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INTERNATIONAL BUSINESS REORGANISATION

TAX & LEGAL ADVISORY
INSIGHTS FROM EUROPE

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CORE ISSUES

Welcome to Taxand Global's new *International Business Reorganisation* publication, giving an overview about the tax and legal issues and offering practical perspectives on the challenges multinational groups face in exemplary cross-border, inbound and outbound reorganisations.

Tax and law landscape within Europe

The EU has created a largely harmonised framework for cross border corporate reorganisations. The **EU Merger Directive** ensures tax neutral treatment for mergers, divisions, transfers of assets, and share exchanges within the EU, reducing fiscal barriers to restructuring. On the legal side, the **Mobility/ Conversion Directive (Directive 2019/2121)** standardises procedures for cross border mergers, conversions, and divisions, introducing clear timelines, documentation rules, and protections for employees, creditors, and minority shareholders. Together, these directives provide companies with a predictable, coordinated system for executing cross border reorganisations across the European Union. However, differences between the member states still exist. Therefore, the respective law of the member state is decisive.

Triggering Events for International Reorganisations

Companies regularly reassess their global structures to stay competitive, compliant, and efficient. Typical triggers for international business reorganisations include

- the optimisation of holding structures,
- the creation of new intermediate entities,
- and the streamlining of existing setups to reduce administrative and compliance costs.

Groups may also consolidate shareholdings, adjust transfer pricing models, or shift functions and profits to reflect evolving business realities. Strategic developments—such as M&A activity, succession planning, carve outs, or corporate turnarounds—often require structural changes as well.

In addition, businesses may separate real estate from operating units for risk or tax optimisation, or adapt their structures in response to new global tax rules such as Pillar 2.

Global Reorganisation Projects as Triggering Events

Major international reorganisations are often driven by strategic shifts or structural changes within multinational groups. Global reorganisation projects—frequently initiated through competitive tenders—aim to harmonise operating models, simplify corporate structures, and align tax and legal frameworks across jurisdictions. Post acquisition integrations represent another common trigger, as newly acquired businesses must be merged into existing group structures, requiring alignment of functions, systems, and governance.

Large de merger projects, such as the historic Daimler Chrysler separation, similarly require extensive cross border restructuring to disentangle operations, assets, and legal entities. Spin offs in preparation for IPOs, such as the E.ON-Uniper Spin-off, also play a significant role, as companies carve out business units to create standalone, capital market ready structures. Together, these events drive some of the most complex and transformative reorganisation projects in the global corporate landscape.

Key Tax Topics in Cross Border Reorganisations

International reorganisations trigger a range of tax considerations, including exit taxation and transfer pricing when functions move across borders, as well as the application of reorganisation tax rules and double tax treaties. CFC regimes, permanent establishment risks, and transaction taxes such as real estate transfer tax also play a central role.

Increasing transparency requirements under Pillar 2 and CbCR must be factored in, alongside the tax treatment of managers—especially in equity based compensation. Finally, balance sheet effects, including impacts on equity and distribution capacity, are essential for both tax and legal planning.



