
Belgium	15 / 0	10	0	[1] [2] [3]
Bulgaria	10 / 0	5 / 0	0	[1] [2] [3]
Brazil	15 / 10 / 0	15 / 0	0	[1] [2]
Canada	15 / 5 / 0	10	0	[1] [2]
Chile	15	10 / 5	0	[1] [2]
China	10 / 5 / 0	10 / 0	0	[1] [2]
Columbia	15 / 0	10	0	[1] [2]
Croatia	15 / 5	5	0	[1] [2] [3]
Cyprus	15 / 0	0	0	[1] [2] [3]
Czech Republic	15 / 0	0	0	[1] [2] [3]
Denmark	15 / 0	0	0	[1] [2] [3]
Ecuador	15	10	0	[1] [2]
Egypt	15 / 5	15	0	[1] [2]
Estonia	10 / 0	0	0	[1] [2] [3]
Finland	10 / 0	0	0	[1] [2] [3]
France	15 / 0	0	0	[1] [2] [3]
Georgia	10 / 0	0	0	[1] [2]
Germany	15 / 0	0	0	[1] [2] [3]
Ghana	15 / 5	10	0	[1] [2]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
Greece	15 / 5 / 0	7	0	[1] [2] [3]
Hong Kong	10 / 0	0	0	[1] [2]
Hungary	15 / 0	0	0	[1] [2] [3]
Iceland	15 / 0	0	0	[1] [2]
India	10	10	0	[1] [2]
Indonesia	15 / 10	10	0	[1] [2]
Iran	15 / 5	10	0	[1] [2]
Ireland	15 / 0	0	0	[1] [2] [3]
Israel	15 / 5	10	0	[1] [2]
Italy	15	12.5	0	[1] [2] [3]
Ivory Coast	15	15	0	[1] [2]
Jamaica	15 / 10	10	0	[1] [2]
Japan	15 / 5 / 0	10	0	[1] [2]
Kazakhstan	15 / 5	10	0	[1] [2]
Korea (South)	15 / 5	10	0	[1] [2]
Kosovo	15 / 5	5	0	[1] [2]
Kuwait	15	10	0	[1] [2]
Kyrgyzstan	15 / 5	5	0	[1] [2]
Latvia	15 / 0	5	0	[1] [2] [3]
Liechtenstein	15 / 0	0	0	[1] [2]
Lithuania	15 / 5	10	0	[1] [2] [3]
Luxembourg	15 / 5 / 0	10	0	[1] [2] [3]
Macedonia	15 / 5	10	0	[1] [2]
Malaysia	15 / 5	10	0	[1] [2]
Malta	15 / 0	10 / 0	0	[1] [2] [3]
Mexico	15 / 0	10 / 5	0	[1] [2]
Moldava	15 / 5	10	0	[1] [2]
Mongolia	15 / 5	10	0	[1] [2]
Montenegro	15 / 5	10	0	[1] [2]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
Morocco	15 / 7	10	0	[1] [2]
Netherlands	15 / 0	0	0	[1] [2] [3]
New Zealand	15	10	0	[1] [2]
Norway	15 / 0	0	0	[1] [2]
Oman	15 / 5	5 / 0	0	[1] [2]
Pakistan	20 / 10	10	0	[1] [2]
Peru	15 / 10	10	0	[1] [2]
Philippines	15 / 10	10	0	[1] [2]
Poland	15 / 0	5	0	[1] [2] [3]
Portugal	15 / 0	10	0	[1] [2] [3]
Qatar	15 / 0	0	0	[1] [2]
Romania	15 / 0	5	0	[1] [2] [3]
Russia	15 / 5	0	0	[1] [2]
Serbia	15 / 5	10	0	[1] [2]
Singapore	15 / 5	5	0	[1] [2]
Slovakia	15 / 0	5 / 0	0	[1] [2] [3]
Slovenia	15 / 0	5	0	[1] [2] [3]
South Africa	15 / 5	5	0	[1] [2]
Spain	15 / 0	0	0	[1] [2] [3]
Sri Lanka	15 / 10	10	0	[1] [2]
Sweden	15 / 0	0	0	[1] [2] [3]
Taiwan	15 / 10	10	0	[1] [2]
Tajikistan	15 / 5	10	0	[1] [2]
Thailand	15 / 10	15	0	[1] [2]
Trinidad and Tobago	20 / 10	10	0	[1] [2]
Tunisia	10	10	0	[1] [2]
Turkey	15 / 5	15 / 10	0	[1] [2]
Turkmenistan	15 / 5	10	0	[1] [2]
Ukraine	15 / 5	10	0	[1] [2]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
United Arab Emirates	15 / 0	0	0	[1] [2]
United Kingdom	15 / 0	0	0	[1] [2] [3]
United States	15 / 5	0	0	[1] [2]
Uruguay	15 / 5	10	0	[1] [2]
Uzbekistan	15 / 5	5	0	[1] [2]
Venezuela	10 / 0	5	0	[1] [2]
Vietnam	15 / 7	10	0	[1] [2]
Zambia	15 / 0	10	0	[1] [2]

Footnotes	
1	According to domestic Swiss tax law interests are only subject to Swiss withholding tax on bonds and bank deposits and on interests if the loan is secured by Swiss real estate.
2	According to domestic Swiss tax law royalty payments are not subject to Swiss withholding tax.
3	Article 9 of the Agreement between the EU and the Swiss Confederation regarding the automatic exchange of information on financial accounts provides for a 0% rate on dividend payments from a Swiss participation to an EU parent company and a 0% rate on interest payments between associated companies, if the participation respectively the associated company amounts to at least 25% and a holding period of at least two years is met.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Tax contact person available to discuss tax matters.
2	Tax Due Diligence	General	A current organisation chart, including all entities by full legal name, jurisdiction, date and place of formation, entity type, class of shares, and ownership percentages. Include a full history of each entity in the structure.
3	Tax Due Diligence	General	A summary of all audits (including status) for any tax, including corporate tax, withholding tax, stamp duty, wage withholding tax, VAT. Provide all significant audit correspondence in the last seven years.
4	Tax Due Diligence	General	Details of any preliminary restructuring in the last five years.
5	Tax Due Diligence	General	Documentation regarding acquisition and/or disposal of qualifying participations in the last five years (including acquisition costs / impairment of participations / value increasing investments / statutory book values / fair market values / sales proceeds / other information if relevant).
6	Tax Due Diligence	General	Overview of transactions with own shares in the last five years.
7	Tax Due Diligence	General	Tax rulings with tax authorities / other documentation of negotiations / agreements with tax authorities.
8	Tax Due Diligence	General	Information regarding pending disputes with federal and / or cantonal / communal tax authorities.
9	Tax Due Diligence	General	Information regarding open requests of federal and / or cantonal / communal tax authorities.
10	Tax Due Diligence	General	Relevant correspondence with Swiss tax authorities of last five years.
11	Tax Due Diligence	General	Any relevant correspondence over the last five years with the external tax advisers.
12	Tax Due Diligence	General	Detailed statutory financial statements of the last seven years.
13	Tax Due Diligence	General	Minutes of shareholder assemblies for the last seven years.

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Nº.	Category	Sub-Category	Description of Request
14	Tax Due Diligence	General	All shareholders since incorporation (including changes), share register and beneficial owners.
15	Tax Due Diligence	Corporate income tax	Copies of tax return for the last five years.
16	Tax Due Diligence	Corporate income tax	Final and provisional tax assessments and tax bills for the last five years.
17	Tax Due Diligence	Corporate income tax	Details re. provisions, accruals and deferrals.
18	Tax Due Diligence	Corporate income tax	Details and overview of depreciations.
19	Tax Due Diligence	Corporate income tax	Detailed calculation of tax provisions including an overview of tax payments per tax period.
20	Tax Due Diligence	Corporate income tax	Overview of Target's permanent establishments in foreign jurisdictions.
21	Tax Due Diligence	Corporate income tax	Information regarding the target's activities performed abroad in the past five years (representation offices / sales offices / agents / employees working (partially) abroad / other information if relevant).
22	Tax Due Diligence	Transfer Pricing	A schedule of related party transactions including the amounts and description of each, to the extent not reflected in the financial statements.
23	Tax Due Diligence	Transfer Pricing	Transfer pricing study / documentation for the last five years.
24	Tax Due Diligence	Transfer Pricing	Agreements with group companies and / or related parties.
25	Tax Due Diligence	Withholding tax	Withholding tax (WHT) forms filed with federal tax administration for FY10-FY17 (in particular Forms 102 / 103 / 105 / 106 / 108 / 110 / 112 /other if relevant) for the last seven years.
26	Tax Due Diligence	Withholding tax	Overview of distributions to shareholders in the last seven years (ordinary and extraordinary dividend, hidden profit distributions, etc.), including decisions of the general assembly regarding dividend distributions.
27	Tax Due Diligence	Withholding tax	Confirmations for notification procedure based on Forms 823, 823B or 823C.
28	Tax Due Diligence	Withholding tax	Confirmations for capital contribution reserves based on Form 170.

Nº.	Category	Sub-Category	Description of Request
29	Tax Due Diligence	Stamp duty	Stamp duty declarations filed with the federal tax administration for the last seven years (in particular Form 3 / 4 / 9 / securities dealer registration form / other if relevant).
30	Tax Due Diligence	Stamp duty	Securities transfer tax register for the last seven years.
31	Tax Due Diligence	VAT	Quarterly VAT declarations for the last five years.
32	Tax Due Diligence	VAT	Annual turnover reconciliations for the last five years.
33	Tax Due Diligence	VAT	Information on any foreign VAT registrations (if any) and copies of foreign VAT returns for the last five years.
34	Tax Due Diligence	VAT	Information on any input tax corrections and details of the calculation.
35	Tax Due Diligence	VAT	Information on VAT audits (including copies of the VAT audit returns)
36	Tax Due Diligence	VAT	Information on VAT and real estates (if any) - Use of immovable property, etc.
37	Tax Due Diligence	VAT	Information on any Notification procedures (*Meldeverfahren*) made during the last five years.
38	Tax Due Diligence	Wage withholding tax	Tax returns for wage withholding tax.
39	Tax Due Diligence	Wage withholding tax	Information and documentation on employees subject to wage withholding tax, including information on salary, civil status, canton of domicile, kind of residency permit.
40	Tax Due Diligence	Wage withholding tax	Information and documentation on closed, pending and forthcoming source tax audits.

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1. INTRODUCTION

a. Forms of Legal Entity

The main types of entities that exist in the UK and their key features are:

- A private company limited by shares : The members' liability is limited to the amount, if any, of the unpaid par value on the shares held by them.
- A private company limited by guarantee : The company does not have a share capital. Instead, the members' liability is limited to the amount that they have agreed to contribute to the company's assets if the company is wound up.
- A private unlimited company : The company may issue shares, but there is no limit to the members' liability. This form of company is rare.
- A public limited company : The company must have share capital of at least GBP50,000 and the members' liability is limited to the amount, if any, of the unpaid par value on the shares held by them. Only a public limited company can offer its shares to the general public.
- Partnership : A relationship whereby two or more partners carry on business together. The partnership does not have a separate legal personality, is fiscally transparent, and the partners are responsible for its debts.
- Limited Partnership : Similar to a partnership, but partnership liabilities can be allocated to specific partners such that limited partners have limited liability and residual liabilities fall on the general partner. The limited partners are generally precluded from taking an active role in the business, which is managed by the general partner.
- Limited Liability Partnership : A partnership where partners are not personally liable for debts and liabilities of the partnership. It has a separate legal personality but is still fiscally transparent.

b. Taxes, Tax Rates

i Corporations

- Corporation Tax

The Corporation Tax rate for company profits, for the 2020/21, 2021/22 and 2022/23 fiscal years, is 19%. From the 2023/24 fiscal year, the rate of Corporation Tax will increase to 25%.

Businesses with profits of GBP50,000 or less, will continue to be taxed at 19%. A tapered rate will also be introduced for profits above GBP50,000, so that only businesses with profits of GBP250,000 or greater will be taxed at the full 25% rate.

- Capital Gains

Capital gains realised by companies are subject to tax at the standard corporation tax rate.

ii Individuals

- Income tax

The UK follows a progressive based tax system for UK taxpayers. In the 2022/23 UK tax year, the standard personal allowance given, is GBP12,570, which is the amount of income that you do not have to pay any tax on. With income over GBP100,000, the personal allowance is tapered down by GBP1, for every GBP2 over and above GBP100,000.

Income between GBP12,570 and GBP50,270, is taxed at the basic rate band of 20%. Income between GBP50,270 and GBP150,000, is taxed at the higher rate of 40%. Any taxable income that falls over this amount is taxed at 45%.*Scottish rates also apply.

As announced in the 2021 Budget, the government will maintain the Personal Allowance at GBP12,570 and higher rate threshold at GBP50,270 for 2022/23, 2023/24, 2024/25 and 2025/26. The additional rate threshold is fixed at GBP150,000. The National Insurance Contributions ("NICs") Upper Earnings Limit and Upper Profits Limit will remain aligned to the higher rate threshold at GBP50,270 for these years.

- Capital Gains Tax

Capital gains realised by individuals are generally taxed at a rate of 20% unless the gains are related to residential property, where they are taxed at 28%, or carried interest, which is taxed at a minimum of 28% subject to specific rules, which should be considered on a case by case basis.

c. Common divergences between income shown on tax returns and local financial statements

The main source of profits is often from trading. A UK incorporated company's trading profits are based on its worldwide profit before tax in its accounts. Adjustments are made for non-trading receipts (such as dividends from other companies and income from property) and non-deductible expenditure (such as capital expenditure). Depreciation for tax purposes (known as capital allowances) is calculated and substituted for the depreciation charged in the accounts. A number of other statutory adjustments are made; three important differences are:

(i) that pension contributions are broadly tax deductible only when paid (but super contributions may be subject to spreading);

(ii) pay and benefits in kind deferred and paid more than nine months after the accounting period are broadly tax deductible only when paid; and

(iii) a tax deduction is available for the notional cost of certain share awards to employees.

From 1 April 2019, where goodwill has been acquired from a third party as part of a business purchase in which qualifying intellectual property is also purchased, corporation tax relief will be available at a fixed rate of 6.5% per annum on the value of the goodwill acquired, subject to a cap of six times the value of the qualifying intellectual property purchased.

Similar principles apply in relation to the calculation of profits of a property business.



Financial profits from a company's trading and non-trading loan relationships (money debts arising from the lending or borrowing of money) and related matters are usually based on the accounts and the distinction between "capital" and "revenue" receipts and deductions is not relevant. Instead, all credits and debits in the accounts are aggregated to find the net trading and/or non-trading income or expense. Certain statutory adjustments must be made, which include an interest capping limitation.

For trading companies, any profit or loss on loan relationships, and/or on intangibles, is generally included within the trading profits. If the company does not have a trade, then loan relationships and intangibles are treated as a separate source of income or expense.

2. RECENT DEVELOPMENTS

The main developments in the UK relevant to M&A transactions relate to the continued implementation of the BEPS actions into domestic legislation. The UK is generally supportive of the BEPS actions.

In addition the UK tax authority ("HMRC") has introduced or proposed new legislation in relation to the following areas:

a. Corporation tax

- The rate of corporation tax is 19% from 1 April 2020 and will increase to 25% from 1 April 2023.
- In respect of very large companies (broadly with profits exceeding GBP20 million in an accounting period) which will have to pay corporation tax by instalments four months earlier than other companies, for accounting periods commencing on or after 1 April 2019. Corporation tax for such very large companies will be due in months three, six, nine, and twelve of the accounting period.
- A temporary extension to the loss carry back rules for trading losses arising in accounting periods ending between 1 April 2020 and 31 March 2022. Trading losses arising in this period may be carried back up to three years (increased from one year). Losses carried back one year remain unrestricted, however, any losses carried back to the second or third year are restricted to GBP2 million for each financial year ended 31 March 2021 and 31 March 2022.
- The amount of SME payable R&D tax credit that a business can receive in any one year is capped at GBP20,000 (plus three times the company's total PAYE and NICs liability).



b. Capital allowances

- The amount of qualifying investment in plant and machinery that benefited from a 100% annual investment allowance ("AIA") was GBP1 million where the relevant expenditure was incurred from 1 January 2019 to 31 December 2020, but reduced to GBP200,000 from 1 January 2021 to 31 December 2021. This has since been temporarily increased to GBP1 million for expenditure incurred from 1 January 2022 to 31 March 2023 (all dates are inclusive).
- For qualifying expenditure incurred from 1 April 2021 to 31 March 2023, companies can claim enhanced first year capital allowances:
  - (i) Of 50% on most new plant and machinery investments that ordinarily qualify for 6% special rate writing down allowances.
  - (ii) A super deduction of 130% on most new plant and machinery investments that ordinarily qualify for 18% main rate writing down allowances. The super deduction will allow companies to cut their tax bill by up to 25p for every GBP1 they invest.
- The rate of capital allowance on special rate expenditure (for instance, integral features) is 6% in 2021/22.
- A Structures and Buildings Allowance of 3% (2% prior to April 2020) may be available for qualifying investments to construct new, or renovate old, non-residential structures and buildings.
- A 100% first year allowance may be available on certain energy efficient plant and cars.
- In the Chancellor's Spring Statement on 23 March 2022, it was indicated that the Government will consider reforms to the capital allowances regime when the enhanced reliefs noted above come to an end in April 2023. This could include a permanent increase to the Annual Investment Allowance, or increasing writing down allowances, both of which have been significantly reduced in recent years. It was also confirmed that certain R&D costs (e.g. cloud computing, pure mathematics, and limited R&D undertaken outsider the UK) will be eligible for relief.

c. National Insurance

- A 1.25% Health and Social Care levy payable by employers, employees, and the self-employed. This will be added to National Insurance rates for the 2022/23 tax year, but levied as a separate charge (including on those who do not pay NIC due to being over the State Pension age) from 2023/24 onwards. It will also apply to individual's dividend income. In the Chancellor's Spring Statement on 23 March 2022, it was announced that this would be partially offset by an increase in the threshold at which National Insurance becomes payable with effect from July 2022 and a proposed reduction in basic rate income tax from 20% to 19% with effect from April 2024 (to be implemented in legislation nearer the time and subject to prevailing economic conditions). This implies a UK General Election in 2024, notwithstanding Government proposals to repeal the Fixed Term Parliaments Act.



d. VAT

- As announced in HMRC's Revenue and Customs Brief 2 ("RCB 2 (2022)"), from 1 April 2022, HMRC's revised VAT policy on early termination/compensation and similar payments needs to be applied (i.e. such payments will represent further consideration for the main contracted supply), therefore, VAT must be accounted for on such payments if the underlying supplies are taxable.
- In the Chancellor's Spring Statement on 23 March 2022, it was announced that the scope of VAT relief for energy saving materials ("ESMs") will be expanded to include items such as solar panels, insulation, and heat pumps. Additional technologies such as wind and water turbines will be added, and eligibility criteria simplified. A time limited zero rating of installation costs will apply until 31 March 2027. These measures are intended to be effective from 1 April 2022 (subject to tabling and passing of the relevant legislation).

e. DAC6

- HMRC announced on 31 December 2020 that reporting under DAC6 would only be required for arrangements that meet hallmarks under Category D. Category D is a specific hallmark concerning automatic exchange of information and beneficial ownership. Regulations were made with effect from 31 December 2020 to implement this change, and to ensure that the rules work correctly after the end of the transition period. The reporting requirements under Hallmarks A, B, C and E have been repealed.

f. Other new proposals

In addition, further significant new proposals and proposed new taxes include:

- An open consultation exploring the proposal for an online sales tax ("OST"). An OST is being considered to redress a perceived imbalance between online retailers, and traditional businesses, arising from the latter's higher fixed costs (most particularly rent and business rates). No decision has been made regarding the introduction of the tax, and the consultation is intended to consider the potential scope and implementation issues of such a proposal. It should be noted that the OST is wholly separate from the UK Digital Services Tax ("DST").
- A plastic packaging tax for manufacturers and importers charged at a rate of GBP200 per tonne, with effect from 1 April 2022. Certain processing activities may be classified as manufacturing, and the liability for the tax lies with the business performing the last substantial modification to the packaging. Companies should review their supply chains accordingly, in order to assess exposure, and ensure that the necessary data can be collected. Businesses have 30 days to register from the date they become liable to tax.
- A Economic Crime levy charged on UK entities regulated for anti-money laundering ("AML") purposes under the Money Laundering, Terrorist Financing and Transfer of Funds Regulation 2017 at a rate of GBP0, GBP10,000, GBP36,000, or GBP250,000 per entity dependent on UK revenue. The first payments will be due in 2023/24 based on revenues arising in 2022/23.
- A new Residential Property Developer Tax from 1 April 2022, applying at 4% to the profits of companies, or groups of companies, undertaking UK residential property development, and having annual profits in excess of GBP25 million. In addition, the Building Safety Act gave powers to the government to introduce a building safety levy, intended to apply to the development of residential buildings, or care homes, over 18 metres or seven stories in height (but subject to exclusions). Details are expected to be published in 2023/23

- For Corporation Tax, Income tax, and VAT returns due for submission on or after 1 April 2022, a qualifying company or partnership (i.e. those with UK turnover above GBP200 million and/or a UK balance sheet total over GBP2 billion) will need to notify HMRC of any uncertain tax treatment ("UTT") where the tax treatment meets one or both of two notification criteria and, in that case, when the threshold test is also met. An UTT will arise where one, or both, of the following two notification triggers are met – either a provision is made in the company or partnership accounts to reflect a tax treatment which is uncertain (i.e. different to that set out by HMRC), or if a tax treatment that has been applied is contrary to HMRC's known position. The threshold test is met where a "tax advantage" of GBP5 million or more arises (determined by comparing the uncertain amount with the expected amount), usually in a 12 month period. Where a company (rather than a partnership or LLP) is a member of a group, its UK turnover and UK balance sheet totals should be aggregated with other 51% subsidiaries to determine if the business is within scope. Some entities are excluded altogether (e.g. Authorised and Unauthorised Unit Trusts, OIECs, Public Bodies).

g. New Qualifying Asset Holding Company ("QAHC") regime

From 1 April 2022, a new regime came into existence, which has been designed to make the UK a favourable asset holding location, comparable to jurisdictions such as Luxembourg. The intention of the tax rules is to give investors in the Qualifying Asset Holding Company ("QAHC") a similar tax outcome to that which would arise, if they invested directly in the underlying assets of the QAHC. The QAHC regime applies by election, which must be made online using the company's Government Gateway account and specify a date of entry after the date of the election, where the eligibility criteria are met. These include:

(i) The ownership condition : Essentially, the QAHC must (broadly speaking) be held at least 70% by institutional funds (e.g. pension schemes and insurance funds), collective investment schemes, regulated alternative investment funds, etc. Holding interests are calculated by reference to voting rights, entitlement to distributions, and entitlement to assets on a winding up. These rights include those attaching to certain equity-like debt instruments. These rules work similarly to the group relief rules and the test delivering the "worst" outcome applies. Individuals and "normal" companies can never be qualifying investors.

(ii) The activity and investment strategy conditions : The main activity of the QAHC must be the carrying on of an investment business. This must not include acquisition of listed securities, except with the purpose of procuring control and delisting. HMRC guidance suggests that acquiring new shares (e.g. on a capital restructuring) ahead of the exit of an investment by way of IPO, or retaining a stake in the newly listed company where driven by commercial factors (e.g. to express confidence to the market in the value of the shares being sold or issued as part of the IPO) would not itself result in this test being failed. Similarly, a minority investment that subsequently became listed would not do so. The prohibition is only against the QAHC seeking to directly or indirectly take positions in listed shares as a strategic matter.

(iii) Other conditions : The QAHC must be UK tax resident, not a Real Estate Investment Trust ("REIT"). and it must not issue listed securities.



Where the QAHC regime applies, the company is subject to all of the usual corporation tax rules, but with the following modifications:

(i) Gains on disposals of certain shares and overseas property are exempt.

