TAXAND

GLOBAL GUIDE TO M&A TAX

2021 EDITION

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If one word could be used to describe 2020, it would be "resilience." During the course of last year, the global pandemic – COVID-19 – and global responses to it brought the global economy to its knees while slowing deal activity to a crawl during the second quarter. 2020 also provided the backdrop for one of the most tumultuous US election seasons in over 100 years, leaving global markets with a level of uncertainty not seen since the financial crisis. The past year also left the markets wondering whether a trade deal would ever be struck between the UK and the European Commission as the Brexit deadline loomed. US bankruptcy filings in 2020 by companies with more than $50 million of liabilities totaled greater than 225 as of the end of November, the most such filings on a comparable period basis since 2009, according to Bloomberg data. As if the foregoing was not enough, the S&P 500 fell by roughly 8.5 percent in February and another 12.5 percent in March. Daily swings of 2,000 points were not uncommon, and the S&P 500 fluctuated by at least 1 percent on twice as many days in 2020 than it did, on average, in any year since 1950.

Despite all of this chaos, 2020 demonstrated remarkable resilience, ending the year with global M&A activity at the $3.6 trillion level, according to Refinitiv data—a mere five percent decline versus 2019. Companies signed close to $2.3 trillion worth of transactions in the last half of the calendar year—an 88 percent increase versus the year's first half. Deal activity in each of the third and fourth quarters of the year eclipsed $1 trillion, making it only the second time since 2008 in which transactions exceeded that level in back-to-back quarters. In fact, per Bloomberg data, roughly 2,500 transactions were announced globally in the last two weeks of 2020, the most on record for that time period. Clearly, the flurry of activity over the holidays leading up to the year-end was the crescendo of the momentum that started back in the third quarter, demonstrating the demand for deals that built up from the first half of the year and, perhaps, a confidence that the worst was over and uncertainty dissipating in light of news of the developed COVID-19 vaccinations.

The US stock market seemed to find new life again with a ripple effect on the appetite for corporate transactions. The S&P 500 set 33 record highs during the course of the year. By August, the index had fully recovered all of its pre-March losses and never looked back. According to the AP, the Dow Jones Industrial Average rose to 30,606.48 – also a record high. Given the increase in market value of stocks, corporates developed confidence to flex their available equity currency to ink some of the largest deals in the last decade. Whether it was cash, stock or a combination, corporates were more than willing to pay large sums during the latter half of the year to get deals signed up.

Certain industries clearly struggled this past year as a direct result of the impact of COVID-19 and global lockdowns, but, at the same time, other industries flourished; some were expecting shutdowns and, instead, experienced booms. And all of this directly impacted the transactions dealmakers were chasing. According to Bloomberg, roughly 18 percent of all M&A activity was focused on technology, outpacing all other sectors. Financials came in second, at roughly 13 percent of all transactions, energy and power at roughly 12 percent, and industrials at roughly 11 percent. At the other end of the spectrum, transactions in the travel, hospitality, luxury, and retail (brick and mortar) were sparse.

Notwithstanding the resilience of the market and the robust deal activity of the third and fourth quarters of 2020, the market appears to be holding back a bit over concerns that random factors could prove headwinds to the 2021 market in general and to the deal market in particular. For example, what if spikes in infections of COVID-19 materialise due to mutated strains of the virus? We are already seeing signs of something like this out of the UK and New York City. What happens if such mutations prove to be materially more deadly, rather than just more infectious? Policymakers may choose to enact broader or more extended lockdowns, globally pulling the market back further into the doldrums.

Setting aside such scenarios or the crystallisation of an unseen set of factors, dealmakers appear relatively bullish on the level of activity for 2021 and appear to be taking into account at least the following:

- ***United States Elections:*** Now that election season is behind us and the Democrat Party controls the Presidency and both houses of Congress, it still remains to be seen how they will govern. Given the relatively close call in the Presidential election and the loss of seats to the Democrats in the Senate, middle-of-the-fairway analysts commentators expect this administration, amidst a bit of left-leaning lip service, to hew to a largely centrist agenda over the next two years. That said, the President promised a roll back of many aspects of the tax reform law of 2017 and increase income taxes on the marginal earnings of material wage-earners and, with broader impact on the domestic and global economy, on corporations. Given the current global pandemic (including calls for greater COVID-19 largesse), a fragile economy, and strong lobbies for infrastructure subsidies, US tax professionals expect this administration to defer tax changes until at least 2022, with much of that decision depending on the political predictions of the mid-term election cycle. For dealmakers, this is likely only to provide added fuel to the already hot M&A fires of 2021.
- ***Private Equity Dry Powder:*** High levels of dry powder available to financial buyers will also continue to contribute to the upward trajectory of global M&A. Data from Preqin suggests that PE funds held roughly $1.6 trillion of pent-up cash at the end of 2020, and interest rates are at all-time lows. With such cash hoards and governments unwilling to tolerate push-ups in interest rates at this time, funds should be well-positioned for the foreseeable future in M&A, whether competing with corporate buyers or making opportunistic investments in the event of further COVID-19 trouble or other market turbulence materialises.