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CROSS- BORDER MERGER



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CROSS-BORDER MERGER

AT / CH / GER

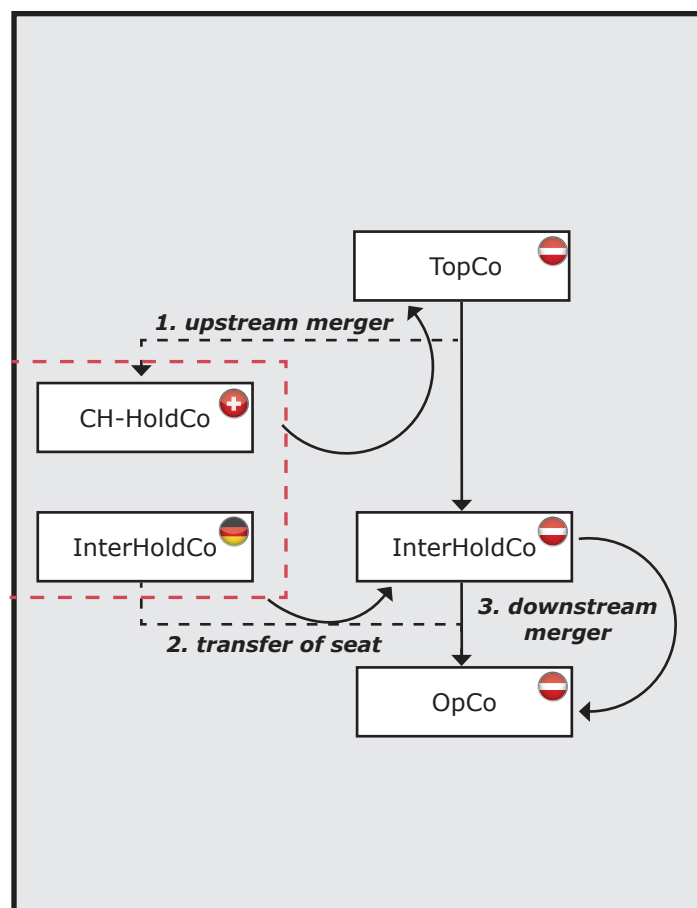
Use Case

A globally operating Austrian industrial group aimed at streamlining its group structure by inter alia transferring the shares in an active Austrian company (OpCo) directly under the Austrian TopCo. Until now, TopCo held the shares in OpCo indirectly via a CH-HoldCo and a German InterHoldCo (historical acquisition structure of OpCo). These two intermediate holdings were to be eliminated. The specific reason for this restructuring was also the intention to integrate OpCo into TopCo's Austrian tax group (profit/loss consolidation).

Against this background and for tax considerations (see below), a multi-step restructuring concept was chosen for implementation:

In the first step, a cross-border upstream merger of CH-HoldCo into TopCo was planned. In the second step, a relocation of InterHoldCo's registered office from Germany to Austria was envisaged (inbound conversion). The final step 3 involved the downstream merger of InterHoldCo into OpCo in order to achieve the target structure ultimately.

Below, the restructuring steps are illustrated in a simplified graphic.



Challenge

Cross-border reorganisations regularly involve legal and tax challenges.

From a legal perspective, the particular challenge lies in the merger of CH-HoldCo into TopCo, as the former is domiciled in a non-EU country (Switzerland), i.e. a third country. While Swiss law expressly permits such a transaction, Austrian/European corporate law does not provide a codified legal basis for cross-border mergers involving third countries. The feasibility of such a transaction therefore requires successful coordination with the competent commercial registers.

The tax background for choosing the specific restructuring steps is predominantly driven by Austrian Controlled-Foreign-Corporation ("CFC") taxation. The originally intended downstream mergers of InterHoldCo and CH-HoldCo (each into OpCo) were abandoned due to the risk of CFC-taxation at the level of TopCo. A transfer of the shares in OpCo by way of export-merger without taxation of the hidden reserves of the OpCo-shares (due to the participation exemptions in Germany and Switzerland) would have been regarded as a deemed low-taxed, passive event at the level of InterHoldCo/CH-HoldCo triggering CFC taxation at TopCo. An upstream merger of CH-HoldCo into TopCo combined with a relocation of InterHoldCo's registered office avoids that risk.

The upstream merger (**step 1**) does not affect or transfer the shares in OpCo and thus not trigger Austrian CFC taxation. From a Swiss tax perspective, step 1 is considered as a liquidation of CH-HoldCo, resulting in corporate income tax on hidden reserves, if the assets do not remain tax-attributed to Switzerland via a permanent establishment. The realisation of hidden reserves on qualifying participations such as InterHoldCo is generally tax-exempt under the Swiss participation relief regime. The 35% Swiss withholding tax applicable to the liquidation dividend can be simply notified (treaty clearance necessary) and is not payable.

The relocation of the registered office of InterHoldCo (**step 2**) is an identity-preserving process that does not qualify as a CFC-relevant taxable event (disposal or transfer of assets). The subsequent **step 3** is a purely domestic transaction where CFC taxation is likewise not an issue.

What our clients say
"Proven tax expertise and competence, also in complex international reorganisations."