(ii) Profits of an overseas property business, where those profits are subject to tax in an overseas jurisdiction are exempt and the associated profits that arise from loan relationships and derivative contracts are exempt.

(iii) Deductions are allowed for certain interest payments that would usually be disallowed as distributions (along with necessary consequential changes to the hybrids rules).

(iv) The transfer pricing exemption for small and medium-sized enterprises ("SMEs") is switched off and the participation condition adjusted, such that the QAHC must maintain transfer pricing documentation, and apply the arm's length principal in dealings with its shareholders.

(v) The obligation to deduct income tax from interest payments is disapplied.

(vi) The transfer pricing exemption for small and medium-sized enterprises ("SMEs") is switched off and the participation condition adjusted, such that the QAHC must maintain transfer pricing documentation and apply the arm's length principal in dealings with its shareholders.

(vii) Premiums paid on the repurchase of share capital from an individual are allowed to be treated as capital rather than income distributions (other than where the shares are employment-related securities).

(viii) Certain amounts paid to qualifying remittance basis users (i.e certain non-domiciled individuals) are allowed to be treated as non-UK source, reflecting the underlying mix of UK and overseas income and gains.

(ix) Repurchases of its own share and loan capital are exempt from Stamp Duty and Stamp Duty Reserve Tax ("SDRT").

(x) Entry and exit provisions, including the deemed sale and reacquisition of the company's assets and the creation of a new accounting period, when a company enters or exits the regime. In relation to the deemed sale and acquisitions of shares held, the substantial shareholding exemption can apply to such shares and the 12 month holding requirement is deemed to be met in all cases.

h. International matters

In June 2016, the European Union adopted an anti-tax avoidance Directive ("ATAD"), which sets out minimum standards for rules to address key international tax and BEPS related issues: (i) deductibility of interest, (ii) exit taxation, (iii) a general anti-abuse rule ("GAAR"), (iv) controlled foreign company ("CFC") rules; and (v) a framework to tackle hybrid mismatches. The UK already had rules covering each of these areas, but introduced limited amendments to the CFC and exit charge rules to ensure they are compliant with this minimum standard.

Gains on non-resident direct disposals and certain indirect disposals of UK property are brought within the scope of UK tax. This applies to gains accrued on or after 6 April 2019. Targeted exemptions may apply to institutional investors, such as pension funds. From 6 April 2020 income received by non-resident companies in relation to UK property is chargeable to corporation tax, rather than income tax.

From April 2019 anti-avoidance provisions have applied to prevent companies and individuals from moving profits offshore (tax avoidance involving profit fragmentation). This builds on measures such as the diverted profits tax ("DPT") and CFC rules already in place to capture UK profits moved offshore.

UNITED KINGDOM

From 1 April 2020, a new digital services tax ("DST") of 2% applies to the revenues of certain digital businesses to reflect the value they derive from the participation of UK users, pending an appropriate international solution. The tax will apply where annual revenues of more than GBP25 million are attributable to UK users (and worldwide revenue exceeds GBP500 million) from activities relating to search engines, social media platforms and online marketplaces. There will be a review of DST by HM Treasury before the end of 2025.

COVID-19

As a result of the COVID-19 pandemic and its impact on the UK economy, the UK Government has continually announced a series of measures to support the economy on a macroeconomic and microeconomic level. The tax and support measures announced are outlined at a high level below as these may continue to be relevant in a tax due diligence process:

i VAT

VAT payments due between 20 March 2020 and 30 June 2020 were able to be deferred on an optional basis and applied to all UK VAT registrations. Where applications for deferment were made by 21 June 2021, payments of any outstanding deferred VAT would not have been required until February 2022.

- Import VAT and Duty deferrals : HMRC permitted a full or partial payment extension on import VAT and duty normally due for those with a duty deferment account on 15th of the month following import without having their guarantee called upon or their deferment account suspended.
- Additional direct tax, payroll tax and VAT deferrals : If the VAT deferral above was not sufficient and/or if the business needed additional time to pay all taxes, HMRC extended its "Time to Pay" helpline. Businesses could request deferrals for VAT (outside the above period), payroll taxes and direct tax.

From 15 July 2020, the government introduced a temporary 5% reduced rate of VAT for certain supplies of hospitality, hotel and holiday accommodation, and admissions to certain attractions. On 24 September 2020, this reduced rate was extended until 31 March 2021. The government announced at the 2021 budget an extension to the 5% reduced rate of VAT until 30 September 2021, followed by a 12.5% VAT rate for a further six months until 31 March 2022.

ii IR35

The reform to the off-payroll working rules in the private sector (commonly known as IR35), which affects large or medium-sized organisations that engage with contractors through an intermediary, came into force from 6 April 2021 (having previously been deferred from 6 April 2020). The regime applies to companies (and groups) that are not "small," which is defined (in accordance with the Companies House definition) as meeting two of the following conditions:

- Turnover of less than GBP10.2 million;
- A balance sheet of less than GBP 5.1 million;
- Less than 50 employees.

If the company (or group), which is not small, engages with contractors through an intermediary (e.g. a personal service company or other intermediary arrangement) and that intermediary provides the personal service of an individual, the IR35 rules should be applied. These are complex, especially in an international capacity or where long supply chain arrangements are in place. Briefly, if the nature of the services provided by the individual is akin to that of



an employee, the IR35 rules may deem that amounts paid to the intermediary should subject to income tax, employee and employer NIC through the payroll ("PAYE") as if paid to an employee. Prior to April 2021, the tax risk associated with any reclassification on enquiry by HMRC typically sat with the worker and the intermediary. From April 2021 onwards, the requirement to formally assess (and issue a determination) of the relationship and the risk of any increased cost of employer NIC, Apprenticeship Levy and the recently announced Health and Social Care Levy moves to the end user, or client. The client is also responsible for issuing a formal outcome, administering an appeals process and ensuring the organisation that actually pays the worker fulfils all employer PAYE obligations.

iii Postponement of phase 2 of Making Tax Digital

Second phase ("digital links") of Making Tax Digital for VAT ("MTD"), initially scheduled for April 2020, had been delayed one year and came into effect on 1 April 2021. Data transfer or exchange within and between, software programs, applications, or products (that make up functional compatible software) must be digital where the information continues to form part of the electronic VAT account. Manually transferring data (e.g. copying and pasting between applications, or viewing on one system and manually entering on another) is not permitted.

iv Coronavirus Job Retention Scheme ("CJRS")

The CJRS was available to all UK employers to 31 December 2021. It enabled them to access support to cover a proportion of employees' salaries, where the employee has been furloughed as a result of the COVID-19 pandemic. The scheme first became available in March 2020 and allowed employers to claim up to 80% of eligible furloughed employees' current salary for hours not worked, up to a maximum of GBP2,500 per month.

v Self-employed individuals

Eligible self-employed individuals, whose trading profits were significantly reduced as a result of Covid, were able to claim up to 80% or GBP2,500 a month cash grant, provided all of the relevant criteria were satisfied, including the requirement to have trading profits less than GBP50,000 per year. This scheme ended on 31 December 2021.

vi Business Rates

For the fiscal year 2020/21, businesses in the retail, hospitality and leisure sectors in England did not have to pay business rates. This relief was initially extended to 30 June 2020. From July 2021, business rates relief was reduced from 100% to 66% until March 2022. To be eligible, businesses must have been affected by the third national lockdown. Qualifying companies are those which were required to close on 5 January 2021.

3. SHARE ACQUISITION

a. General Comments

The purchase of shares means that the purchaser acquires an interest in the company. This includes all assets and all liabilities of the company, including any historical tax liabilities.

b. Tax Attributes

Trading losses incurred prior to 1 April 2017 and carried forward should generally be available to be used against future taxable profits of the same trade in the entity which incurred the tax losses.

Trading losses incurred after 1 April 2017 may be carried forward and set-off against future taxable profits of different activities within a company and its UK group companies. Following a change in ownership any pre-acquisition carried forward losses (incurred after 1 April 2017) in the acquired company cannot be group relieved against the profits of companies in the acquiring group (i.e entities which were not part of its pre-acquisition group) for a period of five years.

Where taxable profits exceed GBP5 million, the amount of annual profit that can be relieved by brought forward trade losses will be limited to 50% of the company's profits.

Carried forward trade losses may be forfeited following a change of ownership under UK anti-avoidance rules where there is a change in ownership and either:

- There is a major change in the nature or conduct of the company's trade within a period of five years, beginning no later than the change in ownership and no earlier than three years before change in ownership; or
- The change of ownership occurs at any time after the scale of the company's activities has become small or negligible and before any significant revival of its trade.

Where the above applies, losses arising before the change in ownership will not be offset against profits arising after the change of ownership. Change of ownership restrictions also apply to non-trading tax losses in a similar manner, but also including the circumstance of a post-acquisition recapitalisation of the business.

Broadly, there is a change in ownership of a company for these purposes where more than half of its ordinary share capital changes hands, but can include circumstances where two or more persons (including unconnected parties) make such an acquisition. Other powers and other share capital, may be taken into account where more appropriate.

c. Tax Grouping

The UK does not have a fiscal unity, or consolidated group tax regime. The basic UK corporation tax rules operate on a company by company basis, however, a system of group relief applies to companies in a group whereby one member of the group can surrender its losses to another member of the group, which can deduct the loss from its total profits, thus reducing the amount of corporation tax payable. From 1 April 2017, brought forward losses can be transferred in the same manner (but subject to the 50% restriction mentioned above), whereas only profits in the same accounting period can be sheltered by pre-1 April 2017 losses.

Broadly, UK companies can surrender profits and losses within a group providing that a common parent holds at least 75% of the ordinary share capital (and rights to at least 75% of profits available for distribution and assets distributable on a winding up).



d. Tax Free Reorganisations

UK tax legislation contains provisions that enable a tax neutral reorganisation, including:

- The ability to transfer assets of a trade, together with accumulated losses, between UK companies within a group without a charge to tax.
- The tax neutral transfer of assets between UK companies within a group under the chargeable gains regime.
- Tax free share for share (and share for loan note) exchanges provided certain conditions are met.
- Group relief provisions for stamp duty and stamp duty land tax.
- Provisions for reorganisations that take place within a VAT group.

When considering a group reorganisation post-acquisition, care needs to be taken with regards to future degrouping charges that may apply if the company is sold outside the group (or otherwise ceases to be a member) within a period of six years. There are also stamp duty and stamp duty land tax relief claw back provisions that apply for a period of three years.

e. Purchase Agreement

The purchase agreement will typically contain tax warranties and a tax indemnity. It is usual practice for a purchaser to perform a due diligence exercise on the target company, the result of which would be reflected in the tax warranties and indemnities.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

Transfer taxes take the form of stamp duty at 0.5% (rounded up to the nearest GBP5), payable by the purchaser. Transfers will need to be documented through a stock transfer form, which must be sent to the Stamp Office, with the appropriate payment, no later than 30 days after the transaction has taken place.

g. "Purchase Accounting" applicable to share acquisitions

Purchase price accounting applies in the UK following IFRS or UK GAAP, however, it is not possible to obtain an uplift in the tax basis of assets acquired within corporate entities.

h. Share Purchase Advantages

- Beneficial tax reliefs on share sales : There are various beneficial capital gains tax reliefs on a sale of shares. For corporate sellers, the main exemption is the Substantial Shareholding Exemption ("SSE"). SSE generally applies to exempt a gain where there is a holding of more than 10% of shares in a trading company or group. For individual shareholders the main benefit is Business Asset Disposal Relief (known as Entrepreneurs Relief prior to 6 April 2020), which may apply to reduce the tax rate to 10% for the sale of shares in trading companies where the individual holds a 5% interest, and is an officer or employee of that company. Qualifying capital gains are subject to a lifetime limit, which has been set at £1 million since 11 March 2020.
- No double tax charge : There is a potential double tax charge on an asset sale, which can result in the seller being taxed twice, on the gain made from the sale of the assets and again when the sale proceeds are distributed. The selling company may suffer corporation tax on chargeable gains that arise on the sale of the assets. The shareholders in the selling company may then pay income tax on dividends paid out of any profit that is made from the sale of assets.

- Rollover relief : A share sale should enable the seller to defer tax on chargeable gains to the extent that the consideration takes the form of shares or loan notes in the buyer. This is not possible on an asset sale, although similar relief is available on the sale of certain qualifying assets if the proceeds are reinvested by the seller in qualifying replacement assets. In each case, the effect of the relief is to defer tax on any gain until the subsequent sale of the consideration shares, loan notes, or replacement assets.
- No capital allowances balancing charges : A single chargeable gain will arise on a share sale, which may be exempt under SSE (as noted above). On an asset sale, the sale of each category of asset will have different tax consequences. For example, the disposal of certain assets in respect of which capital allowances have been claimed could trigger a balancing charge for the seller. This could be the case if the particular asset or, in the case of pooled assets, the asset pool, is sold for more than its tax written down value as the excess is treated as taxable trading income.
- Losses : Brought forward losses in a company would transfer with a share sale (subject to anti-avoidance legislation).

i. Share Purchase Disadvantages

With a share purchase, the purchaser inherits all the historical liabilities of the company, including tax liabilities. There is no opportunity to increase the tax basis in the assets acquired within the company.

4. ASSET ACQUISITION

a. General Comments

Generally, asset sales are less common primarily due to the capital gains exemptions referred to above and the inability to transfer losses.

b. Purchase Price Allocation

Generally, the purchase price allocation for tax purposes follows the allocation made between the parties in the asset purchase agreement.

c. Tax Attributes

Tax attributes do not generally transfer with an asset purchase.

d. Tax Free Reorganisations

It is possible to hive down trade and assets to a new company in order to affect a share sale and potentially benefit from the Substantial Shareholding Exemption ("SSE") from capital gains.

e. Purchase Agreement

As historical liabilities are not transferred with an asset acquisition, there is usually significantly less tax content in the purchase agreement. A Purchase Price Allocation agreed between the parties may form part of the agreement, and would be relevant for expenditure/proceeds for capital allowances purpose or establishing the base cost of certain assets. For fixtures and fittings within a building, the amounts must be agreed between the parties and subject to a joint election filed with HMRC.

f. Depreciation and Amortisation

Amortisation arising on the acquisition of all goodwill or customer related intangibles (including those arising from an asset acquisition) is not deductible for corporation tax purposes, however, there may be a limited opportunity to amortise goodwill on an asset acquisition where the goodwill is acquired together with other items of qualifying intellectual property.

g. Transfer Taxes, VAT

Where a trade is transferred as a going concern the transfer should be VAT free (outside the scope of VAT) where the conditions for Transfer of a Going Concern ("TOGC") treatment are met. Broadly, this requires a business unit capable of independent operation to be sold, and acquired by a VAT registered purchaser who then carries on the same activities (whether as standalone business, or part of a larger business in either case). Otherwise VAT may be chargeable depending on the nature of the specific assets being transferred.

h. Asset Purchase Advantages

- In asset deals, purchasers can choose the assets they want to acquire and leave any known or unknown liabilities behind.
- There is also greater scope for immediate and future tax deductions. For example, the acquisition of assets that qualify for capital allowances and certain IP would typically qualify for tax deductions. Further, certain assets purchased may qualify for rollover relief so a purchaser can defer other gains into these acquisitions.
- There are potentially higher base costs in assets acquired for capital gains tax purposes. Broadly the tax basis of each relevant asset will be the amount paid for it.
- The purchase of assets may qualify as a transfer of a going concern (see 4.g. above), in which case, no VAT would need to be accounted for on the sale.

i. Asset Purchase Disadvantages

- An asset deal is often less attractive for vendors than a share deal because of the potential double tax charge for shareholders outlined above and the inability to access capital gains tax exemptions available on share transactions.
- Any brought forward tax losses would remain with the vendor.



5. ACQUISITION VEHICLES

a. General Comments

The choice of acquisition vehicle generally depends upon how the acquisition is being financed and the future plans for exit and repatriation of cash.

b. Domestic Acquisition Vehicle

A domestic acquisition vehicle is commonly used as it can be leveraged and the interest expense offset against the profits of the acquired entity under the group relief regime described earlier.

c. Foreign Acquisition Vehicle

Foreign acquisition vehicles cannot form a group with a UK target company, so there would be no opportunity to get tax relief on any acquisition debt. A foreign vehicle may be used in order to facilitate a capital gains tax free exit where it is expected the UK exemptions would not apply. Also, the sale of shares on a foreign company, holding UK shares, would not be subject to UK stamp duty.

d. Partnerships and joint ventures

Partnerships are rarely used as acquisition vehicles due to their transparent nature.

e. Strategic vs Private Equity Buyers

There are generally no specific differences in tax regime applicable to strategic vs private equity buyers in the UK.

6. ACQUISITION FINANCING

a. General Comments

The UK is a liberal jurisdiction with a well-developed legal and banking system and so a favourable jurisdiction in which to raise finance.

b. Equity

The UK does not levy withholding tax on dividends and does not levy capital gains tax on foreign shareholders. As such, UK tax does not usually dictate jurisdictions for holding equity in UK companies.

c. Debt

i Limitations on use of debt

Related party debt is subject to transfer pricing rules and interest is only deductible on related party debt if the quantum of debt and rate of interest is on arm's length terms. There are no safe harbour provisions in the UK. In respect of debt, the definition of related parties is extended to include parties who "act together" in the provision of finance.

ii Limitations on interest deductions

In addition to the transfer pricing rules mentioned above, the UK introduced a new regime with effect from 1 April 2017 that restricts the tax deductions that are available for interest expense based on the higher of: (i) 30% of the UK group's tax EBITDA, or (ii) by election, the group ratio based on the actual net third party interest to EBITDA ratio for the worldwide group. There is GBP2 million de-minimus limit of allowable interest (if higher). This rule implements BEPS Action 4 recommendations.

UK tax legislation also contains anti-avoidance provisions that can deny interest deductions where the loan is deemed to have been borrowed for unallowable purposes (which broadly mean that the loan was obtained as part of arrangements to secure a tax advantage).

iii Debt Pushdown

Typically, from a UK standpoint in order to push down debt on an acquisition, a new UK holding company is established and leveraged to carry out the acquisition so that interest on the debt can be relieved against the target company's profits under the UK's group relief provisions. Broadly, UK companies can surrender profits and losses within a group providing that a common parent holds at least 75% of the ordinary share capital (and rights to at least 75% of profits available for distribution, and assets distributable on a winding up).

It may also be possible to borrow to finance distributions from the Target company, although this would need more careful consideration in respect of anti-avoidance provisions.

d. Hybrid Instruments

As the UK has extensive anti-hybrid legislation, hybrid financing instruments are rarely used.

e. Other Instruments

This section is left intentionally blank.

f. Earn-outs

Generally, earn-out payments are taxed effective from the date of disposal of the shares. Where the earn-out consideration is contingent and unascertainable at the date of the disposal it is taxed at a later date, when received.

Earn-outs usually require careful attention in respect of individual recipients to determine whether the earn-out can be reclassified as employment income.



7. DIVESTITURES

a. Tax Free

There is a so called Substantial Shareholdings Exemption ("SSE") from capital gains tax ("CGT") where shares are disposed of by a company in certain circumstances. Generally, for the SSE to apply:

- The parent of the disposing entity would need to hold (together with certain other group members, if applicable) at least 10% of the ordinary share capital of the disposed entity for a continuous 12 month period beginning not more than six years before the date of disposal; and
- The disposed entity would need to be a trading company or the holding company of a trading sub-group.

A trading company is generally a company where no more than 20% of its activity or assets relate to non-trading items, such as holding investments.

b. Taxable

The current rate of UK CGT is 20%. The charge to CGT applies to individuals, trusts, unincorporated bodies and companies in the case of development land gains. Companies resident in UK are taxed on chargeable gains, with the gains forming part of their income subject to corporation tax at the applicable rate.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

The UK operates a worldwide system of taxation.

b. CFC Regime

The controlled foreign company regime ("CFC") applies to companies resident outside the UK that are controlled by UK residents.

The purpose of the CFC regime is to prevent the artificial diversion of profits from the UK through the use of a non-UK resident company controlled by a UK-resident person or persons. A CFC charge is made by apportioning the profits of a CFC to UK resident companies which have an interest in the CFC.

The current CFC regime applies for accounting periods beginning on or after 1 January 2013. The old CFC regime, which applied before this date, is not dealt with in this guide.

i What is a CFC?

A CFC is a non-resident company controlled by a UK-resident person, or persons. For these purposes, a person ("P") controls a non-UK resident company ("C") if at least one of the following conditions are met:

- P has the power to secure that the affairs of C are conducted in accordance with P's wishes;
- P has rights over 50% of the proceeds which would be received on the disposal of C, or over C's income or assets; and
- P is C's parent and if (assuming that the CFC charge is made), at least 50% of C's chargeable profits would be apportioned to P.

In addition, a company which would not otherwise be a CFC is taken to be a CFC where a UK-resident person and a non-UK resident person, taken together, control the company and a 40% test is met. The 40% test will be met where the UK resident controller has at least 40% and the non-UK resident controller has between 40% and 55% of the interest, rights, and powers in respect of which the controllers are taken to control the CFC.

ii The CFC charge

The charge is applied by apportioning the CFC's chargeable profits and creditable tax to the UK resident companies which have a significant interest (at least 25%) in the CFC. In most cases, the apportionment is made in proportion to the shareholdings in the CFC. The charge is restricted to those profits of the CFC which pass through the CFC charge "gateway". No charge is made under the CFC rules if an exemption applies with regard to the CFC.

iii The CFC charge gateway

The CFC charge gateway is effectively a series of definitions of profits that may fall within the CFC regime. Profits that pass through the CFC charge gateway are profits that have been artificially diverted from the UK. A CFC charge can only arise to the extent that profits pass through the gateway.

iv Exemptions

Even if some or all of the CFC's profits pass through the gateway, no charge will be made if one of the following exemptions applies:

- The exempt period exemption : This is a temporary exemption for CFCs coming within the rules for the first time as a result of an acquisition or reorganisation.
- The low profits exemption : A CFC with profits of GBP50,000 or less (or GBP500,000 or less where non-trading income is no more than GBP50,000) will avoid an apportionment.
- The low profit margin exemption : This exemption will apply where the CFC's profits are no more than 10% of its operating expenditure.
- The tax exemption : The tax exemption applies where the tax paid by the CFC in its territory of residence is at least 75% of the corresponding UK tax. This exemption is not available where the foreign tax is paid under designer rate provisions.
- The excluded territories exemption : No CFC charge will be made if the CFC is resident in an excluded territory, and if certain conditions relating to its income and intellectual property are met.



c. Foreign branches and partnerships

Companies carrying on a trade in another territory though a foreign branch include the branch results in their corporation tax return. Relief is given for any foreign tax as a credit against UK tax (capped at the UK tax on those same profits).

Alternatively, on making an election, a UK large or medium sized company will be exempt from UK tax in respect of future profits and losses of all its non-UK branches, except for some branches located in tax havens. The exemption for companies that are small will be restricted to branches located in territories with which the UK has a comprehensive double tax agreement.

d. Cash Repatriation

Distributions paid by a UK or overseas company to a UK resident company are chargeable to corporation tax on the recipient unless the distribution is exempt. A distribution is exempt if it falls within any of the following classes: Distributions from controlled companies, distributions from portfolio holdings, transactions not designed to reduce tax and distributions in respect of shares accounted for as liabilities. Each class is subject to specific anti-avoidance clauses. These classes usually cover most distributions.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Historically, non-UK resident investors could structure their arrangements so that they would be outside the scope of UK tax on UK property. Legislation was introduced from 6 April 2019. The key changes are that from 6 April 2019:

- Disposals of interests in both residential and commercial property will be within the UK's tax base;
- Persons previously able to elect out of charge (such as diversely held companies and widely marketed funds) will now be liable on all disposals of UK land; and
- There will be a new charge for non-residents' gains on disposals of indirect interests in UK property (such as selling the shares in a company that derives 75% or more of its gross asset value from UK land).