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- ***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 a private company. It is an alternative to the IPO route traditionally taken by private companies. In 2020, we saw the use of this vehicle reach unexpected heights. According to data from SPACInsider, 178 SPACs went public between January and October of 2020, raising funds of roughly $65 billion—more than the total of all funds raised by SPACs in the past ten years. By the end of 2020, 220 SPACs were listed in the US and four in Europe. In order to make themselves more attractive to the market, 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. For example, the Nasdaq Nordic exchange is expected to launch a US-style SPAC structure in the near-term. As SPACs grow in the US and Europe – and there is an expectation that such listings will outpace 2020 in 2021 – such vehicles will become buyers of portfolio companies and create incremental sources of capital in the deal markets. 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.
- ***Brexit Agreement:*** In the deal market, confidence grows stronger in proportion to the level of certainty around the rules of trade and the direction of government. In the case of the UK, Brexit provided significant uncertainty for a number of years. After 11 months of negotiations and a week before the deadline, the UK and the EU finally struck a trade deal, providing much-needed relief to the market with the ground-rules on which the two parties would be engaging each other prospectively. With the trade deal solidified, it is quite reasonable to expect that overseas investors could become much more aggressive in targeting the UK companies that have been discounted by declines in the pound, which remains below 2016 levels against the US dollar. This is the good news for those involved in the deal industry. The bad news is that some uncertainty remains when it comes to financial services – including PE – in the trade context. The UK and EU have given themselves until the end of March to create a framework in which they will cooperate in regard to financial services, including the kinds of services that deal with, for example, fund raising and M&A. So, although the certainty of the trade deal, itself, should undoubtedly help spur M&A activity in the region, some questions in the deal space will remain unanswered probably until the end of Q1.
- ***Shareholder Activism:*** Over the last six to eight years, shareholder activists have forced spin-offs or other disentanglements of non-core assets, requiring companies to focus on their strengths and create more nimble and flexible models to gain competitive advantages. At the end 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. As certain industries struggle and asset prices rise, activist shareholders may well be "encouraging" more companies to shed assets or business segments with a view to becoming more focused on core assets and providing liquidity to carry such companies through the pandemic into safer waters. In any event, shareholder activism should continue to drive M&A opportunities.

In addition to the factors mentioned above, other factors — historically low, global interest rates, COVID subsidies provided to business by various countries, and individual citizens experiencing a temporary increase in buying power with general stimulus cash—are likely also to play critical roles in fanning the flames of a fiery deal market. In the final analysis, indicators point toward strong M&A activity in 2021, assuming COVID-19 and government responses to it don't create a turn for the worse.

This edition of the Taxand Global Guide to M&A Tax has been designed as a desktop reference book covering 30 countries and to provide at-a-glance insight into the tax treatment of global mergers and acquisitions. It is intended to provide a basic introduction to M&A tax planning in each of the diverse fiscal environments in its scope and to facilitate understanding and conversation between global M&A tax team members; it should be viewed as a resource that should help multinational advisors find common ground and mutual understanding, rather than as an encyclopedia. National Taxand teams in each of the covered jurisdictions made essential and invaluable contributions to this book, and we are grateful for their participation and support in this project. We are pleased to offer this volume as an example of the benefits that cross-border cooperation can provide.

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ARGENTINA

1. INTRODUCTION

a. Legal Entities

Argentine law provides several types of legal entities by means of 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/quotaholders 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 Income Tax ("IT")

The tax rate applicable in Argentina for legal entities is 30% for fiscal periods commencing as from 1 January 2018. The application of the 25% corporate rate has been suspended until tax periods beginning as of 1 January 2021, inclusive. Also, an additional withholding tax on dividends or distributed profits to reach an aggregate tax burden of approximately 35% is applied.[2]

The income of Argentine resident individuals and undivided estates 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, for taxation purposes the undivided estate of deceased taxpayers who were Argentine residents on the date of their death are considered Argentine residents.

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.

ii Value Added Tax ("VAT")

This tax 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 in the acquisition of goods and services related to export operations.

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 2018,2019 and 2020, a dividend tax of 7% shall apply and the aggregate tax rate would be 34.9%, for tax periods 2021 an onwards, a dividend tax of 13% shall apply and the tax rate would be 34.75%.