Dr. Siegfried Kwanka, Head of Taxes
BMW Group Austria

INBOUND SPIN-OFF



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INBOUND SPIN-OFF

GER / FRA / GBR / USA

Use Case

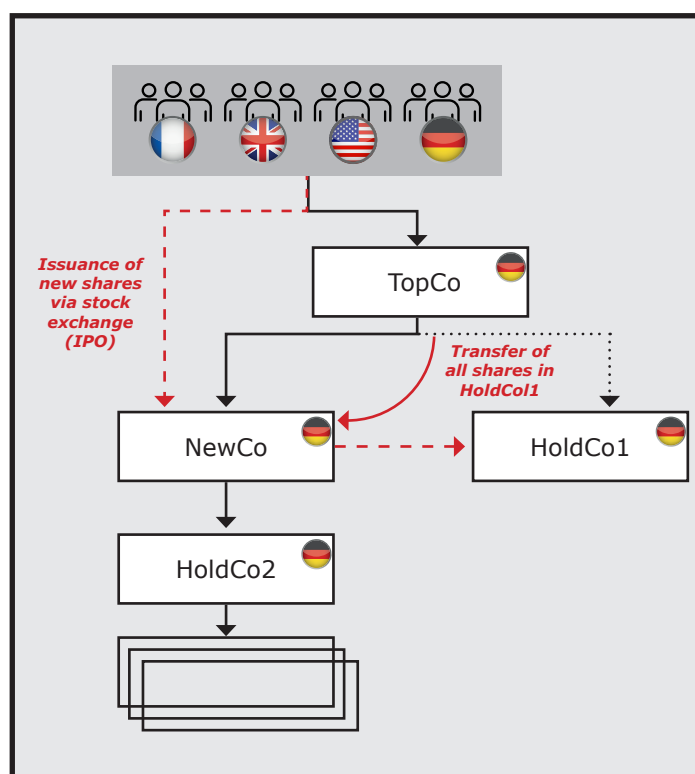
In light of fundamental changes in the market of the respective group, TopCo separated certain activities from its remaining core business in order to achieve a clearer operational focus. TopCo was listed on the German stock exchange and held shares in many companies in different countries.

The strategic realignment involved splitting the group in two by way of a spin-off creating two separate legal entities and groups. TopCo separated the relating activities both organisationally and legally under HoldCo2. HoldCo2 was jointly owned by NewCo and HoldCo1, with HoldCo1 remaining under the ownership of TopCo.

Due to reorganisations in the past and preparatory measures for the spin-off, there were various tax holding periods within the group that had to be observed.

The reorganisation was implemented as a spin-off by absorption pursuant to the German Transformation Act. In this process, TopCo transferred the shares in HoldCo1 to NewCo associated with a non-cash capital increase. In return, NewCo issued new shares which were allocated to the existing shareholders of TopCo at a ratio of 10:1. Following the completion of the spin-off, the shares of NewCo were admitted to trading on the regulated stock exchange market.

The image shows Germany, France, England and the USA, where the majority of shareholders were resident.



Challenge

The spin-off and subsequent listing of NewCo involved significant legal and tax challenges that required careful structuring and execution.

From a legal perspective, the transaction had to fully comply with the German Transformation Act, including the preparation of a detailed spin-off report, the execution of a spin-off and transfer agreement, and registration with the commercial register.

From a tax perspective, the reorganisation was complex as well. The separation into two groups followed by the spin-off arose many questions on the level of the companies and on the level of the shareholders.

On company's level the separation had to comply with tax holding periods, avoid triggering taxation of high hidden reserves, and avoid incurring real estate transfer tax wherever possible. Therefore, many countries had to be assessed. Tax groups had to be dissolved and re-established with new companies.

The highly international and heterogeneous shareholder base therefore resulted in materially different tax treatments and created correspondingly complex advisory needs in different countries. German shareholders could benefit from a preferential tax regime, which meant that the spin-off did not trigger any tax liability. In the main countries preferential regime were applicable as well.

Across all shareholder groups, a key challenge concerned the allocation of the original tax basis between the remaining TopCo shares and the newly received NewCo shares. As no exchange ratio was determined, depositary banks typically applied the distribution ratio (10:1), while it remains unclear whether an allocation based on relative market values would have been more appropriate under tax law. Therefore, there was a risk that the allocation of shares to shareholders might have to be adjusted in their tax returns, which increased complexity and audit risk.

The treatment of tax obligations, tax risks, tax audits and potential litigation cases with respect to tax years where both belong to one single group had to be negotiated between the two separate groups.

What our clients say

"Highly competent and pragmatic advice throughout our group restructurings."

Peter Tigges
Senior Vice President
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OUTBOUND REORGANISATION