The rate of CGT will be 20%. Non-resident CGT returns must be filed and the tax paid, within 30 days of completion of the disposal. All non-resident companies will now pay corporation tax on their gains and should file a company tax return in the usual way.



b. CbC and Other Reporting Regimes

The UK has implemented the Country by Country reporting regime, for groups with a turnover of more than EUR750 million. Entities falling within CbC reporting should inform HMRC:

- The name of the entity making the filing;
- That entity's unique tax reference number; and
- The territory where filing will be made.

Only one notification is required for group entities within the UK, so one company may file the notification and include details (the names and tax reference numbers) of the other relevant UK entities.

10. TRANSFER PRICING

The UK has transfer pricing documentation legislation. The minimum requirement to satisfy this is by maintaining evidence that transactions meet the arm's length standard.

There is an exemption from the application of transfer pricing rules for SMEs. The exemption applies only to transactions with territories for which there is a full non-discrimination article in the relevant treaty.

There is no statutory deadline for preparation of transfer pricing documentation, other than the general requirement to maintain appropriate documentation to support the relevant tax return. Evidence to demonstrate an arm's length result would need to be made available to HMRC in response to a legitimate and reasonable request related to a tax return. If such a request is made, it is reasonable to assume 30 days to respond to it, or such other time as mutually agreed upon.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities and instruments

As part of the United Kingdom's ongoing commitment to the OECD's Base Erosion and Profit Shifting ("BEPS") initiatives, new legislation was enacted in the Finance Act 2016 containing provisions to remove tax mismatches arising from the use of hybrid financial instrument and hybrid entities. Broadly, a tax mismatch arises where a double deduction is being claimed for the same expense ("the double-deduction outcome") or a deduction is being claimed for an expense without the corresponding receipt being fully taxed ("the deduction/ non-inclusion outcome").

The rules impact a wide range of structures, most typically those involving entities which are treated as opaque in the country of incorporation but transparent for the investor or parent entity, for example US parented groups where UK subsidiaries are disregarded by election for US tax purposes. Certain arrangements involving PEs and dual resident entities are also affected.

Other structures affected will include those where financial instruments have been entered into which may be treated as debt for the paying entity, but equity for the payee, thereby generating an interest deduction with no corresponding taxable income for the investor or parent entity.



b. Principal/Limited Risk Distribution or Similar Structures

It is possible to structure UK business operations within the limited risk distribution model, however, it is essential that the transfer pricing rules are adhered to.

c. Intellectual Property

i Patent Box

The Patent Box enables companies to apply a 10% rate of Corporation Tax to profits earned from its patented inventions.

To benefit from the Patent Box a company's profits must be from exploiting patented inventions that are owned and on which qualifying development has taken place. If the company is a member of a group, it may qualify if another company in the group has undertaken the qualifying development.

ii R&D Tax Credit

R&D reliefs support companies that work on innovative projects in science and technology. R&D tax credits can be claimed on projects which are designed to make an advance in science or technology.

For small and medium sized companies, SME R&D relief allows companies to:

- deduct an extra 130% of their qualifying costs from their yearly profit, as well as the normal 100% deduction, to make a total 230% deduction; and
- claim a tax credit if the company is loss making, worth up to 14.5% of the surrenderable loss.

The Research and Development Expenditure Credit ("RDEC") is available to large companies. The company's qualifying expenditure generates a 13% credit, which is taxable. The credit is also creditable against the company's tax liability. If the company is loss making the credit can be claimed as a cash payment.

d. Special tax regimes

Whilst the UK does not generally have special tax regimes related to M&A, the new Qualifying Asset Holding Company ("QAHC") regime is relevant and described at Section 2, above.



12. OECD BEPS CONSIDERATIONS

The UK government successfully helped initiate the G20 OECD BEPS project and worked with G20 and OECD partners to bring this to a successful conclusion in October 2015 and deliver the 2015 Final Reports. The UK's objective has been to ensure that profits are taxed where the economic activity generating them takes place.

In 2014, the UK was one of the first countries to implement the OECD country-by-country reporting template, which will improve transparency of business to tax authorities. The UK continues to be one of the leading countries pushing the BEPS agenda and, in some cases, has adopted stricter measures than anticipated.

Action 6 lays down requirements for the availability of treaties to be limited to situations where a principle purpose test ("PPT"), based on the transactions or arrangements, is met. The PPT can be separately supplemented by a limitation on benefits ("LOB") rule, which limits treaty benefits to persons who meet certain conditions. The UK will adopt the PPT through the multilateral instrument ("MLI"), but will not seek to include the supplementary LOB provisions.

Action 15 of the OECD's BEPS project recommended the development of a MLI to allow countries to swiftly modify their bilateral treaties to implement tax treaty related measures developed as part of the BEPS work. The UK signed the MLI in June 2017.

13. ACCOUNTING CONSIDERATIONS

a. Combinations

IFRS 3 *Business Combinations* outlines the accounting when an acquiror obtains control of a business (e.g. an acquisition or merger). Such business combinations are accounted for using the "acquisition method," which generally requires assets acquired and liabilities assumed to be measured at their fair value at the acquisition date.

b. Divestitures

Divestitures are generally accounted for based on the actual value of the transaction.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Distributions may only be made from a company's distributable reserves. Distributable reserves is a legal concept and is defined as the company's accumulated realised profits less accumulated realised losses.

Where a company does not have sufficient distributable profits, it may be undertake a capital reduction in order to reduce shares capital and create distributable reserves. Strict legal steps need to be followed.



b. Substance Requirements for Recipients

As the UK does not levy withholding tax on distributions and does not levy non-resident capital gains tax (except in relation to property, noted above), substance considerations have been less relevant than for other jurisdictions. In respect of the substance required for treaty claim for reduced withholding tax on interest payments, historically the main issue was whether the recipient had beneficial ownership of the income. As the UK has implemented the MLI, those principals will apply.

c. Application of Regional Rules

Following Brexit, from 1 January 2021 the UK has moved out of the transition period into a new relationship with the EU, governed by the Trade and Cooperation Agreement. The UK has now lost the benefit of the EU Parent Subsidiary Directive and the Interest and Royalties Directive. Group companies will now have to rely on treaty claims to minimise withholding taxes on dividends, interest and royalties paid from the EU to the UK.

d. Tax Rulings and Clearances

There are only a limited number of clearances that are often relevant in respect of UK transactions. The most common relate to tax free treatment of share-for-share exchanges, and de-mergers. The clearances solely relate to the requirement that the transactions have been undertaken for bona-fide commercial purposes and not as part of a tax avoidance scheme. They do not cover the technical aspects of the transactions.

Individual shareholders often seek clearance that their share transactions are capital in nature and not revenue and will not be reclassified as such.

15. MAJOR NON-TAX CONSIDERATIONS

Due regard should be given to the legal aspects that arise in the context of an M&A deal. Where mergers are concerned, it is recommended that a legal due diligence is performed in order to identify any potential risks that may materialise at the level of the target company (e.g. where the target has significant real estate property, or operates in a highly regulated sector). In the context of reorganisations, the legal aspects related to the transfer of employees should be carefully analysed and observed. General Data Protection Regulation ("GDPR") obligations may also arise.



16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Albania	0	6	0	
Algeria	0	7	10	
Antigua and Barbuda	0	20	0	
Argentina	0	12	3/5/10/15	[1]
Armenia	0	5	5	
Australia	0	0/10	5	[2]
Austria	0	0	0	
Azerbaijan	0	10	5/10	[4]
Bahrain	0	0/20	0	[7]
Bangladesh	0	7.5/10	10	[2]
Barbados	0	0	0	
Belarus	0	5	5	
Belgium	0	0/10	0	[5]
Belize	0	20	0	
Bolivia	0	15	15	
Bosnia-Herzegovina	0	10	10	
Botswana	0	10	10	
British Virgin Islands	0	20	20	
Brunei	0	20	0	
Bulgaria	0	0/5	5	[7]
Canada	0	0/10	0/10	[4]; [6]; [7]
Cayman Islands	0	20	20	
Channel Islands:	0			
Guernsey	0	0/20	0/20	[7]
Jersey	0	0/20	0/20	[7]
Chile	0	4/5/10	2/10	[2]; [6]
China (excludes Hong Kong)	0	10	6/10/20	[4]; [8]
Colombia	0	10	10	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Croatia	0	0/5	5	[7]
Cyprus	0	0	0	
Czech Republic	0	0	0/10	[11]
Denmark	0	0	0	
Egypt	0	15	15	
Estonia	0	0/10	0	[2]
Ethiopia	0	5	7.5	
Falkland Islands	0	0	0	
Faroes	0	0	0	
Fiji	0	10	0/15	[4]
Finland	0	0	0	
France	0	0	0	
Gambia	0	15	12.5	
Georgia	0	0	0	
Germany	0	0	0	
Ghana	0	12.5	12.5	
Greece	0	0	0	
Grenada	0	20	0	
Guyana	0	15	10	
Hong Kong	0	0	3	
Hungary	0	0	0	
Iceland	0	0	0/5	[11]
India	0	10/15	10/15	[2]; [6]
Indonesia	0	10	10/15/20	[7]; [8]
Ireland, Republic of	0	0	0	
Isle of Man	0	0/20	0/20	[7]
Israel	0	5/10	0	[2]
Italy	0	0/10	8	[6]
Ivory Coast (Côte d'Ivoire)	0	15	10	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Jamaica	0	12.5	10	
Japan	0	0/10	0	[10]
Jordan	0	10	10	
Kazakhstan	0	10	10	
Kenya	0	15	15	
Kiribati	0	20	0	
South Korea (Republic of Korea)	0	10	2/10	[8]
Kosovo	0	0	0	
Kuwait	0	0	10	
Kyrgyzstan	0	5	5	
Latvia	0	10	5/10	[8]
Lesotho	0	10	7.5	
Libya	0	0	0	
Liechtenstein	0	0	0	
Lithuania	0	0/10	5/10	[7]; [8]
Luxembourg	0	0	5	
Macedonia	0	0/10	0	[5]
Malawi	0	0/20	0/20	[3]
Malaysia	0	10	8	
Malta	0	10	10	
Mauritius	0	20	15	
Mexico	0	5/10/15	10	[7]
Moldova	0	5	5	
Mongolia	0	7/10	5	[2]
Montenegro	0	10	10	
Montserrat	0	20	0	
Morocco	0	10	10	
Myanmar	0	20	0	
Namibia	0	20	0/5	[4]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Netherlands	0	0	0	
New Zealand	0	10	10	
Nigeria	0	12.5	12.5	
Norway	0	0	0	
Oman	0	0	8	
Pakistan	0	15	12.5	
Panama	0	0/5/20	5	[7]
Papua New Guinea	0	10	10	
Philippines	0	10/15	15/20	[7]; [9]
Poland	0	0/5	5	[2]
Portugal	0	10	5	
Qatar	0	0/20	5	[7]
Romania	0	10	10/15	[4]
Russian Federation	0	0	0	
St. Kitts and Nevis (St. Christopher and Nevis)	0	20	0	
Saudi Arabia	0	0	5/8	[8]
Senegal	0	10	6/10	[8]
Serbia	0	10	10	
Sierra Leone	0	20	0	
Singapore	0	0/5	8	[2]
Slovak Republic	0	0	0/10	[4]
Slovenia	0	0/5	5	[7]
Solomon Islands	0	20	0	
South Africa	0	0	0	
Spain	0	0	0	
Sri Lanka	0	10	0/10	[9]
Sudan	0	15	10	
Swaziland	0	20	0	
Sweden	0	0	0	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Switzerland	0	0	0	
Taiwan	0	10	10	
Tajikistan	0	10	7	
Thailand	0	20	5/15	[9]
Trinidad and Tobago	0	10	0/10	[9]
Tunisia	0	10/12	15	[2]
Turkey (excludes North Cyprus)	0	15	10	
Turkmenistan	0	10	10	
Tuvalu	0	20	0	
Uganda	0	15	15	
Ukraine	0	5	5	
United Arab Emirates	0	0/20	0	[7]
United States	0	0/15	0	[11]
Uruguay	0	10	10	
Uzbekistan	0	5	5	
Venezuela	0	5	5/7	[7]
Vietnam	0	10	10	
Zambia	0	10	5	
Zimbabwe	0	10	10	

Footnotes	
1	Royalties: 3% for news; 5% for copyright; 10% industrial; 15% other royalties.
2	Interest: Lower rate for loans from banks and financial institutions.
3	Interest and Royalties: Higher rate applies if recipient controls more than 50% of payer.
4	Royalties: Lower rate applies to copyright royalties.
5	Interest: 0% on loans between businesses.
6	Interest and Royalties: Lower rate applies to industrial, commercial royalties
7	Interest and Royalties: Specific additional conditions apply for lower rate.
8	Royalties: Lower rate applies for equipment royalties.
9	Royalties: Lower rate applies to films, TV, and radio.
10	Interest: Higher rate applies to certain profit related interest.
11	Interest: Specific conditions apply for higher rate.



17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

The following example of a tax due diligence information request list is generic and comprehensive. In general, the preferred approach would be to refine such a list based on initially available information, publicly available information, and our own experience of the sector, in order to ensure the relevance of the questions to the specific transaction under consideration. It would be typical to review the last three completed accounting periods for corporation tax and four years for VAT and employment taxes. Certain other matters (e.g. group reorganisations) may be subject to a review period of six years.

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Contact details for persons available to discuss UK tax matters (tax advisers / management, as relevant).
2	Tax Due Diligence	General	A current group structure chart, including all entities by full legal name, jurisdiction of incorporation and tax residence, entity type, class of shares, and ownership percentages.
3	Tax Due Diligence	General	A brief overview of each entities' activities (trading, holding, dormant).
4	Tax Due Diligence	General	An overview of how the Group's tax affairs are managed (corporation tax, VAT, payroll tax and any non-UK taxes).
5	Tax Due Diligence	General	Details of any risk rating that the UK group has received from HMRC including a copy of any HMRC risk review correspondence.
6	Tax Due Diligence	General	Confirmation whether a Senior Accounting Officer ("SAO") certification has been provided to HMRC for each financial year on a timely basis. If so, please provide a copies of these.
7	Tax Due Diligence	General	In relation to the corporate offence of failure to prevent the criminal facilitation of tax evasion (CCO), details of how this is managed and whether reasonable prevention measures have been implemented, e.g. risk assessment, communication and training, implementation of risk-based prevention procedures and monitoring. Please also provide details of how any findings have been addressed.
8	Tax Due Diligence	General	Confirmation whether a CbC notification has been made to HMRC and when this was made. Please provide a copy of the CbC report.
9	Tax Due Diligence	General	Details of changes affecting the Group over the last six years, highlighting any: (a) Acquisitions, disposals, mergers or other significant corporate transactions (b) Any material changes in the Group's shareholders in the past six years Where applicable in respect of these transactions: (i) Copies of any tax advice or clearances obtained (ii) Copies of any due diligence prepared in respect of any acquisitions or disposals (iii) Copies of any relevant sale and purchase agreements.

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Nº.	Category	Sub-Category	Description of Request
10	Tax Due Diligence	General	Details of any loans to shareholders / directors, when the loans were advanced, the amounts, interest rate applied and details of any s455 tax charge paid.
11	Tax Due Diligence	General	Details of any balances with shareholders which will be settled prior to the proposed transaction.
12	Tax Due Diligence	General	Details of any tax planning schemes undertaken and any known areas of tax exposure.
13	Tax Due Diligence	General	Copies of any significant agreements reached with tax authorities concerning the ongoing tax treatment of particular items or transactions.
14	Tax Due Diligence	General	Details of the principal historical mechanisms of cash repatriation / moving cash from subsidiaries to group companies, and / or shareholders, and any tax leakage which has arisen (e.g. withholding taxes).
15	Tax Due Diligence	General	Please provide details of any tax payment deferrals in place (e.g. VAT, payroll taxes, corporation tax) as a result of recent responses to COVID 19 by HMRC and other tax authorities), i.e. any material amounts deferred and when they are expected to be paid. Details of any Coronavirus Job Retention Scheme funds received from HMRC. Please advise dates for which claims have been made, number of staff furloughed and total value of CJRS funding obtained? Has the company received an HMRC prompter letter? Did the company respond to the letter? Has the company taken professional advice on CJRS?
16	Tax Due Diligence	Related party transactions	Details of any transactions with related parties (e.g. directors, shareholders, group companies) including: (a) Detailed description of the calculation of the pricing (i.e. mark-up and basis of apportionment/charge) of intercompany transactions, e.g. loans, management charges, rental agreements, head office costs, IP, etc. (b) Copies of any transfer pricing studies or APAs (c) Description of known exposures with respect to transfer pricing, including a description of any transfer pricing issues that have been the subject of correspondence with taxing jurisdictions and the status of these issues or a description of how they were resolved (d) Nature and location of the key value drivers in the business (e) Nature and location of any IP (f) The entity which bears the entrepreneurial risks and rewards (g) Location of the management of customer relationships.

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Nº.	Category	Sub-Category	Description of Request
17	Tax Due Diligence	Related party transactions	Details of any group cash pool arrangement in place, including: (a) How it operates (notional or zero balancing) (b) The role of the UK entities (depositor, borrower, cash pool header) (c) The group benefit of the cash pool arrangement (i.e. how are the internal interest rates set) and how this is allocated to the cash pool participants (d) Any transfer pricing work undertaken to support the allocation as being arm's length.
18	Tax Due Diligence	Financing	Details of the financing structure of the Group, e.g. external debt and significant related party loans. Copies of any tax advice received from the company's tax adviser or other analysis prepared in relation to the deductibility of interest expense, in particular the consideration of: (a) The corporate interest restriction ("CIR") (including a copy of the CIR return and supporting calculations) (b) Transfer pricing (c) Anti-hybrid rules (d) Other anti-avoidance provisions.
19	Tax Due Diligence	Financing	Details of any review carried out to assess whether the anti-hybrid legislation applies to the Group's financing, trading, or any other transactions, for example in relation to include any specific instruments/ transactions.
20	Tax Due Diligence	Financing	Matrix of intercompany and shareholder loans including the key terms of the loans and when the loans were advanced.
21	Tax Due Diligence	Withholding taxes	Details of any withholding tax incurred on the payment of interest on the senior loans, shareholder loans and management loans, and any intercompany loans. If withholding tax has not been paid, please provide details of the withholding exemption(s) applied.
22	Tax Due Diligence	Withholding taxes	A description of any withholding tax obligations on the payment of any royalties and details of any exemptions applied or any treaty clearances obtained.
23	Tax Due Diligence	Tax in the financial statements	Draft financial statements for the year ended FYXX, if available.



Nº.	Category	Sub-Category	Description of Request
24	Tax Due Diligence	Tax in the financial statements	The calculation of the corporation tax creditor/debtor balance in the latest financial statements. This should include (by entity, if consolidated): (a) The balance brought forward (b) Calculation of the corporation tax charge for the period (c) Any payments made to / repayments received from HMRC in the period.
25	Tax Due Diligence	Tax in the financial statements	The calculation of the deferred tax asset / liability at in the latest financial statements.
26	Tax Due Diligence	Tax in the financial statements	Details of any provisions for potential UK tax liabilities recorded by the Group on its latest balance sheet.
27	Tax Due Diligence	UK corporation tax	Confirmation whether all corporation tax filings have been filed, and all payments made, within the statutory time limits. Details of any returns filed late, amended returns filed, or payments made late.
28	Tax Due Diligence	UK corporation tax	Copies of corporation tax returns and computations for all open accounting periods (or the last three accounting periods, if longer) together with a copy of your adviser's transmittal letter/email (if any) setting out their assumptions and representations relied on in preparing the computations, and their recommended areas of focus for the future.
29	Tax Due Diligence	UK corporation tax	Draft corporation tax computations for the year ended FYXX, if available.
30	Tax Due Diligence	UK corporation tax	Details of any recent, ongoing or pending HMRC enquiries including copies of any correspondence with HMRC.
31	Tax Due Diligence	UK corporation tax	Details of any group payment arrangement in place and / or any payments made by UK companies for group relief claims.
32	Tax Due Diligence	UK corporation tax	Have the entities with carried forward tax losses been subject to: (a) Any major change in the nature or conduct of their trade? (b) Has the scale of the company's activities become small or negligible? If so, when did this occur?
33	Tax Due Diligence	UK corporation tax	Details of any transactions where a tax charge was deferred or tax relief given which is subject to a claw back or recapture. For example where gains have been held or rolled over.
34	Tax Due Diligence	UK corporation tax	Details of any intragroup transfers of assets to / from any UK group companies in the previous six years, including details of the assets transferred, the basis on which they were transferred and the relevant tax treatment.

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Nº.	Category	Sub-Category	Description of Request
35	Tax Due Diligence	UK corporation tax	Where claims have been made for Research & Development tax relief, details of: (a) The work and procedures undertaken to identify qualifying expenditure for these claims, including copies of any tax advice and supporting documentation for the claims for R&D tax relief (b) Details of any cash refunds for R&D tax credit relief (i.e. amounts, applicable accounting periods and when the cash was received) (c) How the group qualifies for the scheme for SMEs. (d) Any advance assurance sought, and received, from HMRC in relation to the claims.
36	Tax Due Diligence	UK corporation tax	Where the Group has applied the Patent Box regime, details of the work undertaken to determine (i) whether the qualifying conditions have been met, and (ii) the relevant IP income, and a copy of any internal supporting documentation or advice received in respect of this.
37	Tax Due Diligence	UK corporation tax	Details of any permanent establishments (for tax purposes) of the Group outside of the country of incorporation including details of the Group's controls and procedures in managing permanent establishment risks.
38	Tax Due Diligence	UK corporation tax	Details of any exemptions under the UK CFC rules applied to the group's non-UK subsidiaries and a copy of any advice received in respect of this.
39	Tax Due Diligence	VAT	Details of the VAT registration status of the UK entities and details of any VAT grouping arrangements. If applicable, a copy of the VAT group certificate which shows the list of members.
40	Tax Due Diligence	VAT	Details of any registrations for VAT, GST, sales tax, or similar tax anywhere other than the country of incorporation of each entity.
41	Tax Due Diligence	VAT	Confirmation whether all required VAT returns and other VAT filings (e.g. EC Sales Lists and Intrastat Supplementary Declarations) have been submitted, and all payments have been made, within the statutory time limits during the past four years. Details of any VAT returns and/or VAT payments not submitted to HMRC by the relevant deadline over the past four years.
42	Tax Due Diligence	VAT	Copies of the four most recent VAT returns submitted to HMRC and supporting calculations for each UK VAT registered entity. Please provide details of any VAT payment deferrals as a result of COVID 19, i.e. any VAT amounts deferred and when they were/are expected to be fully repaid to HMRC.
43	Tax Due Diligence	VAT	Details of any VAT audits, assessments, penalties, interest, or surcharge liability notices received in the past four years or known to be pending.

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Nº.	Category	Sub-Category	Description of Request
44	Tax Due Diligence	VAT	Details of the type and nature of all supplies made and how these are treated for VAT purposes (e.g. standard rated, zero-rated, exempt, outside the scope). On what basis/ at what point is VAT accounted for to HMRC (i.e. in accordance with the date of invoices raised or payments received)?
45	Tax Due Diligence	VAT	Details of any partial exemption methodology used (including any special method agreed with HMRC).
46	Tax Due Diligence	VAT	Confirmation whether each VAT registered company has blocked VAT on third-party entertaining and/or car hire where appropriate within the past four years.
47	Tax Due Diligence	VAT	Confirmation whether the Group has incurred and/or recovered VAT in relation to buying shares or goodwill within the past four years.
48	Tax Due Diligence	VAT	Details of any services provided over the internet, or via other electronic means, to non-business consumers in any EU member state and the applicable VAT treatment.
49	Tax Due Diligence	VAT	Confirmation whether all supplies between VAT group members (if applicable) are disregarded for VAT purposes, including transactions between establishments located in different countries which belong to the same legal entity. If not, please provide details.
50	Tax Due Diligence	VAT	Details of how services are treated if supplied to a customer belonging in another EU member state who has not provided a VAT registration number. Details of imports and associated import VAT accounting during the last four years.
51	Tax Due Diligence	VAT	Details of the process for obtaining and retaining evidence to support zero rating of exports (and dispatches up to 31 December 2021) during the last four years.
52	Tax Due Diligence	VAT	Details of how dispatches (to 31 December 2021) have been treated if supplied to a customer who has not provided a VAT registration number.
53	Tax Due Diligence	VAT	Details of any structures which have been implemented which are intended to improve VAT cashflows.
54	Tax Due Diligence	VAT	Details of any special VAT accounting schemes used, e.g. cash accounting, retail schemes, second margin scheme, etc. Has the business applied, over the last four years, the reverse charge in respect of services received from non-UK suppliers?



Nº.	Category	Sub-Category	Description of Request
55	Tax Due Diligence	VAT	Details of any land or buildings sold or let during the past four years, including any transactions between related parties, and the VAT treatment applied. Details of any land options to tax in place currently or revoked during the past four years. Details of any Capital Goods Scheme ("CGS") records and adjustments (including records from previous owner (if applicable)) and any items falling within the CGS. Details of any property acquired as a TOGC, as a VAT exempt acquisition or subject to VAT. In the former case, please provide any documentation kept by each Company regarding the TOGC treatment of the purchase (e.g. confirmation from both parties that the transfer met all of the TOGC conditions and that the recipient intended to continue the business which was transferred). Are there any supplies made or received which fall within the scope of the domestic reverse charge for construction services? If so, has the appropriate VAT treatment been applied to all such supplies and please provide more detail, including values involved and dates. If rentals are received, how and when is VAT on any rental deposits accounted for? Also, if any security deposits are received, please confirm whether these are simply held in escrow and so not actual rental deposits which would create a tax point for VAT purposes.
56	Tax Due Diligence	VAT	Has the business taken any VAT advice with regard to Brexit planning and its impact on the business? Please provide details of any steps taken in this regard. Details of any changes to the business's VAT accounting processes as a result of Brexit. Details of any early termination/compensation and similar payments received (e.g. liquidated damages) and the VAT treatment applied during the last four years, and whether the business has changed/will be changing its VAT accounting on such payments from 1 April 2022 as a result of HMRC's revised policy set out in RCB 2 (2022). Has the business considered whether it will be impacted by HMRC's requirements for notification of Uncertain Tax Treatments in relation to VAT accounting for VAT returns due to be filed on or after 1 April 2022? If so, please provide details and whether a notification requirement is expected to arise for the business.
57	Tax Due Diligence	VAT	Does the business have a Making Tax Digital ("MTD") enabled software for the submission of its VAT returns? If not, please state what steps are being taken in order to be compliant with HMRC's Phase 2 MTD requirements.
58	Tax Due Diligence	Employer taxes	Details of which UK companies operate a payroll.
59	Tax Due Diligence	Employer taxes	Confirmation whether all (or at least for the previous six tax years) relevant payroll tax/ NIC and RTI filings have been submitted, and payments of both tax and NIC, have been made in a full and timely manner.

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Nº.	Category	Sub-Category	Description of Request
60	Tax Due Diligence	Employer taxes	Confirmation of what, if any, benefits are included on employees P11Ds.
61	Tax Due Diligence	Employer taxes	Details of the expense policy - what expenses are reimbursed by the Group to employees/ directors, how is it treated for tax purposes and what is the approval policy?
62	Tax Due Diligence	Employer taxes	Confirmation whether all expenses / benefits not reported on forms P11D (or covered by a valid dispensation prior to April 2016) have been subject to payroll taxes.
63	Tax Due Diligence	Employer taxes	Details of any PAYE settlement agreement ("PSA") including whether all filings and payments have been submitted in a full and timely manner.
64	Tax Due Diligence	Employer taxes	Details of any control visits, audits or compliance checks by HMRC and copies of any relevant correspondence, including a summary of the issues and liabilities arising (noting amounts where material).
65	Tax Due Diligence	Employer taxes	Is the Group subject to the apprenticeship levy?
66	Tax Due Diligence	Employer taxes	Details of any termination payments made in the last six previous tax years including: (a) Gross amounts (b) How they have been taxed (c) The nature and the reasons why the termination arose, and whether they included PILONs (d) Where any amounts have been untaxed as "ex-gratia payments" under the GBP30,000 threshold, how was this calculated and do all employees terminated receive this amount? (e) Copies of the settlement agreements (f) Has the Group received any legal or tax advice in this area and if so, please provide details.
67	Tax Due Diligence	Employer taxes	Does the Group operate an employee benefit trust or any other pooling vehicle/third party vehicle? If so, please confirm the purpose of such vehicle, what assets are currently held within it, and what benefits have been provided to employees and directors to date (e.g. any loans made historically).
68	Tax Due Diligence	Employer taxes	Details of any long term (>12 month) secondments of UK employees abroad.
69	Tax Due Diligence	Employer taxes	Details of any employees seconded to the UK from group companies and how they have been treated from an employment tax perspective, including details of any special arrangements entered into with HMRC, including any non-UK employees that work in the UK on business trips.
70	Tax Due Diligence	Employer taxes	Confirmation that the Group has no employees nor any directors or officers who are not UK resident or who might be considered to have dual residency.

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Nº.	Category	Sub-Category	Description of Request
71	Tax Due Diligence	Employer taxes	Confirmation that all employees' and directors' full salaries and bonuses are remunerated through the payroll. Where this is not the case, please provide details of any other individuals who provide services for the Group and are paid outside of the payroll.
72	Tax Due Diligence	Employer taxes	Where the Group does engage/has engaged with self-employed contractors directly in the previous six tax years, please provide: (a) The total amount paid gross to self-employed individuals in the last four years. (b) Details of the procedures undertaken to confirm the individuals' self-employed status. Where the Group engages contractors via limited companies, please confirm whether: (a) The relevant engagement letters are addressed to individuals or companies (also whether these are personal service companies or umbrella companies), and invoices are issued by individuals or companies? (b) All of the contractors' limited companies are UK companies or provide details of any payments made to offshore companies? (c) Any contractors provide their services via managed service companies and in these instances whether the company directly or indirectly encouraged any individuals to provide their services via managed service companies? Details of any payments made gross to office holders, noting where this relates to (i) office holder duties, and (ii) consultancy services. In relation to the above: (i) What services have they performed for the Group? (ii) How are they paid for their services (e.g. hourly rates, retainers, etc)? (iii) How long have they performed these services? (iv) Are any employees providing similar services as the self-employed contractors and the rationale why they are self-employed contractors? (v) How often do they perform services (and do they have jobs elsewhere)? (vi) Has the Group received any legal or tax advice in this area? If so, please provide details. (vii) What consideration has been made to date in relation to the legislative changes to off-payroll workers that will come into place from April 2020?

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Nº.	Category	Sub-Category	Description of Request
73	Tax Due Diligence	Employer taxes	Construction Industry Scheme, confirmation whether: (a) The / any company has never been required to operate under any of the provisions of the Construction Industry Scheme ("CIS") at any time and has at no time been a contractor or sub-contractor (b) The / any company has never spent more than GBP1 million on average annually in any three year period on construction or building work (c) The / any company has at all times properly operated under the provisions within the CIS; carrying out timely verifications of sub-contractors and making proper and appropriate deductions from payments made to them (d) The / any company has applied and obtained gross payment status and has this ever been challenged because of a poor compliance record
74	Tax Due Diligence	Employer taxes	Details of any special arrangements or agreements with HMRC.
75	Tax Due Diligence	Employer taxes	Details of any transaction bonuses that will be paid on this transaction. Does the Group intend to deduct these payments (and employer NIC) for corporation tax purposes?
76	Tax Due Diligence	Employment related securities	Do any of the companies in the group operate any share or share option incentive plans for employees and have any employees acquired shares in the Group under any previous plans or arrangements operated by the Group? Including any HMRC tax-advantaged share schemes (CSOP/SAYE/SIP).



Nº.	Category	Sub-Category	Description of Request
77	Tax Due Diligence	Employment related securities	Details of all transactions involving the acquisition and disposal of securities (including shares, loan notes and partnership interests)(in any Group entity, not just Topco) by employees/directors (including NEDs) (current, former and prospective) in the last six tax years, including: (a) A schedule of the shareholdings by individual, date when the shares were acquired, and the acquisition price (b) A schedule of any share disposals by individual, date when the shares were disposal of, and the sale price (c) Details of how the acquisition/sale price was determined and confirmation whether this was considered to be market value (d) A copy of any internal or external valuation prepared to support the market value of the securities at the time of acquisition/disposal. Please provide copies of correspondence with HMRC in regard to the valuation of securities on acquisition/ disposal (e) Confirmation whether the shares fall within the restricted securities regime, and whether any of the restrictions have subsequently been lifted (f) Confirmation whether the shares are treated as readily convertible assets (are there (or have there been in the past) any trading arrangements in place where employees can sell their shares?) (g) Confirmation whether elections were made under s431 ITEPA 2003 within 14 days of the share acquisitions (h) Confirmation whether any shareholders have provided a tax indemnity to the employing company in respect of any PAYE / employee NIC liabilities on the share acquisition (i) Confirmation whether the employing company has reported all employment related securities to HMRC on Form 42 (for periods up to April 2014) and the online employment related securities returns (for subsequent periods) on a timely basis (i.e. by 6 July each year) for all relevant years (j) If any employees/directors who hold/has held securities are non-UK tax resident please specify.

Nº.	Category	Sub-Category	Description of Request
78	Tax Due Diligence	Employment related securities	Details of any unapproved share options issued to employees/directors (including NEDs), including: (a) Copies of share option plan rules or ancillary documentation (b) A schedule of the share options granted, the date when the options were granted, the exercise price, and any share options which have been exercised (c) Where any share options have been exercised, confirmation that any option gains were subject to PAYE income tax and employer NIC withholding, and an employer NIC tax liability for the employing entity. Please provide copies of valuation work undertaken to support the position. (d) Confirmation whether the employing company has reported all employment related securities to HMRC on Form 42 (for periods up to April 2014) and the online employment related securities returns (for subsequent periods) on a timely basis (i.e. by 6 July each year) for all relevant years (e) Confirmation if the employees have entered into NIC agreements or elections to pass the employers NIC to the employee, and if so, please provide us with a copy.



Nº.	Category	Sub-Category	Description of Request
79	Tax Due Diligence	Employment related securities	Details of any EMI share option schemes, including: (a) Copies of share option plan rules or ancillary documentation (b) A schedule of the EMI share options granted, date when the options were granted, the exercise price (c) Confirmation whether the qualifying conditions (set by HMRC) of the EMI share option scheme have been satisfied to date, there have been no disqualifying events, and there are not expected to be any disqualifying events before the proposed transaction (d) Confirmation that the exercise price of the EMI share options is not less than the actual market value of the shares at the time that the options were granted, and a copy of any valuation prepared to support this (e) Confirmation whether the group has requested and received assurance from HMRC that it met the qualifying conditions of the EMI scheme when the options were granted (f) Confirmation whether the employing company notified HMRC of the grant of the options within 92 days from the date of the grant (Form EMI1) (g) Confirmation whether the option holder agreements include a tax indemnity from the option holder to the employing company in respect of any PAYE / employee NIC liabilities which may arise on the share acquisition (h) Confirmation whether the employing company has reported all employment related securities to HMRC on Form 42 (for periods up to April 2014) and the online employment related securities returns (for subsequent periods) on a timely basis (i.e. by 6 July each year) for all relevant years (i) If any options have been exercised, confirmation whether elections were made under s431 ITEPA 2003 within 14 days of the share acquisitions.
80	Tax Due Diligence	Employment related securities	Confirmation whether the conditions of the safe harbour under the Memorandum of Understanding ("MoU") negotiated between HMRC and the British Venture Capital Association ("BVCA") were satisfied for the shares acquired by management.

Nº.	Category	Sub-Category	Description of Request
81	Tax Due Diligence	Employment related securities	Details of any ESS scheme, including: (a) A schedule of the ESS shares acquired and a copy of the ESS agreement (b) Details of the employment rights given up and confirmation that no consideration was paid for the shares (c) A copy of any valuation prepared for the ESS shares and any correspondence with HMRC to agree the valuation (d) Confirmation whether all requirements for the shares to qualify for ESS tax treatment have been satisfied (e) Confirmation whether elections were made under s431 ITEPA 2003 within 14 days of the share acquisitions (f) Confirmation whether the employing company has reported the issuance of the ESS shares to HMRC by way of the employment related securities online filing on a timely basis.
82	Tax Due Diligence	Employment related securities	Please provide copies of any non-statutory clearances/correspondence with HMRC relating to the operation of any employee share incentive arrangements.
83	Tax Due Diligence	Employment related securities	Have any awards been granted or settled by any other third parties such as shareholders?
84	Tax Due Diligence	Employment related securities	Details of any other incentive arrangements operated by the Group that are not straight forward cash bonus plans or benefits reported on form P11D.

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1. INTRODUCTION

a. Forms of Legal Entity

The US makes multiple options available for legal structures for holding and business activities in the US. The laws of the state in which the legal entity is organised may provide different results than the general concepts described, below. Most commonly:

- Corporation

A corporation in the US may be either public or private and has legal aspects similar to other corporations around the globe, shareholders who typically have voting rights over major corporate decisions and do not usually have liability (by virtue of statutory law) for the corporation's actions, a board of directors which typically is responsible for management oversight of the corporation, and officers who are responsible for day to day management of the corporation. For tax purposes, most corporations are treated as taxpayers in their own right (so-called "C corporations") and their distributions of profits are generally taxable for their shareholders as dividends. However, some qualifying, closely held corporations (so-called "S corporations") with small shareholder bases and no foreign owners may elect to have their profits and losses taken into account for tax purposes directly by their shareholders. No legal distinction exists between these two tax classifications.

- Partnership

From a legal standpoint, a partnership is a hybrid between a legal entity and a contract between the partners, allowing the partners tremendous flexibility in arranging their legal relationships. Partnerships require at least two owners and come in several different varieties: (a) a general partnership, in which all the partners are liable legally for all acts of the partnership, (b) a limited partnership or "LP," which has at least one general partner who is liable legally for all acts of the partnership and at least one limited partner who can enjoy some measure of insulation against liability for acts of the partnership, and (c) a limited liability partnership ("LLP") which usually has no general partner and whose limited partners can enjoy some measure of insulation against liability for acts of the partnership. The level of liability protection for limited partners will vary by state. Partnerships may be managed directly by partners without any need for a board of directors, but partners who engage in such management can risk their limited liability in some states. Partnerships may elect to be taxed as if they were corporations, or their partners may be taxable on their shares of partnership taxable income (a so called "flow through entity"). Partnerships whose interests are widely held and/or traded publicly or privately may be at risk of being taxed as corporations by law regardless of election.

- Limited Liability Company ("LLC")

The LLC typically provides flexibility of governance and economic arrangement similar to a partnership along with limited liability (by virtue of statutory law) for owners (called "members"). As with partnerships, LLCs may elect to be taxed as if they were corporations or to flow their income and expenses through to their owners for tax purposes. As with partnerships, LLCs whose interests are widely held and/or traded publicly or privately may be at risk of being taxed as corporations by law regardless of election. Due to the flexible nature and relative newness of LLCs, (a) some countries do not extend tax treaty benefits to US LLCs, (b) other countries will treat them as "transparent," extending treaty benefits only to LLC members who qualify, and (c) still other countries will extend treaty benefits based on LLC classifications for US tax purposes.

- "Series"

The laws of some states permit LLCs (and, in some cases, partnerships) to conduct themselves as "series" companies. In such cases, the legal entity is able to segregate the assets and liabilities of each of its divisions for legal purposes into separate "series," much as if each series was a separate legal entity but without the need for a separate legal entity. In some cases, each series may elect whether to be taxed as a corporation or to permit its income to be taxed directly to its owner(s). US tax treaties have not yet addressed the treatment of series.

b. Taxes, Tax Rates

The US employs a "progressive" income tax system for individuals in which tax rates increase as a taxpayer's taxable income increases. Corporations are generally subject to a flat rate of tax on income. Individual US citizens and residents and corporations (or entities electing to be treated as corporations) formed in the US are subject to US income tax. Each state allocates or apportions a taxpayer's income based on the taxpayer's presence ("nexus") in the state and then subjects the resulting amount to state income tax. Further, some localities ("counties and cities") may levy their own taxes. State and local income taxes can range from 0-14% and are deductible for federal purposes (although deduction is very limited in the case of individuals).

Federal income tax rates are as follows:

- Individuals: 0-37% on earned income; 23.8% on capital gains.
- Corporations: 21% (corporations do not have a separate capital gain rate).

State rates: See above discussion for context; although the rates will differ based on the facts, the following are usually adequate for initial economic modelling:

- Individuals: 7-14%.
- Corporations: 5% (after taking the federal deduction into account).

Other common taxes include:

- State and/or local taxes on real and tangible personal property ownership (property tax rates and determination of taxable base vary by state and city);
- State and/or local taxes on sales of goods or services to consumers (sales for resale and irregular sales are generally exempt but may require some documentation; sales tax rates vary by state and city with combined rates ranging from 0% to 10.3%);
- Social contribution taxes based on employee wages (social security tax: 6.2% for employees and 6.2% for employers, applicable only for the first USD147,000 earned during the year for 2022; Medicare tax: 1.45% for employees and 1.45% for employers);
- Excise taxes on specific items (e.g. fuel, certain vehicles, air transportation, fishing/hunting equipment, alcohol, and tobacco); and
- Import duties on specific goods.

c. Common divergences between income shown on tax returns and local financial statements

Measurement of income for tax purposes regularly differs from measurement of income for financial purposes. From a US tax return perspective, Schedules M-1 and M-3 contain reconciliations of these items each year for corporate taxpayers, as well as for flow-through entities with more than one owner. Corporate taxpayers will also keep deferred tax asset or liability accounts that reconcile their book basis and their tax basis in any asset. The most common book to tax differences include:

- Tax depreciation/amortisation:
  - Arising from assets whose cost is recovered more quickly for tax than for book; and
  - Arising from any transactions in which the assets and liabilities were restated at fair value ("purchase," "business combination," or "fresh-start" accounting) for book purposes but not for tax (because no tax was paid in the transaction).
- Book allowances for doubtful accounts or slow-moving or obsolete inventories;
- Book accruals for compensation to be paid significantly beyond the end of the tax year;
- Items not fully deductible for US tax purposes (travel/entertainment or governmental penalties); and
- Valuation allowances for items that may not be deducted with tax benefit before they expire and reserves for tax positions that have less than a 50% chance of success.
- US corporations that receive dividends from US corporations outside the recipient's consolidated group may be entitled to deduct a significant portion of those dividends in calculating their taxable income (the "dividend-received deduction" or "DRD"). Dividends between members of the same consolidated group are exempt from federal tax.

2. RECENT DEVELOPMENTS

a. Final Foreign Tax Credit ("FTC") Regulations

On 28 December 2021, new US Treasury Regulations were adopted that apply to foreign taxes paid in taxable years beginning on or after 28 December 2021, that substantially revise the definition of a foreign tax that is creditable against US income tax liabilities.

Generally, section 901 allows a credit for foreign income, war profits and excess profits taxes. Section 903 provides that such taxes include a tax in lieu of a generally imposed foreign income, war profits or excess profits tax. The pre-existing regulations, issued in 1983, set forth rules for determining when foreign taxes qualify under sections 901 or 903. The prior final regulations treated a foreign levy as an income tax if (1) the foreign levy is a tax and (2) the predominant character of that tax is that of an income tax in the US sense. A tax generally has the predominant character of an income tax if it is calculated to reach net gain in the ordinary circumstances in which the tax applies.

The final regulations make several changes to modernise and clarify the regulations to address issues that have arisen because of changes in global taxation post-1983. In particular, the final regulations modify the net gain requirement to limit the role of the predominant character analysis in determining whether a tax meets each of the components of the net gain requirement. Those components are the realisation requirement, the gross receipts requirement, and the net income requirement (which under the regulations is now referred to as the "cost recovery requirement"). The final regulations also impose a fourth requirement, the "attribution requirement," that must be satisfied for a levy to qualify as a foreign income tax (which was referred to as the "jurisdictional nexus requirement" in the proposed regulations).

The "attribution requirement" provides that a tax is creditable only if arises from a base that has at least minimum connections with the taxing jurisdiction. It is intended to disallow a credit for certain novel taxes, such as digital services taxes, that depart from conventional jurisdictional norms. A creditable tax exists if one of the following is true regarding the gross receipts and costs that underlie the foreign tax base:

- Activities based attribution : They are reasonably attributable (look to functions, risks, assets, etc.) to the non-resident's activities within the foreign country imposing the tax. The foreign tax law may not use as a significant factor (i) the location of customers, users or other similar destination based criteria or (ii) the location of persons from whom the non-resident makes purchases in the foreign country.
- Source based attribution : Other than from sales or other dispositions of property (other than inventory), they:
  - Arise solely from sources within the foreign country imposing the tax; and
  - Are determined based on sourcing rules that are reasonably similar to those provided by US tax rules.
- Property Situs Attribution : They include only gains from the disposition of:
  - Real property located in the foreign country, or an interest in a resident corporation or other entity that owns such real property (similar to the US "FIRPTA" regime); or
  - Property that is part of the business property creating a taxable presence in the foreign country (including interests in a partnership or other pass-through entity attributable to that property; similar to US effectively connected income rules).

b. Final Subpart F Stock Ownership Determination Regulations

The US Department of Treasury and the IRS on 25 January 2022, published final regulations ("2022 Final Regulations") under section 958 on determining stock ownership for purposes of Subpart F, including global intangible low-taxed income ("GILTI") and proposed regulations regarding the treatment of domestic partnerships and S corporations that own stock of passive foreign investment companies ("PFICs") and their domestic partners and shareholders.

The 2022 Final Regulations finalise, with modifications, a portion of the previously proposed regulations ("2019 Proposed Regulations") issued on 21 June 2019 that generally treat domestic partnerships as aggregates of their partners for purposes of determining income inclusions under section 951. The 2022 Final Regulations apply to tax years of foreign corporations that begin on or after 25 January 2022, and to tax years of US persons in which or with which such tax years of foreign corporations end. A domestic partnership may apply the 2022 Final Regulations to tax years of a foreign corporation beginning after 31 December 2017, subject to certain requirements.

The proposed regulations ("2022 Proposed Regulations") provide guidance on the treatment of PFICs held by domestic partnerships and S corporations, as well as on other PFIC and Controlled Foreign Company ("CFC") related issues. The 2022 Proposed Regulations provide guidance regarding the determination of the controlling domestic shareholders of foreign corporations, the owner of a CFC or qualified electing fund ("QEF") that makes an election under section 1411, the treatment of S corporations with accumulated earnings and profits ("E&P") and the determination and inclusion of related person insurance income ("RPII"). The 2022 Proposed Regulations generally adopt an aggregate approach, requiring reporting, elections and inclusions at the partner or shareholder level rather than at the domestic partnership or S corporation level as previously has been the case. The 2022 Proposed Regulations generally apply for tax years of shareholders beginning on or after the date of the filing of these regulations as final in the Federal Register.

c. American Rescue Plan Act of 2021

In part as a response to the ongoing COVID-19 crisis, on 11 March 2021, President Biden signed into law the American Rescue Plan Act of 2021 (the "ARPA"). The ARPA, a USD1.9 trillion economic stimulus bill, provided several relief and funding measures for individuals, businesses and state governments that had been adversely impacted by the pandemic. Among the changes were some notable tax law changes summarised here.

i Certain excessive employee compensation

To prevent corporations from taking deductions on compensation that is deemed "excessive," there is a USD1 million limit on the deduction for annual compensation paid to a "covered employee." The ARPA expands the definition of who is considered to be a "covered employee."

For tax years beginning on or before 31 December 2017, a "covered employee" included the Chief Executive Officer ("CEO"), in addition to the three most highly compensated officers whose compensation was required to be reported to shareholders under Securities and Exchange Commission ("SEC") disclosure rules.