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OUTBOUND REORGANISATION

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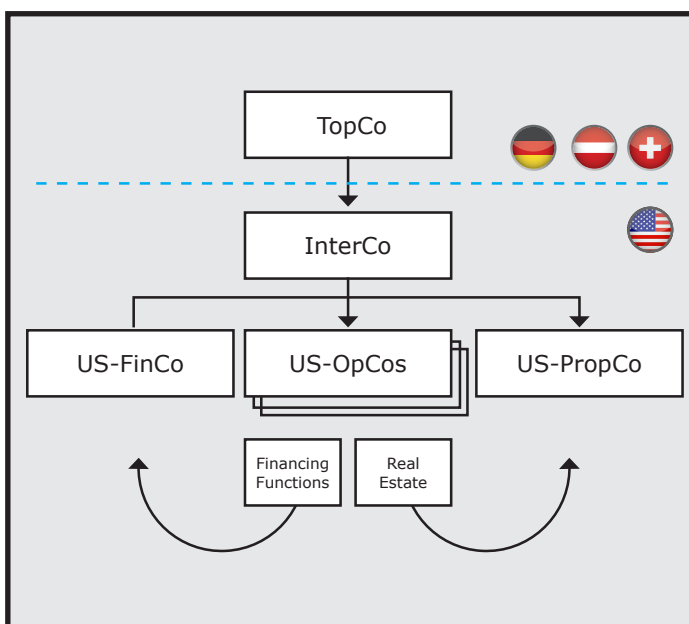
Use Case

In view of increasing complexity in the US tax landscape, the German parent company of a US subgroup ("TopCo") initiated a reorganisation of the legal structure in the USA. The US corporations were engaged in various financing and treasury activities and generated substantial financing income (such as from interest transactions and foreign-exchange dealings) and rental income. The existing structure was not efficient, in particular regarding US state tax and income allocation to the different business lines.

TopCo evaluated several restructuring alternatives under US corporate law. Mergers, demergers, changes of legal form and contributions were examined for legal implementation. The objective was to implement a structure that would reduce state tax exposure, streamline the financing activities, and align the US subgroup with the group's global tax strategy. The various business activities were to be divided into separate tax-transparent or non-tax-transparent subsidiaries, depending on the applicable government tax regulations and the desired tax treatment.

The reorganisation was designed to preserve tax neutrality at the level of the US corporations to the extent possible, while ensuring that the restructuring did not trigger adverse tax consequences for TopCo in Germany. The project required a coordinated assessment of federal and state tax implications, corporate law requirements, and the interaction with German tax rules applicable to foreign subsidiaries.

The figure shows examples of spin-off processes for financing functions and real estate assets.



Challenge

The US reorganisation could have triggered taxation under **Controlled-Foreign-Corporation ("CFC") rules in Germany** at the level of TopCo, even though the US group was highly taxed in the USA. The reason for this is that, under German CFC rules, an outbound reorganisation is subject to CFC taxation in particular if the transformation is not comparable to a preferential reorganisation under the German Transformation Act.

Against this background and to avoid German CFC taxation, the management even explored the possibility of **relocating TopCo's corporate seat** and place of management to another jurisdiction. A relocation would have triggered exit taxation in Germany on all of TopCo's assets (mainly shareholdings subject to 1.5% exit tax). Furthermore, capital gain tax on the level of the shareholder of TopCo must be avoided – this is the case if the relocation of TopCo's seat takes place in the course of a transformation into legal form of a European company." Austria and Switzerland emerged as the primary candidates for such a relocation. The tax implications of the US restructuring in these jurisdictions, particularly with regard to CFC rules, would have been as follows:

Austria: CFC rules were implemented also in Austria in 2019 (in the course of EU ATAD), however not as strict as in Germany. For instance, harmful passive type income is conclusively defined in law and does inter alia not include rental income from immovables. Furthermore, the passive income has to exceed a "one third of total income"-threshold at the level of OpCos in order to trigger CFC taxation. In addition, low-taxation was only deemed in case of an effective tax rate of 12,5% at that time (and not <15% as under German rules). So, relocating TopCo to e.g. Austria can significantly ease the CFC-taxation challenges of the reorganisation and thus, it is always important to take a holistic view of the options available to find the best solution.

Switzerland: If TopCo were located in Switzerland, the US reorganisation would not trigger taxation at the level of TopCo, as there are no CFC rules under Swiss tax law.

With regard to the relocation, Switzerland generally recognises TopCo's assets at fair market value for Swiss tax purposes ("immigration step-up"), enabling tax-deductible amortisation of the stepped-up values. For qualifying participations, such as InterCo, a step-up is not available since capital gains are anyway basically tax-exempt under the Swiss participation relief regime.

Accordingly, Switzerland represents a suitable jurisdiction to mitigate German CFC taxation in connection with the US reorganisation.

ABOUT TAXAND

Taxand is a global organisation comprising top tier local independent tax advisory firms who together provide high quality, integrated tax advice to clients worldwide.

Overall there are more than 700 tax partners and over 3,000 tax advisors across 51 countries, focussed on understanding you and your business needs; collaborating to deliver tailored, practical local and international tax advice, in consideration of your strategic goals.