Beginning in 2018, the definition was expanded under the Tax Cuts and Jobs Act ("TCJA"), enacted on 22 December 2017, to include any individual who served as the CEO or Chief Financial Officer ("CFO") during the taxable year, in addition to the three most highly compensated individuals aside from the CEO and CFO during the taxable year. Additionally, the TCJA expanded the definition to include any individual who was a covered employee for any taxable year beginning after 31 December 2016.

Most recently, the ARPA expanded the number of covered employees for tax years that begin after 31 December 2026 and will include an additional "five highest compensated employees" beyond the CEO, CFO and the three highest paid executive officers already covered by existing law (i.e. the definition will apply to up to 10 individuals). This change is relevant for taxpayers undergoing a purchase or sale as large one off payments made in connection with a change in ownership may be subject to this excessive compensation rule.

ii Worldwide Interest Expense Allocation Repeal

The worldwide interest expense allocation election, provided by section 864(f), was repealed as part of the ARPA.

Originally enacted in 2004, the effective date of section 864(f) was delayed several times by legislation and the provision became effective for taxable years beginning after 31 December 2020. Section 864(f) allowed a "worldwide affiliated group" to make a one off irrevocable election to allocate the interest expense of each domestic corporation that is a member of the worldwide affiliated group (which includes 80% owned controlled foreign corporations) as if all members of such group were a single corporation. This is commonly referred to as allocation on a "worldwide basis." Where foreign corporations had at least a proportionate share of interest expense (based on relative asset basis), none of the US group's interest expense would be allocated against foreign source income.

Interest expense allocation is significant, because the FTC rules limit the amount of foreign income taxes that a taxpayer may claim as a credit against its US income tax based on the US tax imposed on the taxpayer's foreign source income on a category-by-category (or "basket") basis. As a result, greater allocation of interest expense to foreign source income reduces the FTC limitation.

By repealing section 864(f), Congress expects to raise significant tax revenue by generally lowering the FTC limitation for multinational taxpayers. The repeal is retroactive to taxable years beginning after 31 December 2020, which was the last scheduled effective date.

3. SHARE ACQUISITION

A buyer may purchase interests in certain entities and receive the same economic result as a purchase of assets. However, the purchase of interests in an entity treated as a corporation for tax purposes will generally not be treated as an asset purchase. Thus, US tax practitioners will usually distinguish between the former as an "entity acquisition treated as an asset purchase" and the latter as a "stock acquisition". Some taxable stock purchases may electively be treated as asset purchases as discussed below under "Purchase Agreement".

a. Tax Attributes

- Following a change in share ownership, complex US rules limit the post-acquisition use of US tax net operating loss, US tax credit carry forwards and US interest expense carry forwards.
  - At a high level, a change in stock ownership occurs when one or more 5% shareholders increase their ownership of the company's equity by at least 50 percentage points within any consecutive three year period.
  - In such a case, the corporation generally may deduct such items only to the extent of the equity value of the company's stock at the time of change multiplied by the "long-term tax-exempt rate" (1.63% as of March 2022). During the five years following the ownership change, the limitation becomes less restrictive if the company's US assets had a net built-in tax gain and more restrictive if the company's US assets had a net built-in tax loss. If thoughtfully managed in advance, a change in control in an insolvency (bankruptcy) proceeding may avoid these restrictions.
- Under prior law, a net operating loss ("NOL") arising in a taxable year could be carried back to the two preceding taxable years and forward to the 20 years following the loss year. A loss could fully offset taxable income in the year applied, though in some cases an alternative minimum tax ("AMT") could still result in tax liability.
- TCJA eliminated the ability to carry back NOLs but allows them to be carried forward without the prior law 20 year limitation. However, an NOL can now offset no more than 80% of taxable income, before considering the NOL deduction. TCJA repealed the AMT and allowed a credit for AMT previously paid to be claimed over a four year period.

b. Tax Grouping

- US corporations (that are not S corporations) tied together with 80% ownership of their voting rights and value have the option to "consolidate" and defer tax consequences of transactions between members so long as those members remain consolidated.



- The stock basis of a corporation that is a subsidiary within a US consolidated group will be increased by its US taxable income and decreased by its US taxable loss beginning on the date it joins the consolidated group. Thus, a consolidated group that has formed a US subsidiary may have no tax preference as to whether it sells the US subsidiary or the assets of the US subsidiary.
- A US S corporation that owns 100% of the stock of another corporation may elect to disregard the subsidiary as separate from the parent, effectively treating the subsidiary as a branch of the S corporation for tax purposes.
- Foreign companies and flow-through entities with more than one owner may not consolidate for US tax purposes, and, if interposed between two US corporations, prevent those corporations from consolidating with each other (unless the foreign entity is a disregarded entity for US purposes).

c. Tax Free Reorganisations:

- Entities taxed as corporations in the US are often able to achieve a combination or separation without incurring US tax on the entities or their owners so long as (among other things) the transaction is undertaken for non-tax reasons and pursuant to a plan, the consideration in the transaction is equity, and certain levels of pre-transaction business conduct and equity ownership are continued after the transaction.
- Although both combinations and separations of US corporations in a tax free manner require careful compliance with complex rules, tax free separations (spinoffs, split-offs, and split-ups) tend to be more difficult to achieve than combinations.
- The readjustment of a single corporation's capital structure (corporate recapitalisation exchanges involving stock or debt securities) can often be achieved tax free, but any unpaid interest or dividends in arrears on exchanged securities will typically be accelerated and should be carefully evaluated.
- A change in a corporation's organisational type and jurisdiction can usually be undertaken tax free so long as the change does not remove assets or entities from the taxing jurisdiction of the US.

d. Purchase Agreement

In the following circumstances, a stock acquisition may be treated as an asset acquisition for US tax purposes:

- 80% or more of a domestic target's stock is acquired by a purchaser or affiliated group of purchasers during a 12 month period, the target is either an S corporation or a member of a consolidated group of corporations, and the purchaser (and/or the seller, in some cases) elects; in this case, the seller will incur the economic liability for the tax on the deemed asset sale (depending on the facts, this is either known as a section 338(h)(10) or section 336(e)) election.
- Sometimes (usually because an existing owner wants to retain significant equity) the purchase of an S corporation cannot qualify for a section 338(h)(10) or section 336(e) election. In this case, the owners of an S corporation will often contribute their S corporation stock to a new S corporation, convert the old S corporation to an LLC and sell interests in the LLC to the buyer in a transaction treated as an asset purchase.

A domestic corporate acquiror of a target's stock (regardless of whether target is domestic or not) may make an election on similar facts as above without the seller's consent, in which case the buyer will incur the economic liability for the tax on the deemed asset sale (if the target is domestic) (this is known as a section 338(g) election).

- If the target of a section 338(g) transaction is a foreign corporation, the deemed asset sale can result technically in a different analysis for the seller's US tax consequences.



- US owned buyers almost always prefer a section 338(g) transaction for a foreign corporation because the section 338(g) election eliminates the US tax history of the acquired foreign corporation, something which is very difficult to determine if the foreign corporation is not US owned.
- Sellers concerned about potential adverse tax effects from a unilateral 338(g) election by a buyer may protect themselves in the purchase agreement by prohibiting such an election or requiring buyer indemnification for any adverse consequences. Likewise, buyers interested in making such an election may wish to signal their intention early or ensure that the purchase agreement does not contain such seller protections.
- Any entity taxed as a corporation that has been consolidated with other corporations may be liable to the government for taxes of the consolidated group during the period it was consolidated. Most purchasers will seek representations regarding the entity's historical consolidations and seller indemnities for any tax resulting from any such consolidation.
- An S corporation and its owners enjoy the advantage of the corporation's profits being taxed only to the owners and not to the corporation, as well.
  - If a corporation claiming S corporation status failed to qualify or maintain its qualification as an S corporation, US tax law will treat the company as a C corporation taxable on its own profits. Buyers typically seek seller indemnification for this exposure, and, because the individual owners would be entitled to tax refunds in such a case, buyers may also seek rights to receive such tax refunds as partial security for the indemnity.
  - For S corporation shareholders, the sale of shares creates capital gain whereas the actual or elective sale of an S corporation's assets can create a blend of capital gain and ordinary income. A share purchase without a section 338(h)(10) election yields no step-up in the US tax basis of the target S corporation's assets, whereas an actual or elective purchase of the S corporation's assets will. Economic modelling is important to measure the benefit to the buyer of the step-up in an asset sale and the additional cost, if any, to the seller. If additional seller cost is present, the seller will often ask to be made whole.
- A buyer of interests in a partnership (or entity treated as a partnership for tax purposes) or disregarded entity should expect to achieve the same tax economics as if it had purchased a pro-rata share of that entity's assets. The mechanisms for achieving this can be extraordinarily complicated and require careful consideration.
- Because state merger laws typically permit a majority owner of an entity to "squeeze out" other owners and avoid protracted negotiations over sales of recalcitrant owners' interests, purchases of entities are often structured as mergers. In such transactions the purchaser sets up a merger company and merges that company into the target, with cash transferring directly from the merger company to the seller or sellers' representative. At closing, all former owners' interests are typically cancelled and converted into rights to receive cash. For tax purposes, the merger company is usually ignored entirely due to its intentionally transient existence. If the merger company borrows funds to complete the acquisition, that borrowing is treated as made by the target, so that proceeds distributed to selling shareholders are treated as received in a redemption of shares rather than a sale to the buyer.
- Large amounts of compensation that become payable to certain employees (usually management team members) upon a change in control of an entity taxed as a corporation for US tax purposes may constitute "golden parachute payments." These payments may be partially non-deductible to the corporation and may create a penalty tax to the recipient. Privately owned entities may typically avoid these provisions if the issue is identified and managed properly. In addition to seeking seller and/or target representations that the target and its subsidiaries are not party to any agreement governed by "section 280G," a buyer should understand whether any compensation agreements contain "gross-up" obligations that would require the entity to pay the recipient additional amounts to alleviate costs of the penalty tax.

- When a target entity treated as a corporation for tax purposes reports its taxes on the cash method of accounting (e.g. recognises income only when cash is received) and that target entity is acquired by an entity that reports its taxes on the accrual method of accounting (e.g. recognises income when it has the right to receive cash), the target entity generally will be required also to use the accrual method of accounting post-acquisition. Depending upon the form of the transaction, this may accelerate recognition for tax purposes of all of the target's rights to receive cash and obligations to make payments and any resulting tax consequence may be borne economically by the buyer. US tax rules permit an entity that changes its accounting methods detrimentally (for tax) in one year to pay the additional tax due over four tax periods. The net working capital provisions in a purchase agreement generally should make adjustments that shift the resulting tax consequence to the seller in these situations.
- A US or US owned buyer typically will ask for representations and warranties with respect to the legal types of entities being acquired directly or indirectly and their tax treatment for US tax purposes. As a general matter, US entities other than corporations will not be treated as corporations for US tax purposes unless certain elections are made, but foreign limited liability entities will almost always be treated as corporations for US tax purposes unless certain elections are made.
- Although there are exceptions, the income of a US flow-through entity is taxed to its owners, so that no pre-closing income tax liabilities are inherited by a buyer. However, non-income tax liabilities will typically remain and buyers will typically require related representations, warranties, and indemnities.
- Buyers typically ask that tax indemnities be treated separately from the rest of the deal indemnities and that such indemnities only lapse following some reasonable period after the tax authorities can no longer assess the taxes.
- If a share sale is treated electively as an asset sale, the purchase agreement should contain some agreement between the buyer and seller as to how the purchase price will be allocated among the assets for tax purposes. See discussion, below, regarding purchase price allocations in asset sales.

e. Transfer taxes on share transfers

- A buyer must withhold 15% of the purchase price of the shares of any US corporation the fair market value of whose assets is half or more attributable to US real property (so-called "FIRPTA" withholding); this 15% amount is remitted to the US government. Although land and buildings clearly constitute real property, other property permanently affixed to the ground and some building components can also constitute real property. Withholding tax can be avoided if the target corporation certifies in good faith that the fair market value of its real property is less than 50% of the value of its assets (and has been for the previous five years) or the seller certifies that it is a US person. Share transfer agreements typically condition closing on the provision of such certification.
- Some states impose a tax on the transfer of shares, either as a securities transfer tax (similar to a stamp tax) or on the same theory as FIRPTA, above. These are not universal, but the parties to a share transfer agreement should identify whether the risk of such tax exists, and it is to be borne. There is no "market" standard for this sharing.

Applicability of "purchase accounting" to a direct or indirect acquisition of shares: Under Financial Accounting Standards Board Accounting Standards Codification 805, a company must undertake business combination accounting (so called "purchase accounting") whenever an entity acquires direct or indirect control (>50%) of another entity. Purchase accounting effectively resets all the assets and liabilities of the company (and all of its subsidiaries that report their results in consolidation with the company) to fair market value for financial reporting purposes. Financial reporting does not affect the cash tax situation of the company but can affect the company's effective tax rate and the tax reporting (of deferred items, etc.) on its balance sheet. Purchasers should carefully consider the potential implications of purchase accounting with respect to possible post-acquisition reorganisations or other transactions.

f. Share Purchase Advantages

Share purchases, can avoid consent requirements with respect to transfers of contracts, licences, permits, etc. However, buyers should review contracts and licences to ensure they do not contain "change in control" consent rights.

Share purchases typically have the advantage of simplicity of execution, avoiding the necessity of transferring title to property owned by the company and potentially paying taxes on the transfers. They can also avoid resetting tax values to fair market value with respect to local property taxes.

In a transaction with significant time between signing the agreement and closing, some states permit an entity to finalise some of its tax exposures prior to acquisition by applying for and receiving "tax clearance certificates."

g. Share Purchase Disadvantages

- The target's tax basis in its assets remain unchanged.
- The target's liabilities, whether known or unknown, remain target's liabilities; although seller indemnities can help alleviate costs of such liabilities, indemnities (if available) typically are capped and expire.

4. ASSET ACQUISITION

a. General Comments

A taxable asset acquisition generally results in the recognition of gain or loss by the selling company, as well as at the owner level if the proceeds of the sale are distributed. Losses and credits may be used to offset the tax liability resulting from the sale, but do not carry over to the purchaser. The purchaser takes a cost basis (generally fair market value) in the acquired assets.

Existing income tax liabilities of the selling entity ordinarily do not carry over to the acquiror in an asset purchase. These liabilities remain with the seller unless there is a contractual agreement specifically providing otherwise. However, certain non-income tax liabilities (sales and use, payroll, and property) may be inherited by a buyer of the business assets.

b. Purchase Price Allocation

When assets, constituting a trade or business, are acquired in a taxable transaction, the parties to the transaction are required to allocate the purchase price among the assets using a residual method among seven classes of assets. The parties are bound by any agreed allocation of purchase price among the assets. To the extent the parties mutually agree to the allocation, a valuation of the assets is not necessary as a practical matter. If the parties have difficulty arriving at a mutually agreeable allocation, having an independent valuation performed may prove helpful.

c. Tax Attributes

Existing tax attributes, such as net operating losses, foreign tax credits, capital losses, as well as other attributes do not carry over to the purchaser in a taxable asset acquisition. While income tax liabilities generally remain behind with a seller in an asset sale, if there are significant tax attributes such as loss and credit carryovers, it may be beneficial and indeed preferred, for a seller to structure a transaction as an asset sale, if the tax on the transaction can be reduced or eliminated.



d. Tax Free Reorganisations

If an asset acquisition takes the form of a tax free reorganisation in which a substantial part of the consideration is paid in the form of stock of the acquiring company, the stock must constitute a significant part of the overall consideration, usually between 40% and 100%. The gain recognised by selling shareholders may be limited to the amount of non-stock consideration received and a gain or loss may not be recognised at the company level with respect to asset transfers. With respect to asset reorganisations between corporations wholly owned by a common parent, either directly or indirectly, cash and other non-stock consideration may be used as a significant percentage of the overall consideration, up to 100%. To the extent a gain is not recognised, exchanging shareholders receive a carryover basis in the shares they receive and the basis of the corporation's assets is not increased. A reorganisation may take the form either of a stock acquisition or an asset acquisition.

e. Purchase Agreement

In a number of states, a purchase of assets can subject the buyer to liability for the seller's taxes if seller fails to pay. The circumstances that give rise to this tax can vary, but buyers may wish to seek seller indemnification against such taxes or require a "tax clearance certificate" from the relevant state.

A purchase agreement for assets (or a sale of stock treated as an asset sale for tax purposes) should contain an agreement between buyer and seller as to how the purchase price (and any underlying debt assumed or deemed assumed) will be allocated to the assets for tax purposes. Non-corporate sellers are often incentivised to allocate the purchase price to intangible assets so as to minimise their ordinary gains, whereas buyers are incentivised to allocate the purchase price to tangible assets which permits much faster cost recovery for tax purposes. Buyer and seller are obligated to notify the government in the event they do not agree on the allocation. A typical scheme for allocation is for one party to propose an allocation, the other party to approve or challenge the allocation within a given period of time, the parties then negotiate in good faith to resolve their differences and then an independent firm is typically engaged to resolve any remaining differences (one party usually proposes two to three independent firms and the other party selects one of those firms). If a particular allocation is important to a party, the purchase agreement should provide for that particular allocation.

f. Depreciation and Amortisation

A major advantage of a taxable asset purchase is that, in the instance where the seller recognises gain, the buyer receives a corresponding step-up to fair market value in the basis of the acquired assets (including goodwill), generally resulting in increased future depreciation or amortisation deductions for the buyer. Intangible assets (including goodwill) acquired as part of a trade or business are amortised using the straight line method over a 15 year period. Intangible assets not acquired as part of a trade or business are generally amortised using a straight line basis over their estimated useful lives. Software not acquired as part of a trade or business may be amortised using the straight line method over 3 years.

Under the TCJA, the bonus depreciation rules expanded to provide for a 100% deduction for the cost of "qualified property." Qualified property generally includes tangible depreciable property with a class life of 20 years or less. Goodwill and other section 197 intangibles are not considered qualified property and as mentioned above, are still amortised over 15 years.

The new bonus depreciation rules apply to property placed in service or purchased after 27 September 2017 with a depreciation life of 20 years or less. Pre-existing depreciable assets would be recovered under current MACRS rules. Further, the new bonus depreciation rules include not only "original use property" but also "used" property to the extent a taxpayer acquires such property in an asset deal as well as deemed asset deals (such as section 338(h)(10), partnership/LLC acquisitions). These new rules will phase down the percentage of deduction for property acquired after 2022 to 80%, 60%, 40% and 20% annually from 2023 to 2026. MACRS should apply to the remaining depreciable basis.



A correction was made in the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, enacted on 27 March 2020, which applies the same favourable bonus depreciation treatment for certain improvements to non-residential real estate ("qualified improvement property"), such as improvements to leased property, retroactive to 2018.

Pursuant to section 179, dealing with certain software and tangible property, taxpayers may elect to treat as a current deduction the cost of such assets acquired for use in the active conduct of a trade or business. Under the TCJA, the total deduction available under section 179 is generally USD1 million. This limitation, which is adjusted annually for inflation, is reduced dollar-for-dollar to the extent the total cost of section 179 property placed in service during the year exceeds USD2.5 million.

g. Transfer Taxes, VAT

Asset sales may result in significant taxes. Many states and local jurisdictions impose sales and use tax on asset transfers, though occasional or isolated sale exemptions often apply. Real property is generally subject to realty transfer or documentary stamp tax. The US does not impose a value added tax ("VAT"). It should also be noted that asset sales may give rise to both ordinary income and capital gain (taxed at a reduced rate for individuals). In the case of a disposition of the assets of a US business by a foreign person, the gain is ordinarily treated as effectively connected income subject to US tax. Under recent legislation, the sale of a partnership interest by a foreign person is treated as the sale of that person's share of the US business assets of the partnership.

h. Asset Purchase Advantages

In an asset acquisition, the tax basis of the assets is stepped up, or stepped down and the basis may be depreciated or amortised over a period of time for tax law purposes. If any of the assets acquired are "qualified property," the TCJA provides for the immediate expensing of the cost for such property.

Prior law allowed a 50% current deduction for certain investments in new depreciable property. The remaining cost of the property was recoverable through depreciation or amortisation. TCJA modified this "bonus" depreciation regime by allowing 100% of the cost of new or used property to be deducted immediately, as long as the property is purchased from an unrelated party. Eligible property includes tangible personal property with a recovery life of 20 years or less (which will include most tangible personal property) and certain software. The new bonus depreciation rules will provide a significant benefit to taxpayers engaging in asset acquisitions (or deemed asset acquisitions), because the portion of the purchase price allocable to eligible property will be deductible immediately by the purchaser. There is concern, however, about the interaction of this provision with the interest expense limitation that comes into effect in 2022. Bonus depreciation will reduce EBIT and therefore reduce the allowable deduction for interest.

The liabilities of a Target entity are not acquired as part of an actual asset purchase, unless otherwise agreed to in the purchase agreement. A person who acquires assets in a deemed purchase, such as a stock acquisition with a section 338 election, generally is deemed to assume the liabilities of the target. Certain non-income taxes may attach to the acquired assets.

In an asset acquisition, it is possible to acquire only the desired assets or pieces of a given business.

When acquiring assets, the buyer is able, through its existing affiliates or newly created entities, to acquire the desired assets in a favourable jurisdiction. For example, a buyer evaluating the assets of a Target with IP located in a high tax jurisdiction may decide to purchase the IP through a newly created entity in a low tax jurisdiction.

i. Asset Purchase Disadvantages

Tax attributes of a target remain behind in an asset purchase, (e.g. net operating losses, tax credits, capital losses).



A seller may demand a higher purchase price to compensate for paying a higher federal income tax rate for selling assets at ordinary rates as opposed to selling stock at preferential capital gains rates.

State and local transfer taxes may be implicated in the context of a transaction structured as an asset purchase.

In an asset purchase, assets will need to be retitled and new agreements put into place with existing customers of the acquired business, employees, and between affiliated entities interacting with one another.

5. ACQUISITION VEHICLES

a. General Comments

As discussed above, the US provides various forms of legal entities for purposes of an acquisition. In determining the optimal type of legal entity ("vehicle") to make an acquisition, an investor must weigh the facts and circumstances of its situation, including its existing legal entity structure, the jurisdictions of the target company and its subsidiaries, the jurisdictions and makeup of the ultimate investor base, and the desired legal and tax consequences of the acquisition.

b. Domestic Acquisition Vehicle

- LLC

  The ability of a domestic LLC to be treated electively as a flow-through entity or a corporation for federal tax purposes provides significant tax flexibility in an acquisition.

  The acquisition or disposition of the equity interests in a partnership or disregarded entity will generally be treated as the acquisition or disposition of the assets of the entity for US federal tax purposes.

- Partnership

  Because of the limited liability of members of a limited liability company, partnerships (in which at least one partner generally must be fully liable for the debts of the entity) are less commonly used. However, partnerships can be useful in the foreign context when a particular treaty grants specific rights to partners or partnerships that are clearer than or different from those granted to members or limited liability companies.

- S corporation

  Because of the limits on shareholders, discussed above, and the lack of flexibility with respect to stock arrangements, practitioners typically encounter S corporations only when a US individual or family owns a business of limited size. Most reasonably sophisticated investors will prefer to use an LLC or partnership if they wish to achieve flow-through tax treatment in the US.

- C corporations

  The global legal community and tax authorities typically understand US corporations quite well. Because the US taxes foreign owners of pass-through entities engaged in business in the US as if they engaged in that business directly, and treats corporations as taxpayers in their own rights, a US corporation is commonly interposed (as a "blocker") between (a) the taxable operations of a flow-through entity (otherwise owned by US taxable persons) and (b) tax-exempt or non-US investors; the recent reduction in the US corporate income tax rate to 21% has made this option even less costly. Considerable thought should be given to the appropriate type and jurisdiction of entity that owns the blocker's shares to minimise investor level taxes with respect to distributions, withholding taxes and share sales.

US investors acquiring the stock of a US corporation will usually organise a new US corporation for that purpose and cause the target to join the acquisition corporation in filing consolidated income tax returns. Corporate investors often prefer investing in corporate entities because of the partial deduction they enjoy with respect to dividends from such entities.

c. Partnerships and Joint Ventures

Business arrangements in which parties do not form a legal entity (i.e. agree on the arrangement via contract) are typically referred to as "joint ventures." If the parties to a joint venture share profits, the joint venture may be treated as a flow-through entity for federal tax purposes and subject the parties to tax in the US with respect to any business that is carried on in the US by the joint venture. Although joint ventures can provide significant commercial advantages and flexibility, these arrangements should be carefully understood and negotiated by all parties with the aid of a tax adviser well versed in US flow-through taxation and international tax.

d. Strategic vs Private Equity Buyers

Strategic acquirors who anticipate reinvestment of a target's earnings are more likely to select a corporate mode of business for the target, because the corporate tax rate is low and dividends, although subject to shareholder level tax, are unlikely in such cases. A private equity fund (or a strategic buyer who anticipates significant return of cash on investment) may be more likely to select a pass-through mode of business for the target, considering (a) the single layer of tax on current earnings, (b) the ability to pass cashflow to owners without incremental tax, and (c) the ability to increase basis in investment to the extent of reinvested, after-tax earnings. Obviously, these are general observations and ultimate strategy will depend on the investors' particular facts.

6. ACQUISITION FINANCING

a. General Comments

Cross border transfers of USD10,000 or more must be reported to the federal government; however, banks that move funds will automatically report such transfers.

"Know Your Customer" laws ("KYC" or "Customer Identification Programme") in the US can be complicated and can create delays in setting up US bank accounts, which can lead to delays in closing if the complexity is not properly anticipated.

US citizens or residents of any type are required to report to the federal government ("FBAR") any financial interest in or signature authority over accounts outside the US (>USD10,000 individually or in the aggregate). Penalties for failure to report can be significant.

b. Equity

An acquisition vehicle must generally be funded with a meaningful amount of equity. Otherwise, all or part of the debt financing may be recharacterised as equity. US tax law does not allow for a notional interest deduction on equity contributions. Distributions on equity are treated as profit distributions to the extent of available current or accumulated profits. See "Acquisition Vehicles" above for additional discussion.

c. Debt

As a general matter, the amount of debt used in any US acquisition should be determined by weighing:

- The potential for debt to be recharacterised as equity by federal authorities:
  - Common Law Recharacterisation: The following factors can be cited in support of treating an instrument as debt rather than equity for federal tax purposes and thus, allowing deduction of "interest": fixed maturity not overly long-dated, unconditional obligation to pay, defined interest rate, standard creditor rights upon default, lack of equity features (non-convertible, non-participating, non-voting, etc.), supported by borrower's projected cashflows, disparity between identities of stock and debt holders, reasonable debt-equity ratio for borrower's market, absence of management representation, lack of subordination, holder of debt acts like creditor after issuance, and purpose of debt is not for business start-up). Neither the presence nor absence of any one factor is determinative.
  - Debt issued after 4 April 2016 by a US corporation (or one of its pass-through entity subsidiaries) to a person who is related within a >80% chain of ownership but not a member of the issuer's US consolidated group may be recharacterised as equity if it is issued in:
    - A distribution; or
    - Exchange for stock or assets of another related party.

Although exceptions exist, primarily for short-term obligations and certain qualifying reorganisations, this recharacterisation will generally occur if the debt was issued with the purpose of funding these transactions or within 36 months of any such transaction, regardless of purpose.

- The tax deductibility of interest (see "Limitations on Interest Deductibility" below).
- The possibility that a related party who provides a guarantee that enables a thinly capitalised corporation to borrow amounts it could not have otherwise borrowed (rather than simply enabling it to obtain better terms) may be treated as the true borrower (the so-called "Plantation Patterns issue").
- In a related party context:
- Withholding taxes on interest and the benefits of extracting the principal amount from the borrower free of withholding tax (versus extracting the same amount in the form of dividends);
  - US penalty taxes on significant payments by a US corporation (or consolidated group) to foreign related parties; and
  - The amount of debt that would be respected as such under-state law; this can affect:
    - A creditor's ability to recover in any bankruptcy of the borrower; and
    - The ability of the borrower to make distributions.

Interest can include regular "coupon" interest (whether paid in cash or not), accruals of the difference between issue price and stated value ("original issue discount" or "OID"), amortisation of debt issuance costs, and other items that have a "time value of money" component.

i Limitations on Interest Deductibility

- Net interest deductions by US taxpayers are limited to 30% of adjusted taxable income ("ATI").
  - ATI consists of taxable income with addbacks for non-business income/losses, business interest income and expense, net operating loss deductions, and (for tax years beginning before 1 January 2022), depreciation, amortisation, and depletion.
  - This is often referred to in pre-2022 years as the "30% of EBITDA" limitation and, in post-2021 years, as the "30% of EBIT" limitation.
  - Additions to ATI from foreign subsidiaries are possible but limited, and, unlike the EU, the US does not provide for relief if the overall group's external gearing is higher than it is in the US.
  - Obviously, the effects of this limitation become more draconian as interest rates rise and/or business profits decrease.
  - Interest expense which has been limited may be carried forward indefinitely but is treated as if it was a net operating loss in the event of a change in control (See Share Acquisitions, Tax Attributes, above).
- Applicable High Yield Discount Obligations ("AHYDO") – If a corporation issues debt with significant OID and the debt matures more than five years after issuance, the accruals of OID expense by the borrower may be deferred (or disallowed) to the extent the yield exceeds the "applicable federal rate" plus 5%.
- Interest on debt issued by a corporation to acquire stock in another corporation or at least two-thirds of another corporation's assets by value may be non-deductible if the debt is subordinated to trade creditors and the borrower's (a) debt equity ratio exceeds 2:1 or (b) three year earnings are less than 3x the borrower's interest expense.
- The interest expense of a US corporation with foreign subsidiaries may reduce the utility of its foreign tax credits. Interest paid by a US corporation to related foreign parties (whether subsidiaries or not) may subject the US corporation to additional tax.
- Finally, the deduction for interest expense (like other expenses) incurred by a US person in respect of a related party will generally be deferred until such time as that related party takes the interest income into account for US tax purposes.

ii Debt Pushdown

Debt pushdowns in the US are fairly simple so long as a debt-equity recharacterisation is avoided. Standard pushdown in a taxable share purchase occurs as follows:

- Acquiror forms a US acquisition subsidiary and funds it with the desired level of debt and equity;
- Acquisition takes place by means of a merger of the acquisition subsidiary into the target, with the target surviving; this merger has the benefits of:
  - Low shareholder approval requirements and reduced exposure to complications arising from disaffected shareholders;
  - Legal simplicity; and
  - Ability to attach the acquisition debt directly to the assets of the target.



7. DIVESTITURE

a. In General

Divestitures generally take the form of taxable sales of business assets or shares of subsidiaries conducting the business to be divested. Non-taxable acquisitions of subsidiaries in exchange for shares of the acquiring company are possible, but rare in practice unless the shares received are immediately disposed of by the seller. Another non-taxable alternative is a corporate separation, often referred to as a spinoff, split off, or split-up.

b. Corporate Separations - Section 355

Section 355 deals with divisive transactions, such as spinoffs, split offs, and split-ups. Section 355 allows a corporation to distribute the stock of a subsidiary to shareholders without the recognition of income or gain by either the corporation or its shareholders. This favourable tax treatment can only be achieved by satisfying a number of stringent requirements.

The following is a summary of the requirements which must be satisfied in order to qualify for non-recognition treatment:

- Immediately before the distribution, the distributing corporation must control the corporation whose shares are being distributed (the "controlled corporation"). For this purpose, the term "control" means ownership of stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of the total number of shares of all other classes of stock of the corporation.
- The distributing corporation must distribute all its stock and securities in the controlled corporation, or at least distribute enough stock to constitute control. If the distributing corporation retains any stock of the subsidiary, it must establish to the satisfaction of the IRS that the retention is not in pursuance of a plan having as one of its principal purposes the avoidance of federal income tax.
- Immediately after the distribution, with certain exceptions, both the distributing and controlled corporations must be engaged in the active conduct of a trade or business, and each active trade or business must have been actively conducted throughout the five year period ending on the date of the distribution.
- The transaction must not be used principally as a device for the (non-taxable) distribution of earnings and profits of the distributing corporation, the controlled corporation, or both.
- The distribution cannot transfer majority ownership of a disqualified investment corporation to a shareholder of the distributing corporation. In addition, neither the distributing corporation nor the controlled corporation can be a real estate investment trust. The terms "disqualified investment corporation" and "real estate investment trust" are defined elsewhere in the IRC.
- The distribution must not constitute a "disqualified distribution," defined as any distribution if, immediately after the distribution, any person holds disqualified stock in either the distributing or controlled corporation which constitutes a 50% or greater interest in such corporation. "Disqualified stock" is defined as any stock in the distributing or controlled corporation acquired by "purchase" during the five-year period ending on the date of the distribution, or stock received in a distribution to the extent the distribution is attributable to stock acquired by "purchase." If a distribution is characterised as a disqualified distribution, then the distributing corporation (but not its shareholders) will recognise gain on the distribution.

- The distribution must not be part of a plan or series of transactions pursuant to which one or more persons acquire directly or indirectly stock representing a 50% or greater interest in either the distributing corporation or controlled corporation (or their predecessors or successors). If one or more persons acquire stock representing a 50% or greater interest during the four year period beginning on the date which is two years before the date of distribution, a plan is presumed to exist "unless it is established that the distribution and the acquisition are not pursuant to a plan or series of related transactions". In such case, the distributing corporation will recognise gain on the distribution.
- The distribution must be undertaken pursuant to a valid corporate business purpose; and
- The regulatory and judicial requirements of (i) continuity of interest and (ii) continuity of business enterprise must also be satisfied.
- The business purpose requirement of section 355 is significantly more stringent than the business purpose test in other contexts. A corporate, rather than a shareholder, business purpose is required, and the taxpayer must be able to clearly demonstrate that the separation will provide a clear and measurable benefit to the businesses of the distributing and controlled corporations which is not related to federal income taxes. The regulations provide that a "corporate business purpose" is a real and substantial non-federal income tax purpose germane to the business of the distributing corporation, the controlled corporation, or the affiliated group to which the distributing corporation belongs. Moreover, the business purpose requirement is not satisfied if the stated corporate business purpose can be achieved through a non-taxable transaction that does not involve the distribution of the controlled corporation's stock and that is neither impracticable nor unduly expensive.

In general, the requirements outlined above must be satisfied based on all facts and circumstances and demonstrating that they are satisfied can be burdensome. Because the tax consequences of a failed section 355 distribution will almost always outweigh any benefit of the post-distribution structure, taxpayers are advised to undertake such transactions only with the assistance of a tax adviser. It is possible in some cases to obtain an advance ruling from the IRS that a proposed transaction qualifies for nonrecognition treatment under section 358.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

- The US historically has taxed the worldwide income of its citizens and residents, both corporations and individuals. Although the TCJA made major changes in the US taxation of foreign income, US persons are still generally subject to tax on their worldwide income. Some types of foreign income are, nevertheless, taxed more lightly now than they were before tax reform.
- Income from the sale or licensing of property for foreign use is subject to a reduced rate of tax under the Foreign Derived Intangible Income ("FDII") regime. This regime seeks to identify the return on intangible assets that are used in the production of property for sale or licensing abroad. That return is subject to tax at a reduced effective rate of 13.125%. The reduction in rate is achieved by allowing taxpayers a deduction equal to 37.5% of their FDII. FDII is calculated generally as the foreign sourced business income derived directly (rather than through controlled foreign subsidiaries or foreign branches) by a taxpayer, minus a deemed 10% return on a proportionate share of tangible assets. Income from CFCs and from foreign branches does not qualify for the FDII regime.

- Foreign branch income is taxed at full corporate rates. In addition, foreign income taxes paid with respect to foreign branch income may be credited only against the US tax attributable to the aggregate income of the taxpayer's foreign branches. New rules have been proposed for distinguishing between income generated by foreign branch operations, and by domestic operations in the same supply chain. These rules are predictably complex.

b. CFC Regime

The US defines a controlled foreign corporation as a foreign corporation that is more than 50% owned by "US shareholders," either by voting power or by value. A US shareholder is a US person who owns at least 10% of the value or voting power of the stock of the foreign corporation. Stock ownership can be direct or indirect and can be attributed to a US person from a related US or foreign person. If a foreign corporation is a CFC, generally its subsidiaries will also be CFCs.

Before the recent tax reform, US shareholders of a CFC were taxed currently only on its "Subpart F income" and on certain deemed distributions resulting from investments of CFC earnings in US property. Subpart F income includes primarily income of a passive or investment character, and income from certain related party transactions. Other income, especially income earned from the conduct of business in the CFC's home country, was not subject to current US tax and was generally taxed only when distributed to the shareholders as a dividend.

While largely retaining Subpart F, the TCJA introduced a new category of CFC income that is subject to current taxation in the hands of US shareholders. This is global intangible low-taxed income ("GILTI"). A US shareholder's GILTI inclusion is roughly equal to the aggregate net income of its CFCs (or its pro rata share of the income of CFCs that are not wholly owned), reduced by any Subpart F income and by a 10% implied return on tangible assets. Losses incurred by a CFC can be offset against the profits of other CFCs for this purpose. In many cases, nearly all CFC income is subject to current US tax in the hands of US shareholders under the GILTI regime. US shareholders that are corporations are allowed a deduction equal to 50% of their GILTI income (but not more than 50% of taxable income). Corporate US shareholders also may claim a foreign tax credit for 80% of the foreign tax paid by the CFC on its income that is taken into account in the GILTI calculation.

As discussed below, dividends paid by CFCs are generally no longer subject to tax in the hands of corporate US shareholders.

c. Foreign branches and partnerships

The US taxes foreign branch income on a current basis, including it in the taxable income of the domestic owner. A credit is allowed for foreign income taxes paid on branch income, subject to an aggregate limitation under which branch tax credits may only offset the US tax imposed on branch income. Transactions between a taxpayer and its branch, including contributions and remittances, are generally disregarded, but may be taken into account in measuring branch income. However, a branch must report its income in its functional currency, and remittances may give rise to exchange gain or loss. As mentioned above, branch income is excluded from the benefit of the FDII regime, and therefore is subject to taxation at the full corporate rate, before consideration of foreign tax credits.

Income derived from a foreign partnership is taxed in a manner similar to the taxation of branch income, and for many purposes a partnership interest is included in the definition of a branch. Partnerships, and entities treated as partnerships, are fiscally transparent. A partner is taxed on its distributive share of partnership income, whether or not distributed.

A foreign limited liability company or partnership can elect whether to be treated as a corporation or a partnership for US income tax purposes. A partnership for tax purposes can be formed (voluntarily or involuntarily) without the formation of a legal entity. Contractual joint ventures, for example, may be treated as partnerships if the parties intend to carry on business jointly and share profits and losses.



d. Cash Repatriation

Branch remittances are not taxable, except for possible exchange gain or loss as noted above. Dividends to a domestic corporation from a foreign corporation in which it owns an interest of 10% or more are effectively not taxed, as the recipient corporation is entitled to a deduction equal to the amount of the dividend that is paid from foreign earnings. No credit is allowed for foreign taxes attributable to the excluded dividend, or to the earnings of the foreign corporation from which the dividend is paid.

e. Transition Tax

As part of the transition to a new system of worldwide taxation, the TCJA imposed a one off tax on the accumulated earnings of foreign corporations in which US shareholders own an interest of 10% or more. This tax was imposed on US shareholders at the end of the last taxable year beginning before 2018. The tax rate was between 8% and 15.5%, depending on the amount of cash and cash equivalents held by the foreign corporations. The tax is electively payable over an eight-year period, with most of the payments due in the later years. This deferred tax liability is an exposure that should be considered during due diligence engagements.

f. Base Erosion and Anti-abuse Tax ("BEAT")

The BEAT imposes a minimum tax on large corporate taxpayers that make substantial deductible payments to related foreign persons. The tax is imposed at a rate of 10% (5% in 2018) on a base consisting of taxable income computed without regard to "base erosion payments". Base erosion payments include virtually all deductible payments made to foreign related parties. Combined with the reduced corporate income tax rate (21%) also included in the TCJA, the BEAT has the potential to reverse long-standing practices involving leveraged acquisitions and intangible licensing within multinational groups.

g. Global Intangible Low-Taxed Income ("GILTI")

As noted above, GILTI is a category of income taxed to the US shareholders of controlled foreign corporations ("CFCs"). GILTI sweeps nearly all CFC income that would not have been taxed currently under prior law into the taxable income of US shareholders. An elective exception applies to income that is subject to a relatively high rate of foreign tax. Instances of CFCs with large amounts of untaxed earnings accumulated over a period of years will now be rare. This substantially reduces the importance of rules that treat gain on the sale of CFC shares as a dividend, rather than capital gain, though those rules remain in effect. CFC income that has been included in the income of a US shareholder under GILTI becomes previously taxed income that can be distributed without further US tax.

h. Foreign Derived Intangible Income ("FDII")

FDII is a regime that provides for a reduced rate of tax on income derived by US taxpayers from the sale or licensing of property, or provision of services, to unrelated foreign users. This will primarily benefit exports of services and tangible and intangible property, and the benefit is not provided to income derived through a foreign branch.

i. Participation Exemption

As a companion to the GILTI provisions, Congress provided US corporations with a deduction equal to the amount of otherwise taxable dividends received from 10% owned foreign corporations. This largely removes the barrier to repatriation of foreign earnings that existed under prior law. It allows the tax free distribution of earnings even if those earnings have not been taxed as GILTI.

j. Foreign Tax Credits ("FTC")

The TCJA reduced the scope of foreign tax credit benefits, by eliminating indirect credits with respect to inbound dividends (which instead are now exempt from tax). The foreign tax credit is still significant, however, because credit is still available for foreign taxes that a domestic taxpayer pays directly (including withholding taxes and taxes on foreign branch income), as well as for taxes paid indirectly under the pass-through regimes of legacy subpart F and the new GILTI provisions.

The limitation is calculated to be the amount of US tax imposed on foreign income. However, certain types of foreign income are considered separately rather than included in the worldwide general limitation. Before TCJA, the principal separate limitation was applied to income considered passive and justified on the basis that such income was easily portable to low-tax jurisdictions. TCJA created two new categories of separate limitation income: GILTI and foreign branch income. The low rate of domestic tax on GILTI makes this separate category particularly significant. Moreover, GILTI credits are further restricted by a provision that disallows carryovers and carrybacks of taxes imposed on GILTI in excess of the current limitation.

k. Source of Manufacturing Income

Prior to TCJA, income from the manufacture and sale of personal property was generally considered to arise equally from manufacturing activity and sales activity, resulting in a 50:50 split of gross profit between the place of manufacture and the place of sale. For US manufacturers, this rule often provided a benefit because income from export sales was rarely taxed abroad, due to the effect of tax treaties and foreign laws that incorporated a permanent establishment concept in their jurisdictional rules. The resulting low- or un-taxed income could be used to average down the effective rate of foreign tax on the taxpayer's foreign income, expanding its foreign tax credit limitation. Conversely, the rule had little impact on foreign exporters of products to the US, because they could generally arrange their affairs in such a way that the sales income, though treated for US purposes as income from US sources, was exempt by treaty as not attributable to a permanent establishment in the US. TCJA changed the source rule applicable to income from sales of goods manufactured by the taxpayer. All the income from manufacturing and sale is now considered to arise at the place of manufacture. As a result, domestic exporters will have access to fewer foreign tax credits, while foreign exporters to the US will incur less risk of US taxation. Note however that income from the purchase and sale of inventory is still generally sourced at the place of sale, creating a difference in treatment between manufacturers and distributors.

l. CFC Investments in US Property

Section 956 taxes US shareholders of a CFC on earnings not otherwise subject to US tax on a current basis, to the extent the CFC holds certain kinds of US property (such as stock or obligations of a related US person). This provision was formerly a major obstacle to indirect repatriation of foreign profits. TCJA did not amend section 956 directly, but other provisions of TCJA deprived section 956 of most of its effect on corporate taxpayers. First, the participation exemption made it possible to repatriate untaxed foreign profits free of US tax. Second, GILTI substantially reduces the ability of taxpayers to accumulate low-taxed earnings in CFCs, by imposing tax on the US shareholders with respect to most CFC income. Recognising the diminished role of section 956 after TCJA, the IRS has announced that corporate US shareholders will not be subject to tax as a result of CFC investments in US property, to the extent the earnings of the CFC would have been eligible for the participation exemption if repatriated directly.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

The US taxes all gains recognised by foreign persons with respect to US real property. A US real property interest ("USRPI") includes any interest in real property located in the US, other than an interest solely as a creditor. Shares of a domestic corporation are also USRPI, if the fair market value of USRPI owned by the company equals at least half the value of its total assets. Thus, a foreign person is taxed on gain realised on the disposition of stock of a US real property holding corporation ("USRPHC"). Gain on sale of a partnership interest is also taxed to the extent the value of the partnership interest is attributable to real property assets. As indicated elsewhere, the US also taxes gain attributable to any assets of a trade or business conducted within the US.

Gain on the sale or exchange of a USRPI is taxed in the same manner as income from the conduct of a trade or business in the US. Gain realised on the exchange of a USRPI for other property in a transaction that would otherwise qualify for nonrecognition of gain will be recognised, unless the property received in exchange is also a USRPI.

A purchaser of a USRPI must generally withhold 15% of the purchase price, unless the seller provides a certificate that the seller is a US person. Stock of a domestic corporation is presumed to be a USRPI unless the corporation provides its certification that the stock is not a USRPI, or in other words, that the corporation's assets do not consist, and have not in the preceding five year period consisted, at least 50% of USRPI.

Net income derived from US real property used in a trade or business is taxable at regular corporate or individual rates, as the case may be. Rental income derived from real property held for investment, rather than used in a trade or business, to is subject to gross basis withholding tax of 30% unless a lower treaty rate applies. However, a foreign person may elect to be treated as engaged in a trade or business with respect to the investment property, in which event tax is imposed at regular rates on the net income from the property. Some treaties provide a similar election.

b. CbC and Other Reporting Regimes

The US requires CbC reporting by the US parent of a multinational enterprise with prior year group revenue of at least USD850 million.

The reporting company must file Form 8975 and Schedule A (Form 8975). A separate Schedule A is filed for each foreign jurisdiction in which the group has reportable activities. The forms are attached to the corporation's income tax return.

10. TRANSFER PRICING

Transfer pricing is a term used to describe intercompany pricing arrangements relating to transactions between related entities. The international standard for determining the appropriate transfer price is the arm's length principle. Under this principle, transactions between two related parties should produce results that do not differ from those that would have resulted from similar transactions between independent companies under similar circumstances. This principle is cited in the US transfer pricing rules (section 482 and the Treasury regulations thereunder). The section 482 regulations provide several methods to test whether a price meets the arm's length standard, but provide no strict priority of methods. Thus, no method invariably will be considered to be more reliable than another. Instead, every transaction reviewed under section 482 must be judged under the method that, under the facts and circumstances, provides the most reliable measure of an arm's length result. In addition, the type of transaction may also influence the method and in most cases, there will be a range of acceptable pricing under each method.

There are three stages in Mergers and Acquisitions where transfer pricing has an impact. The first phase, due diligence ("DD") is the time to understand the target company's transfer pricing policy and identify the transfer pricing risks and opportunities. Some common factors should be considered in assessing transfer pricing risks are:

- Significant intangibles – are the ownership and use of such resources aligned; and
- Are the functions and risks borne by each party as described in intercompany agreements different from the allocation of those functions and risks in practice.

DD is the phase when the risks of the company are identified and measured. During this phase, the DD scope may be limited to reviewing the high-quantity transactions and transactions that involve intangible property and potential tax havens.

The second phase is the optimisation of the business model. This is the phase where the transfer pricing policy of the merged company is integrated into that of the acquirer in order to maximise the shareholder value. This phase also involves other considerations like value chain optimisation, alignment of business with the transfer pricing policy, intangible property strategies, and cross border redeployment of functions and risks.

The third and the final phase involves standardising, centralising, and automating the statutory transfer pricing compliance requirements. This allows the merged company to also meet the global transfer pricing compliance requirements such as master file, local files and country-by-country reporting.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

- Before the TCJA, post-acquisition integration of a US target company into a foreign based multinational enterprise was often focused on minimising the US tax base by moving foreign operations out from under the US structure, moving intangible assets up to the foreign parent or another non-US-controlled entity, and earnings stripping through payment of deductible interest and royalties by the US target.
- The TCJA attacked these fundamental post acquisition integration considerations on many fronts:
  - The reduction in the corporate tax rate from 35% to 21% greatly reduced the potential tax savings from earnings stripping or from moving income-producing assets and operations out of the US structure. In the case of an asset acquisition, generous cost recovery deductions further reduce the tax cost of US operations.
  - At the same time, the rate reduction reduced the tax cost of selling assets upstream or to a non-US sister company.
  - The incentive to move foreign subsidiaries "out from under" was further eroded by the imposition of a still lower rate of US tax on CFC earnings under the GILTI regime.
  - The stricter limitation of interest expense deductions to 30% of adjusted taxable income makes earnings stripping through debt financing more difficult.
  - For large MNE groups, the BEAT limits the benefits of earnings stripping through deductible payments. Smaller groups may still find this option attractive, however, as the FDII regime may result in greatly reduced tax costs associated with exporting intangible assets.



a. Use of Hybrid Entities

- The great flexibility afforded by the US "check-the-box" rules remains a useful tool for taxpayers, as it allows operations to be conducted through a limited liability entity without creating a separate taxpayer. Both domestic and foreign structures can make use of limited liability companies that are treated as partnerships or disregarded as separate entities for US tax purposes.
- A foreign owner that holds a direct interest in a US hybrid entity will be subject to US tax on income derived by the hybrid from the conduct of a trade or business in the US. To avoid this exposure, business operations should be held through an entity that is taxed by the US as a corporation. Such an entity may be a domestic corporation or a "reverse hybrid," a limited liability company or partnership entity that has elected to be fiscally opaque.
- The use of hybrid entities to create "nowhere" income, however, has been sharply curtailed both by the OECD BEPS initiative outside the US, and by domestic legislation included in the TCJA.
- New rules disallow a deduction for any "disqualified related party amount" that is paid or accrued by, or to, a hybrid entity, or in a hybrid transaction. A disqualified related party amount is interest or a royalty that is paid or accrued to a related foreign party that is not included in the related party's income under the law of its residence jurisdiction, or with respect to which the related party is allowed a deduction in that jurisdiction. The law grants the IRS broad regulatory authority to expand the scope of this provision.

b. Use of Hybrid Instruments

- Transactions that create payments that are treated as interest or royalties for US tax purposes, but not for purposes of the tax law in the recipient's country of residence, are now classified as hybrid transactions. Amounts paid or accrued under a hybrid transaction with a related party will be disallowed under the anti-hybrid legislation enacted in the TCJA.
- Payments under hybrid transactions with third parties, however, are not subject to disallowance under these rules.

c. Principal/Limited Risk Distribution or Similar Structures

In the past, limited risk distribution arrangements were used to limit the amount of taxable income arising in the US from imports of goods and services. The reduction in the corporate tax rate from 35% to 21% has reduced the need for such arrangements. However, they are still useful to foreign enterprises seeking to minimise their exposure to the US tax system. The change in the source rule for income from the sale of property manufactured by the taxpayer will also help by assigning the entire gross profit on sales of property manufactured by the taxpayer outside the US to the place of manufacture. However, income from the purchase of property outside the US and its sale within the US will still be assigned a US source. Distribution arrangements should be reviewed from a legal, tax, and transfer pricing standpoint to reduce audit risk.

d. Intellectual property

Contingent payments for the use of intellectual property in the US will be taxed as royalties, whether the licensing agreement otherwise constitutes a license or sale for tax or commercial purposes. Royalties are subject to tax of 30% of the gross amount, unless the royalties are part of the profit of a business conducted in the US. The gross basis tax is collected by withholding at the source and may be reduced or eliminated by treaty.

A licence agreement will be considered as a transfer of ownership of the intellectual property if the licensee obtains "all substantial rights" to the use of the property in the US for the life of the property. Conversely, a license to use intellectual property for limited purposes or in only part of the US cannot be treated as a sale.

Multinational groups differ in their approach to holding intellectual property. In some groups, IP ownership is centralised in an IP holding company, while in others, each local operating company owns the rights to IP in its jurisdiction. When a target company has valuable IP, it is often desirable to transfer ownership of non-US rights to the parent company or to a sister licensing company. Such a transfer must be made at an arm's length price, either in a lump sum or under a royalty arrangement. Generally, a cost-sharing agreement is entered into with regard to IP development, under which the US company bears the cost of developing the US rights (based on the share of future revenues expected to arise from US sources). Transfer pricing professionals should always be consulted when considering the integration of acquired IP into the purchaser's supply chain.

Before the TCJA was enacted, the US had no special tax regimes of interest to foreign acquiring companies. Tax reform introduced the GILTI and FDII provisions, which are described elsewhere in this report. Each of those regimes is designed to apply a reduced rate of US tax to a certain category of income derived from foreign sources.

12. OECD BEPS CONSIDERATIONS

The US did not sign the 2015 BEPS Multilateral Instrument and has preferred to adopt unilateral measures addressing base erosion and profit shifting. However, the US has joined the October 2021 Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. The 2017 Tax Cuts and Jobs Act introduced a number of measures designed to reduce the incentives for US multinationals to engage in base erosion and profit shifting activities. These include the Base Erosion and Anti-Avoidance minimum tax, the GILTI regime of worldwide taxation, and the Foreign Derived Intangible Income rules. These are described elsewhere in this chapter. Whether and how the two pillars of the Statement will be implemented in the US remains to be seen at the time of writing.

13. ACCOUNTING CONSIDERATIONS

a. Combinations

In most M&A transactions, ASC 805-740 provides that deferred tax assets and liabilities should be established for the tax effect of the difference between (1) the fair market value of the acquired assets and (2) the tax basis in those assets. For US tax purposes, in a non-taxable transaction (e.g. stock acquisition with no Sec. 338 election), historical tax basis and tax attributes of the acquired entity carry over, resulting in a deferred tax balance sheet impact for all fair value financial statement adjustments made in purchase accounting (e.g. non-goodwill intangibles). Conversely, in a taxable (asset) transaction, the tax basis in the assets will be adjusted to fair value, generally resulting in little initial basis difference for book and tax purposes and hence minimal deferred tax balance sheet impacts.

Numerous other complexities arise when accounting for income taxes in business combinations. These include valuation allowance considerations for both the acquiror and target companies, revaluing deferred tax assets for tax attribute limitations resulting from the acquisition, accounting for income tax uncertainties arising in the transaction, jurisdictional tax reporting issues, reporting purchase agreement indemnifications, and treatment of goodwill basis differences.

b. Divestitures

The divestiture of a subsidiary, division, or business line may result in the need to account for the sale as a discontinued operation or prepare carve-out financial statements.

Under intraperiod allocation rules, the tax impacts of both the historical operations and the sale itself must be allocated between the retained (i.e. continuing) operations and the divested (i.e. discontinued) operations for all periods presented in the financial statements. A complicated result can occur where, for example, the continuing operations have pre-tax income and utilise losses from the discontinued operations or where tax attributes are utilised to offset discontinued operations income.

Where a new legal entity is created to effectuate a spinoff or sale, carve-out financial statements may be required. In this case, a tax provision is necessary to report the hypothetical tax position for assets and liabilities which may have existed across multiple legal entities and tax filings. Current and deferred taxes are often computed as if this entity had previously filed a stand-alone separate return, with allocations amongst entities to reimburse for tax payments made or tax attributes utilised on behalf of other the new and legacy entities.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves:

In the US, three distinct regimes co-exist with respect to the ability of a company to make distributions. For legal purposes, corporations generally must deal with the concepts of paid-up capital and surplus. For accounting purposes, companies generally have to deal with the concepts of shares, additional paid-in capital ("APIC") and retained earnings ("R/E"). For tax purposes, companies generally must deal with tax basis and earnings and profits ("E&P"). Many persons treat the similar concepts as if they were the same, but caution is advisable (e.g. purchase accounting will eliminate retained earnings with no effect on the legal concepts or E&P; similarly, US purchase accounting will eliminate retained earnings of a foreign subsidiary for US GAAP purposes while a 338(g) transaction eliminates that subsidiary's E&P, but the subsidiary's ability to make a distribution from a local (non-US) tax, accounting, or legal perspective will remain unchanged).

From a US tax perspective, a corporate taxpayer is expected to maintain an E&P account which keeps track of its economic accretions and decrements on a tax-modified basis. Distributions to shareholders will be taxed to them as dividends (the corporation receives no deduction) to the extent made from E&P. Distributions in excess of a corporation's E&P are non-taxable to the extent of shareholders' tax basis in the stock and any distribution in excess of basis is taxed as capital gain.

b. Substance Requirements

Companies formed within the US are per se subject to US taxation, regardless of their activity.

Companies seeking application of a US income tax treaty to an entity organised or tax resident in another jurisdiction should ensure that the entity does not violate the limitation on benefits clause in that treaty; although each clause will differ, most such clauses require an entity to have substance in the other jurisdiction beyond simple tax residency.

c. Application of Regional Rules

The US is a member of the OECD and takes its suggestions into account but will often modify OECD suggestions for its own purposes.

States within the US are not parties to US treaties, but they do generally begin their calculation of state taxable income with the amount of taxable income reported to the federal government.

d. Tax Rulings and Clearances

The Internal Revenue Service ("IRS") issues private letter rulings ("PLRs") to taxpayers. The IRS regularly lists specific issues on which it will not issue a PLR, and the IRS generally will not issue a PLR with respect to any issue (a) with respect to which the IRS is working actively to issue regulations, (b) under audit or in litigation, (c) that is only part of a larger, integrated transaction, or (d) that is primarily factual in nature. The IRS is bound by PLRs it issues to taxpayers so long as the written request submitted by the taxpayer on which the PLR is premised fully and accurately described the proposed transaction and the transaction is carried out as described. A PLR may not be relied on as precedent by other taxpayers or IRS personnel.

e. US State Taxation

The US is composed of 50 separate states, as well as the federal district (District of Columbia). Each of those jurisdictions taxes various activities conducted within its borders. Ad valorem sales taxes and taxes on net income or gross receipts are major sources of revenue for the states and for cities and other governmental units below the state level. Significantly from an international standpoint, US income tax treaties do not provide any protection against the imposition of state income tax, or any other kind of state tax. Moreover, many states measure the income arising within their borders based on formulas that apportion income according to factors such as property, payroll, and sales. Thus, the sale of property to customers located in a state may give rise to state income or sales tax liabilities. However, in order to impose a tax on economic activity, a state must find that a taxpayer has a significant connection ("nexus") with the state. Nexus can be established by physical presence of property or personnel within the state. However, in 2018, the US Supreme Court held in South Dakota v. Wayfair, Inc. that jurisdiction to impose sales tax can be conferred on a state by economic factors (such as in-state sales) alone. As a result, foreign sellers who have no physical presence in the US, but who sell to US customers, may now be required to collect sales tax from their customers in states where their economic activity (sales) is significant. Whether jurisdiction based on economic presence will be extended to state income taxes is yet to be determined.

f. Coronavirus Aid, Relief, and Economic Security Act ("CARES Act")

On 27 March 2020, in response to the COVID-19 pandemic and its impact on the US economy, Congress enacted the CARES Act, which contains provisions aimed at providing taxpayers with short-term liquidity. The CARES Act includes several short-term tax provisions relevant to corporate taxpayers, including changes to the rules regarding net operating losses, relaxation of the limitation on interest deductions, and accelerating refunds for AMT credits, among others.

i Employment Tax Provisions

Eligible employers (except those receiving a Small Business Interruption Loan) are entitled to a refundable credit against Social Security taxes equal to 50% of the qualified wages of each employee if their operations are fully or partially suspended due to the impact of COVID-19, or if they suffered significant economic loss due to shutdowns. Qualified wages are limited to those paid after 12 March 2020 and before 1 January 2021 and the amount of qualified wages differs based on the employer's number of employees. The aggregate amount of wages is capped at USD10,000 per employee and is subject to certain reductions for other payroll credits.

In addition, eligible employers and self-employed individuals can defer the employer portion of Social Security and Medicare taxes due from the date of enactment of the CARES Act through the end of 2020 until the following future dates:

- 50% deferred until 31 December 2021.
- 50% deferred until 31 December 2022.

15. MAJOR NON-TAX CONSIDERATIONS

Compliance with the Hart-Scott-Rodino Act ("HSR" or US antitrust law) and similar laws in jurisdictions in which the target or its subsidiaries are active can require significant time and energy; if these laws are implicated, many buyers begin working on the necessary filings well in advance of any signing of an agreement. HSR can cause a transaction to change or fail, and the transactional results of possible permutations should be agreed by the parties as part of the purchase agreement.

Sellers and non-US buyers of US businesses should assess any necessary compliance with the requirements of the Committee on Foreign Investment in the US ("CFIUS") and the risk that CFIUS could cause the transaction to change or fail.

The details of post-acquisition management equity should be settled well before a purchase agreement is signed, as these details can raise a number of economic issues and tax issues (options, stock, profits interests, participation hurdles, vesting, legal type of issuer) for both the issuer and the holder.

The state whose law will govern the agreement may restrict the enforceability of certain contract terms (in particular, non-competition agreements) and affect the liability of officers and directors in the transaction. Governing law should be chosen carefully with the assistance of counsel.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
Argentina	D	D	D	
Armenia	D	D	0	
Aruba	D	D	D	
Australia	15	10	5	
Austria	5/15	0	0/10	[1] [2]
Azerbaijan	D	D	0	
Bangladesh	10/15	10	10	[3]
Barbados	5/15	12.5	12.5	[4]
Belarus	D	D	0	
Belgium	15	15	0	
Bulgaria	5/10	5	5	[5]
Canada	5/15	0	0/10	[6] [7]
Chile	D	D	D	
China	10	10	10	
Cyprus	5/15	0/10	0	[8] [9]
Czech Republic	5/15	0	0/10	[10] [11]
Denmark	5/15	0	0	[12]
Egypt	5/15	15	15	[13]
Estonia	5/15	10	5/10	[14] [15]
Finland	0/5/15	0	0	[16]
France	0/5/15	0	0	[17]
Georgia	D	D	0	
Germany	0/5/15	0	0	[18]
Greece	D	0/D	0/D	
Hungary	5/15	0	0	[19]
Iceland	5/15	0	0/5	[20] [21]
India	15/25	10/15	10/15	[22] [23] [24]
Indonesia	10/15	10	10	[25]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
Ireland	5/15	0	0	[26]
Israel	12.5/25	10/17.5	10/15	[27] [28] [29]
Italy	5/15	0/10	0/5/8	[30] [31] [32]
Jamaica	10/15	12.5	10	[33]
Japan	0/5/10	0/10	0	[34] [35]
Kazakhstan	5/15	10	10	[36]
Korea (ROK)	10/15	12	10/15	[37] [38]
Kyrgyzstan	D	D	0	
Latvia	5/15	10	5/10	[39] [40]
Lithuania	5/15	10	5/10	[41] [42]
Luxembourg	5/15	0	0	[43]
Malta	5/15	10	10	[44]
Mexico	0/5/10	0/4.9/10/15	10	[45] [46]
Moldova	D	D	0	
Morocco	10/15	15	10	[47]
Netherlands	0/5/15	0	0	[48]
Netherlands Antilles	D	D	D	
New Zealand	0/5/15	0/10	5	[49] [50]
Norway	15	0/10	0	[51]
Pakistan	15/D	D	0	[52]
Philippines	20/25	10/15	15	[53] [54]
Poland	5/15	0	10	[55]
Portugal	5/15	10	0/10	[56] [57]
Romania	10	10	10/15	[58]
Russia	5/10	0	0	[59]
Slovakia	5/15	0	0/10	[60] [61]
Slovenia	5/15	0/5	5	[62] [63]
South Africa	5/15	0	0	[64]
Spain	10/15	0/10	0/5/8/10	[65] [66] [67]

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
Sri Lanka	15	10	5/10	[68]
Sweden	5/15	0	0	[69]
Switzerland	5/15	0	0	[70]
Tajikistan	D	D	0	
Thailand	10/15	10/15	5/18/15	[71] [72] [73]
Trinidad & Tobago	D	D	0/15	[74]
Tunisia	14/20	15	15	[75]
Turkey	15/20	10/15	5/10	[76] [77] [78]
Turkmenistan	D	D	0	
Ukraine	5/15	0	10	[79]
United Kingdom	0/5/15	0	0	[80]
Uzbekistan	D	D	0	
Venezuela	5/15	4.95/10	5/10	[81] [82] [83]
Vietnam	D	D	D	

Footnotes	
1	Dividends - Maximum rate of 15%. 15% applies if the beneficial owner of the dividends is a resident of the other Contracting State and the 5% rate does not apply. 5% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns directly 10% of the voting stock of the company paying the dividends.
2	Royalties - Maximum rate of 10%. 10% rate applies if the royalties constitute consideration for the use of, or right to use, cinematograph films, tapes, or other means of reproduction used for radio or television broadcasting. 0% rate applies if the 10% rate does not apply.
3	Dividends - Maximum rate of 15%. 10% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns, directly or indirectly, at least 10% of the voting stock of the company paying dividends. 15% rate applies if the beneficial owner is a resident of the other Contracting State and the 10% rate does not apply. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed by both Contracting States.
4	Dividends - Maximum rate of 15%. 5% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns at least 10% of the voting stock of the company paying the dividends. 15% rate applies if the beneficial owner is a resident of the other Contracting State and the 5% rate does not apply.
5	Dividends - Maximum rate of 10%. 5% rate applies if the beneficial owner is a company that directly owns at least 10% of the voting stock of the company paying the dividends. 10% rate applies if the 5% rate does not apply.
6	Dividends - The 5% rate applies to dividends paid to a company that holds at least 10% of the voting stock of the distributing company.

Footnotes	
7	Royalties - The 0% rate applies to royalties on certain cultural works (e.g. literary, dramatic, musical or artistic work), as well as to payments for the use of, or the right to use, computer software, patents and information concerning industrial, commercial and scientific experience; otherwise, the rate is 10%.
8	Dividends - Maximum rate of 15%. 5% rate applies if the recipient is a corporation that owns at least 10% of the outstanding shares of the paying corporation and not more than 25% of the gross income of the paying corporation for such prior taxable year (if any) consists of interest or dividends. 15% applies when the 5% rate does not apply.
9	Interest - Maximum rate of 10%. 0% rate applies if the resident paying the interest is a Cypriot corporation which derives 50% or more of its total gross income from one or more permanent establishments which such corporation has in the US.
10	Dividends - Maximum rate of 15%. 15% applies if the beneficial owner of the dividends is a resident of the other Contracting State and the 5% rate does not apply. 5% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns directly 10% of the voting stock of the company paying the dividends.
11	Royalties - Maximum rate of 10%. 10% rate applies if the royalties constitute consideration for the use of, or right to use, cinematograph films, tapes, or other means of reproduction used for radio or television broadcasting. 0% rate applies if the 10% rate does not apply.
12	Dividends - Maximum rate of 15%. 15% applies if the beneficial owner of the dividends is a resident of the other Contracting State and the 5% rate does not apply. 5% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns directly 10% of the voting stock of the company paying the dividends.
13	Dividends - Maximum rate of 15%. 5% rate applies if the recipient is a corporation that owns at least 10% of the outstanding shares of the paying corporation and not more than 25% of the gross income of the paying corporation for such prior taxable year (if any) consists of interest or dividends. 15% applies when the 5% rate does not apply.
14	Dividends - Maximum rate of 15%. 15% applies if the beneficial owner of the dividends is a resident of the other Contracting State and the 5% rate does not apply. 5% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns directly 10% of the voting stock of the company paying the dividends.
15	Royalties - Maximum rate of 10%. 5% rate applies if the royalties paid were for the use of industrial, commercial, or scientific equipment. 10% rate applies if the 5% rate does not apply.
16	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company which owns at least 10% of the voting stock of the company paying the dividends. Reduced rate of 0% rate applies if the beneficial owner is a company that is a resident has owned, directly or indirectly, shares representing 80% of the voting power of the company paying the dividends for a 12-month period ending on the date on which entitlement to the dividend is determined and meets certain other requirements.
17	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the recipient company owns directly at least 10% of the voting power in the company paying the dividends, if such company is a resident of the US, or, directly or indirectly, at least 10% of the capital of the company paying the dividends if such company is a resident of France. Reduced rate of 0% applies if the recipient company has owned, directly or indirectly through one or more residents of either France or the US, shares representing 80% or more of the voting power of the company paying the dividends in the case of the US, or 80% or more of the capital of the company paying the dividends in the case of France, for a 12-month period ending on the date on which entitlement to the dividends is determined, and satisfies certain clauses set forth in Article 30 of the treaty (Limitation on Benefits of the Convention).

Footnotes	
18	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company that holds directly at least 10% of the voting shares of the company paying the dividends. Reduced rate of 0% applies if the beneficial owner is a company that has owned directly shares representing 80% of the voting power in the company paying the dividends for a 12-month period ending on the date entitlement to the dividends is determined and certain other requirements are met.
19	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company which owns, directly or indirectly, at least 10% of the voting stock of the company paying the dividend.
20	Dividend - Maximum rate of 15%. Reduced rate of 5% applies when the recipient is a corporation that owns at least 10% of the voting stock of the paying corporation during the part of the paying corporation's taxable year which precedes the date of the dividend and not more than 25% of the gross income of the paying corporation for the prior taxable year consists of interest or dividends.
21	Royalties - The 0% rate applies, unless the royalty relates to copyrights of motion picture films or tapes used for radio or television broadcasting.
22	Dividends - Maximum rate of 25%. Reduced rate of 15% applies if the beneficial owner is a company which owns at least 10% of the voting stock of the company paying the dividends.
23	Interest - Maximum rate of 15%. Reduced rate of 10% applies if the interest is paid on a loan granted by a bank carrying on a bona fide banking business or by a similar financial institution, including insurance companies.
24	Royalty - Maximum rate of 15%. Reduced rate of 10% applies to royalties related to the use or right to use any industrial, commercial, or scientific equipment.
25	Dividends - Maximum rate of 15%. Reduced rate of 10% applies if the beneficial owner is a company which owns at least 25% ownership interest in the company paying the dividends.
26	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company that owns at least 10% of the voting stock of the company paying the dividend.
27	Dividends - Maximum rate of 25%. Reduced rate of 12.5% applies if the recipient is a corporation that owns at least 10% of the voting stock of the paying corporation and not more than 25% of the gross income of the paying corporation consists of interest or dividends.
28	Interest - Maximum rate of 17.5%. Reduced rate of 10% if the interest is derived from a loan of whatever kind granted by a bank, savings institution, insurance company, or the like.
29	Royalty - Maximum rate of 15% applies to industrial royalties. Reduced rate of 10% applies to copyright and film royalties.
30	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company that has owned at least 25% of the voting stock of the paying company a 12 month period ending on the date the dividend is declared.
31	Interest - Maximum rate of 10%. Reduced rate of 0% applies if - (1) the interest is beneficially owned by a resident that holds, directly or indirectly, less than 25% of the capital of the one paying the interest; (2) the interest is paid with respect to debt obligations guaranteed or insured by a qualified government entity and is beneficially owned by a resident; (3) the interest is paid or accrued with respect to a sale on credit of goods, merchandise, or services provided; or (3) the interest is paid or accrued in connection with the sale on credit or industrial, commercial, or scientific equipment.

Footnotes	
32	Royalty - Maximum rate of 8%. Reduced rate of 5% applies if the royalties are for the use of, or right to use, computer software or industrial, commercial, or scientific equipment. Reduced rate of 0% applies if royalties are for the use of, or right to use, a copyright of literary, artistic, or scientific work; unless such royalty is for computer software, motion pictures, films, tapes, or other means of reproduction used for radio or television broadcasting.
33	Dividends - Maximum rate of 15%. Reduced rate of 10% applies if the beneficial owner is a company, other than a partnership, which owns, directly or indirectly, 10% of the voting stock of the company paying the dividend.
34	Dividends - Maximum rate of 10%. Reduced rate of 5% applies if the beneficial owner is a company that owns, directly or indirectly, at least 10% of the voting stock of the company paying the dividends on the date on which entitlement to the dividend was determined. Reduced rate of 0% applies if the beneficial owner of the dividends is a company that has owned, directly or indirectly, more than 50% of the voting stock of the company paying the dividends for the 12-month period ending on the date on which the entitlement to the dividend was determined.
35	Interest - Maximum rate of 10%. Reduced rate of 0% applies if - (1) the interest is beneficially owned by the one country, an authority of the country, or any institution owned by the country; (2) the interest is guaranteed, insured or indirectly financed by the government of one country, an authority of the country, or any institution owned by the country; (3) the interest is beneficially owned by a resident that is either a bank, insurance company, registered securities dealer; (4) the interest is beneficially owned by a pension fund, provided that such interest is not derived from carrying on business, directly or indirectly, by the pension fund; or (5) the interest is beneficially owned by a resident and paid with respect to indebtedness arisen as a part of a sale on credit of equipment or merchandise.
36	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company which owns at least 10% of the voting stock of the company paying the dividends.
37	Dividends - Maximum rate of 15%. Reduced rate of 10% if the recipient is a corporation of which, during part of the paying corporation's taxable year which precedes the payment of the dividend and the entire prior taxable year, at least 10% of the voting stock of the paying corporation was owned by the recipient and not more than 25% of the gross income of such prior taxable year of the paying corporation consists of interest or dividends.
38	Royalties - Maximum rate of 15%. Reduced rate of 10% applies to royalties derived from copyrights, or rights to produce or reproduced any literary, dramatic, musical, or artistic work and the rights to use motion picture films including films and tapes used for radio or television broadcasting.
39	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company which holds directly at least 10% of the voting shares of the company paying the dividends.
40	Royalties - Maximum rate of 10%. Reduced rate of 5% applies to royalties paid for the use of industrial, commercial, or scientific equipment.
41	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company which directly holds at least 10% of the voting shares of the company paying the dividends.
42	Royalties - Maximum rate of 10%. Reduced rate of 5% applies if the royalty is paid for the use of industrial, commercial, or scientific equipment.
43	Dividends - Maximum rate of 15%. Reduced rate of 5% applies to dividends paid to a company that owns directly at least 10% of the voting shares of the payer company; otherwise, the rate is 15%.
44	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company that owns directly at least 10% of the voting stock of the company paying the dividends.



Footnotes	
45	Dividends - Maximum rate of 10%. Reduced rate of 5% applies if the beneficial owner is a company which owns directly at least 10% of the voting stock of the company paying the dividends. Reduced rate of 0% applies if (i) the beneficial owner is a trust, company, or other organisation constituted and operated exclusively to administer or provide benefits under one or more plans established to provide pension, retirement or other employee benefits and its income is generally exempt from tax in the country of which it is a resident, provided that such dividends are not derived from the carrying on of a business, directly or indirectly, by such trust, company or organisation, or (ii) is a company that has owned shares representing 80% or more of the voting stock of the company paying the dividends for a 12-month period ending on the date the dividend is declared, and satisfies certain other conditions.
46	Interest - Maximum rate of 15%. Reduced rate of 4.9% applies to interest derived from (i) loans granted by banks, including investment banks and savings banks, and insurance companies, and (ii) bonds or securities that are regularly and substantially traded on a recognised securities market. Reduced rate of 10% applies to interest paid by banks (except where the 4.9% rate applies) or interest paid by the purchaser of machinery and equipment to a beneficial owner that is the seller of the machinery and equipment in connection with a sale on credit. Reduced rate of 0% applies if the beneficial owner is a trust, company, or other organisation constituted and operated exclusively to administer or provide benefits under one or more plans established to provide pension, retirement or other employee benefits and its income is generally exempt from tax in the country of which it is a resident.
47	Dividends - Maximum rate of 15%. Reduced rate of 10% applies if the recipient is a corporation in which at least 10% of the voting shares of the paying corporation was owned by the recipient corporation during the part of the paying corporation's taxable year which precedes the date of the payment of the dividend and not more than 25% of the gross income of the paying corporation for such prior taxable year consists of interest or dividends.
48	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company which holds directly at least 10% of the voting power of the company paying the dividends. Reduced rate of 0% applies if the beneficial owner of the dividends is a company that has owned directly shares representing 80% of the voting power in the company paying the dividends for a 12-month period ending on the date the dividend was declared and meets certain other requirements.
49	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company that owns at least 10% of the voting power of the company paying the dividends. Reduced rate of 0% applies if the beneficial owner is a company that is a resident that has owned, directly or indirectly, shares representing 80% of the voting power in the company paying the dividend for a 12-month period ending on the date on which entitlement to the dividends is determined, and certain other requirements are met.
50	Interest - Maximum rate of 10%. Reduced rate of 0% applies if the interest is - (1) beneficially owned by one country or an instrumentality of that country which is not subject to tax on income by that country; (2) beneficially owned by a resident with respect to a debt obligation guaranteed or insured by that country or an instrumentality of that country which is not subject to tax on its income by that country; or (3) beneficially owned by a bank or an enterprise substantially deriving its gross income from the active and regular conduct of a lending or finance business involving transaction with unrelated parties.
51	Dividends - Maximum rate of 15%. 10% rate applies if the recipient is a corporation that owns at least 10% of the outstanding shares of the paying corporation and not more than 25% of the gross income of the paying corporation for such prior taxable year (if any) consists of interest or dividends. 15% applies when the 10% rate does not apply. Can be taxed by both Contracting States.
52	Dividends - Maximum Rate of 15%. Domestic rates apply unless the company receiving dividends lacks both permanent establishment in the US and controls more than 50% of the voting power in the company paying the dividend.



Footnotes	
53	Dividends - Maximum rate of 25%. 20% rate applies when the dividends are paid to a corporation that owns at least 10% of the voting stock of the paying corporation during the taxable year prior to the payment.
54	Interest - 15% maximum rate. A 10% rate applies if the debt relates to publicly issued debt from bonds.
55	Dividends - Maximum rate of 15%. 15% applies if the beneficial owner of the dividends is a resident of the other Contracting State and the 5% rate does not apply. 5% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns directly 10% of the voting stock of the company paying the dividends.
56	Dividends - Maximum rate of 15%. 5% rate applies if the recipient is a company which holds at least 25% of the voting shares of the company paying the dividends for two years without interruption.
57	Royalties - Maximum rate is 10%. If the royalties are received as consideration for the use of, or the right to use, containers in international traffic, the royalties shall be taxable only in the Contracting State of which the recipient is a resident, so it some cases, the rate may be 0%.
58	Royalties - Maximum rate of 15% applies for Industrial royalties where are defined as royalty payments of any kind made as consideration for the use of, or the right to use, patents, designs, models, plans, secret processes, or formulae, trademarks, or other like property or rights, or for knowledge, experience, or skill. Otherwise, 10% rate applies for cultural royalties which are payments of any kind made as consideration for the use of, or the right to use, copyrights of literary, artistic, or scientific works, including copyrights of motion picture films or films or tapes used for radio or television broadcasting.
59	Dividends - Maximum rate of 10%. 5% rate applies if the beneficial owner is a company that directly owns at least 10% of the voting stock of the company paying the dividends. 10% rate applies if the 5% rate does not apply.
60	Dividends - Maximum rate of 15%. 5% rate applies if the recipient is a company which holds at least 25% of the voting shares of the company paying the dividends for two years without interruption.
61	Royalties - Maximum rate of 15% applies for Industrial royalties where are defined as royalty payments of any kind made as consideration for the use of, or the right to use, patents, designs, models, plans, secret processes, or formulae, trademarks, or other like property or rights, or for knowledge, experience, or skill. Otherwise, 10% rate applies for cultural royalties which are payments of any kind made as consideration for the use of, or the right to use, copyrights of literary, artistic, or scientific works, including copyrights of motion picture films or films or tapes used for radio or television broadcasting.
62	Dividends - Maximum rate of 15%. 5% applies if the beneficial owner is a company which owns at least 25% of the voting stock or statutory capital of the company paying the dividends.
63	Interest - Generally 5%, unless the interest payment recipient meets one of the following three factors - 1) the beneficial owner is qualified governmental entity that does not control the person paying the interest, 2) the interest is paid or accrued with respect to debt obligations guaranteed or insured by a qualified governmental entity of that other Contracting State; or 3) the interest is paid or accrued with respect to a deferred payment for personal property (movable property) or services. If one of the three factors are met, the applicable rate is 0%.
64	Dividends - Maximum rate of 15%. 15% applies if the beneficial owner of the dividends is a resident of the other Contracting State and the 5% rate does not apply. 5% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns directly 10% of the voting stock of the company paying the dividends.
65	Dividend - Maximum rate of 15%. 10% rate applies if the recipient is a company which holds at least 25% of the voting shares of the company paying the dividend.

Footnotes	
66	Interest - Maximum rate is 10%. 0% rate can apply if the interest is from long-term loans (five or more years) granted by banks or other financial institutions and/or interest paid in connection with the sale on credit of any industrial, commercial, or scientific equipment.
67	Royalties - Maximum rate of 10%. 0% rate applies to royalties received in consideration for the use of, or the right to use, containers in international trade and traffic. The 5% rate applies for the use of, or the right to use, any copyrights of literary, dramatic, musical, or artistic work, and the 8% rate applies to royalties received in consideration for the use of, or the right to use, cinematographic films, or films, tapes, and other means of transmission or reproduction of image or sound, and of the gross amount of royalties for the use of, or the right to use, industrial, commercial, or scientific equipment, and for any copyright of scientific work.
68	Royalties - Maximum rate of 10%. 5% rate applies in the case of rentals for the use of tangible personal property.
69	Dividends - Maximum rate of 15%. 15% applies if the beneficial owner of the dividends is a resident of the other Contracting State and the 5% rate does not apply. 5% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns directly 10% of the voting stock of the company paying the dividends.
70	Dividends - Maximum rate of 15%. 15% applies if the beneficial owner of the dividends is a resident of the other Contracting State and the 5% rate does not apply. 5% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns directly 10% of the voting stock of the company paying the dividends.
71	Dividends - Maximum rate of 15%. 10% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns, directly or indirectly, at least 10% of the voting stock of the company paying dividends.
72	Interest - 15% is the maximum rate. 10% rate will apply to interest payments due to financial loans or sales of equipment, merchandise, or services.
73	Royalties - 15% is the maximum rate. A rate of 5% applies for royalties paid for the use of literary, artistic, or scientific copyrights. A rate of 8% applies to royalties paid for the use of or the right to use industrial, commercial or scientific equipment.
74	Royalties - Maximum rate of 15%. If the royalties are derived from the use of a literary, dramatic, musical, or artistic copyright, a rate of 0% applies.
75	Dividends - Maximum rate of 20%. 14% rate applies if the beneficial owner is a resident of the other Contracting State and is a company (other than a partnership) which owns directly at least 25% of the share capital of the company paying dividends. 20% rate applies if the beneficial owner of the dividends is a resident of the other Contracting State and the 14% rule does not apply.
76	Dividends - Maximum rate of 20%. 15% rate applies of the beneficial owner of the dividends is a resident of the other Contracting State and if the beneficial owner is a company which owns at least 10% of the voting stock of the company paying dividends. 20% rate applies if the beneficial owner of the dividends is a resident of the other Contracting State and the 15% rate doesn't apply.
77	Interest - Maximum rate of 15%. 10% rate applies if the interest is derived from a loan of whatever kind is granted by a financial institution (bank, insurance, etc.). 15% rate applies if the 10% rate does not apply.
78	Royalties - Maximum rate of 10%. 5% rate applies if the royalties is a consideration for the use or sale of any copyright of literary, artistic, or scientific work including motion pictures and works on film, tape, or other means of reproduction in connection with radio or television broadcasting, any patent, trademark, design/model, concerning industrial, commercial, or scientific experience. 10% rate applies if the 5% rate does not apply.
79	Dividends - Maximum rate of 15%. 5% rate applies if the beneficial owner is a company that owns at least 10% of the voting stock if a resident of Ukraine and 20% of the voting stock if not a resident of Ukraine.

Footnotes	
80	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company that owns shares representing directly or indirectly at least 10% of the voting power of the company paying the dividends. Reduced rate of 0% applies if the beneficial owner is (i) a company that has owned shares representing 80% or more of the voting power of the company paying the dividends for a 12-month period ending on the date the dividend is declared, and that either owned shares representing such voting power prior to 1 October 1998 or satisfies certain clauses set forth in Article 23 of the treaty (Limitation on Benefits), or (ii) is a pension scheme, provided that such dividends are not derived from the carrying on of a business, directly or indirectly, by such pension scheme.
81	Dividends - Maximum rate of 15%. 15% applies if the beneficial owner of the dividends is a resident of the other Contracting State and the 5% rate does not apply. 5% rate applies if the beneficial owner is a resident of the other Contracting State and is a company which owns directly 10% of the voting stock of the company paying the dividends.
82	Interest - Maximum rate of 10%. 4.95% rate if the beneficial owner is a resident of the other Contracting State and if the interest is beneficially owned by any financial institution (including insurance company). 10% if the beneficial owner is a resident of the other Contracting State and the 4.95% rate does not apply.
83	Royalties - Maximum rate of 10%. 5% rate applies if the royalties are in consideration of the use, or right to use, industrial, commercial, or scientific equipment. 10% rate applies if the royalties are in consideration of the use, or right to use, any copyright of literary, dramatic, musical, artistic, or scientific work, including films, tapes, and other mean of image/sound reproduction; any patent, trademark, design/model, secret formula/ process for information concerning industrial, commercial, or scientific experience.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

For the purpose of the following requests, we recommend obtaining historical documents covering all tax years for which the statute of limitations remains open under ordinary circumstances, or longer if there has been an agreement to extend.

Generally, the IRS may examine any closed tax year, but the statute of limitations for making an assessment is limited to three years from the later of the due date of the tax return for a particular tax period or the date the tax return was actually filed (including any extensions). For example, a taxpayer with a calendar year end that files its 31 December 2021 US federal income tax return under extension on or before 15 October 2022 (the extended due date) will be potentially subject to an audit assessment through 15 October 2025.

In the case of an understatement of gross income by more than 25%, the statute of limitations may be extended to six years. In addition, the statute of limitations may be extended by mutual consent of the taxpayer and taxing authority, this might happen in the case of an ongoing examination that is unlikely to conclude before the statute of limitations tolls. Finally, in the case of a failure to file, the statute of limitations never begins to run and is, in effect, indefinite.

Most states follow the IRS in using a three year statute of limitations while a few have a four year statute of limitations.

Nº	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Tax contact person available to discuss income and non-income tax matters.
2	Tax Due Diligence	General	A current organisation chart, including all entities by full legal name, jurisdiction, date and place of formation, entity type, class of shares, and ownership percentages. Include a full history of each entity in the structure.
3	Tax Due Diligence	General	A summary of all audits (including status) for any tax, including federal, state, and local (including income/franchise, payroll, sales and use, property, excise, and any other tax). Provide all significant audit correspondence. Indicate whether the statute of limitations has been extended for any period.
4	Tax Due Diligence	General	Details of any preliminary restructuring necessary to effect the proposed acquisition of the Company, including any plan to remove cash/settle intercompany balances. Include any related tax analysis.
5	Tax Due Diligence	General	A summary of all material tax attributes and their years of expiration. In addition, a summary of any limitations with respect to the use of such attributes.
6	Tax Due Diligence	General	Copies of the tax provision workpapers supporting the Company's most recent financial statements. Copy of the Company's most recent tax provision calculation for the current period.
7	Tax Due Diligence	General	ASC 740-10 (FIN 48) and ASC 450-20 (FAS 5) workpapers and memorandums.
8	Tax Due Diligence	General	A schedule of any significant recent acquisitions or dispositions or indemnities. Include copies of acquisition agreements. In addition, provide any related tax due diligence reports, structure slides, and a description of the manner in which the basis of any asset was stepped-up.

Nº	Category	Sub-Category	Description of Request
9	Tax Due Diligence	General	Copies of any tax sharing or indemnity agreements. Include a description of any other arrangement pursuant to which tax liabilities could be inherited or have been indemnified against (including several liability).
10	Tax Due Diligence	General	A schedule of related party transactions including the amounts and description of each, to the extent not reflected in the financial statements.
11	Tax Due Diligence	General	Schedule of deferred intercompany gains or losses, including amounts, and in what entity the deferred item resides.
12	Tax Due Diligence	General	A summary description of any significant tax incentives or negotiated tax arrangements granted to the Company or an affiliate.
13	Tax Due Diligence	General	Copies of memoranda, opinions, ruling requests, or other documentation regarding tax positions taken by the Company and its affiliates relating to any material transactions or tax planning ideas.
14	Tax Due Diligence	US Federal Income Tax	Copies of the Company's federal income tax returns for the previous three years (or open periods, if longer), including all attachments and disclosures, amendments and carryback claims.
15	Tax Due Diligence	US Federal Income Tax	Copy of the Company's calculations for its interest expense limitations, if any.
16	Tax Due Diligence	US Federal Income Tax	Current estimate of taxable income for current year and for prior year (if such tax return has not been filed).
17	Tax Due Diligence	US Federal Income Tax	Access to the tax workpapers used in preparing the Company's income tax returns for the previous three years.
18	Tax Due Diligence	US Federal Income Tax	Estimated transaction expenses related to the proposed transaction.
19	Tax Due Diligence	US Federal Income Tax	A schedule of tax amortisable intangibles and goodwill and the projected run-off.
20	Tax Due Diligence	US Federal Income Tax	A schedule of tax depreciation run-off for the current year and the next three years.
21	Tax Due Diligence	US Federal Income Tax	Copies of any tax elections, including Form 8832 (Entity Classification Election) for any entity and the IRS letter confirming acceptance of such election.
22	Tax Due Diligence	US Federal Income Tax	Schedule of the Company's outstanding debt obligations (including debt to related parties) setting forth principal and accrued interest. For each obligation, include a schedule of any differences between the accrual and payment of interest. Also include copies of any calculations related to interest deductions attributable to original issue discount and applicable high yield discount obligations.
23	Tax Due Diligence	US Federal Income Tax	Description of the Company's significant tax accounting policies. Include a description of the tax accounting method used with respect to deferred or unearned revenue (including deposits) recorded in the financial statements.
24	Tax Due Diligence	US Federal Income Tax	Details of adjustments made pursuant to a change in accounting method under IRC §481.

USA

Nº	Category	Sub-Category	Description of Request
25	Tax Due Diligence	US Federal Income Tax	Copies of all estimated tax payments made for the current and preceding tax years.
26	Tax Due Diligence	US Federal Income Tax	Details of any "reportable transactions" required to be disclosed pursuant to Treas. Reg. §1.6011-4.
27	Tax Due Diligence	US Federal Income Tax	Tax basis balance sheet, including information regarding inside and outside (stock) basis.
28	Tax Due Diligence	International Tax	A summary of the Company's non-US tax filings in significant jurisdictions (including type of tax and amounts paid by year). Also include a summary of all non-US income and non-income tax audits for the open tax years.
29	Tax Due Diligence	State Income / Franchise	Copies of all state and local income/ franchise/ gross receipts tax returns filed by each entity for the past three years.
30	Tax Due Diligence	State Income / Franchise	Schedule of states travelled into by year for the past three years. Alternatively, a brief description of employee travel (e.g. sales solicitation, services, trade shows).
31	Tax Due Diligence	State Income / Franchise	Apportionment / Allocation schedules for the past three years, listing property, payroll, and sales for each entity on a state-by-state basis.
32	Tax Due Diligence	State Income / Franchise	Schedule of the Company's tax filings by entity by state for income and non-income taxes (e.g. sales and use, property, payroll).
33	Tax Due Diligence	Sales and Use Tax	Sales and use tax returns for the past three fiscal years. Alternatively, a schedule of jurisdictions where the Company files sales and use tax returns. The schedule should detail the amounts collected or accrued and remitted for the past three years for each entity.
34	Tax Due Diligence	Sales and Use Tax	Schedule detailing sales by state as either taxable or not taxable for the past three years. Explanation for which sales are not taxable.
35	Tax Due Diligence	Sales and Use Tax	Schedule of all states in which the legal entities are registered or licensed to operate.
36	Tax Due Diligence	Sales and Use Tax	If available, provide a copy of any written internal guidelines used by the tax department concerning sales tax collection or use tax self-assessment (e.g. list of products subject to sales tax and purchases which require the accrual of use tax).
37	Tax Due Diligence	Sales and Use Tax	Detailed description of policies and procedures for the collection and maintenance of exemption certificates. Resale or other exemption certificates for the top three customers for each facility or location.
38	Tax Due Diligence	Sales and Use Tax	Schedule of the top 10 vendors for fixed assets (e.g. machinery and equipment, computer hardware or software, furniture and fixtures) and consumable items (e.g. office supplies).
39	Tax Due Diligence	Payroll Tax	Federal and state payroll tax filings within the last three years. If a third-party payroll processor is used, quarterly and annual summary statements of deposit and filings can be submitted in lieu of returns.

Nº	Category	Sub-Category	Description of Request
40	Tax Due Diligence	Payroll Tax	Details regarding the use of independent contractors, including the amount spent on independent contractors annually and the responsibilities of the Company and independent contractors. If applicable, the rationale for treating such workers as independent contractors instead of employees.
41	Tax Due Diligence	Payroll Tax	Forms 1099 for the most recent three years. Alternatively, a schedule of independent contractors, their compensation, and state of residence by year.
42	Tax Due Diligence	Property Tax	State and local real, personal, and intangible property tax returns and/or renditions or assessments filed within the last three years.
43	Tax Due Diligence	Property Tax	List of addresses where Company owned real or personal property is located.
44	Tax Due Diligence	Unclaimed Property	Unclaimed property filings for the last three years.
45	Tax Due Diligence	Unclaimed Property	Description of policies and procedures related to unclaimed property compliance and filings.

18. APPENDIX III - TABLE OF ABBREVIATIONS

Abbreviation	Description
AHYDO	Applicable High Yield Discount Obligation
AMT	Alternative Minimum Tax
APIC	Additional Paid-In Capital
ARPA	American Rescue Plan Act of 2021
ATI	Adjusted Taxable Income
BEAT	Base Erosion and Anti-Abuse Tax
BEPS	Base Erosion and Profit Shifting
CARES	Coronavirus Aid, Relief, and Economic Security Act of 2020
CEO	Chief Executive Officer
CFC	Controlled Foreign Corporation
CFIUS	Committee on Foreign Investment in the US
CFO	Chief Financial Officer
DD	Due Diligence
EBIT	Earnings before interest and taxes
EBITDA	Earnings before interest, taxes, depreciation, and amortisation
E&P	Earnings and Profits



Abbreviation	Description
FBAR	Foreign Bank Account Reporting
FDII	Foreign Derived Intangible Income
FIRPTA	Foreign Interest in Real Property Tax Act of 1980
FTC	Foreign Tax Credit
GILTI	Global Intangible Low Tax Income
HSR	Hart-Scott-Rodino Act
IRS	US Internal Revenue Service
KYC	Know Your Customer
LLC	Limited Liability Company
MNE	Multinational Enterprise
NOL	Net Operating Loss
OECD	Organisation for Economic Co-operation and Development
PFIC	Passive Foreign Investment Company
PLR	Private Letter Ruling
PMI	Post-Acquisition Integration
QEF	Qualified Electing Fund
R/E	Retained Earnings
RPII	Related Person Insurance Income
SEC	US Securities and Exchange Commission
TCJA	Tax Cuts and Jobs Act of 2017
US GAAP	US Generally Accepted Accounting Principles
USRPHC	US Real Property Holding Company
USRPI	US Real Property Interest
VAT	Value Added Tax

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