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 by 31 December of each year, as follows.

Taxable assets which exceed the non-taxable minimum threshold		Pay AR$	plus %	Over the exceeding amount of$
More than AR$	To $			
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	onwards	156,250	1.25%	18,000,000

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 $	
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 Account ("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.

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 have been 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 (named COVID-19) (the "Pandemic") has forced governments around the world to take immediate and extraordinary actions to cope and overcome this crisis.

In particular, in order to avoid the expansion – and to mitigate the effects – of the coronavirus in Argentina, the Argentine Government has taken several measures. In this regards, 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 have been 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, it is highlighted: (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 are:

- 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 in 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-time 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 the Pandemic.

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. If the Argentine company's shares are purchased by an Argentine company, the acquisition cost of the shares cannot be depreciated for IT purposes. Regarding acquisitions or investments, the Tax Reform Act allows the application of certain actualisation methods established in the IT 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 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 IT. 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 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 IT 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 subject neither to federal taxes (i.e IT and VAT) nor, 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 IT 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 IT 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 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 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 IT at the rate of 30% for fiscal years beginning as from 1 January 2018. The application of the 25% corporate rate has been suspended until tax periods beginning as of 1 January 2021, inclusive. 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 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 IT to the extent the shares are issued by an Argentine company and are authorised for public offering by the 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. Please note that these rates may be reduced in certain scenarios due to the application of a 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.

Argentine 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.
- IT 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 stock 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. The business’ non-assessed tax and social security liabilities are not transferred from the seller to the buyer 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 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 IT, 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 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 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.

e. Depreciation and Amortisation

The 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 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 IT 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.

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 accrual basis.

The seller's tax benefits (such as promotional regimes and tax exemptions) may not be available or "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 a certain period of time.

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 acquired assets since tax periods commencing as of 1 January 2018, taxpayers are entitled to update the cost of them.

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.

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 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 and United Arab Emirates and 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 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).

However, there are also recent judicial precedents supporting the opposite position. The jurisprudence is divided. The Federal Supreme Court has yet to express a direct opinion on the subject matter.

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 IT purposes if certain requirements are met. 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 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.

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 of 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 IT in Argentina at 25%/30% tax rate.

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 given the difference between the amount of the redemption and the computable cost of the referred shares and (ii) also IT derived from capital gains is triggered i.e the redemption of shares, depending on certain circumstances, may be treated as a sale of shares and a dividend distribution.

Also, an additional cash repatriation technique is when 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 deduce the interest expenses and FX differences for IT purposes. In addition, note that certain local jurisdictions have created GTT withholding regimes that may apply to interests 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 IT on net income. The final IT of Argentine legal entities are calculated at the end of the fiscal year by applying the 30% corporate IT rate for fiscal years beginning as from 1 January 2018. The application of the 25% corporate rate has been suspended until tax periods beginning as of 1 January 2021, inclusive. 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 improvements 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 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);
- 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 if the shares are issued by an Argentine company and they are authorised for public offering by the 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. These rates may be reduced due to the application of a 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 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" income tax-wise.

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, for taxation purposes the undivided estate of deceased taxpayers who were Argentine residents on the date of their death are considered Argentine residents.

Also, certain Argentine entities (e.g. S.R.L.) are considered "transparent" under USA 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).
- "Tax Benefit Regime for the Software Industry" (Act No. 25,922).
- "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 cancelation 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. Although Congressional approval has not been given yet, changes are in force since 2019. 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 inter-company 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 authorized 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.

No.	Category	Sub-Category	Description of Request
14	Tax Due Diligence	General	A list and description of any country, provincial, state or local tax credits or incentives.
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 expiration 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	Inform 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.

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. Inform 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

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AUSTRALIA

AUSTRALIA

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 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;
- registered foreign companies carrying on business through a permanent establishment in Australia;
- partnerships and limited partnerships;
- joint ventures; and
- trusts.

b. Taxes, Tax Rates

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").

The main taxes imposed in Australia are Federal income tax (including tax on net capital gains), withholding tax in respect of certain amounts paid to non-residents, indirect taxes such as goods and services tax ("GST") (our VAT equivalent), and State based taxes such as payroll tax, land tax and duty.

There are a number of employment related taxes and withholdings including fringe benefits tax and superannuation guarantee.

The company tax rate is 30% (27.5% for certain small businesses for the 2019-20 income year, reducing to 26% in the 2020-21 income year and 25% in the 2021-22 income year).

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 lodgment of only one Australian income tax return on behalf of the group, the ability to ignore (for tax purposes) any intra-group transactions (e.g. asset transfers, loans, payments of dividends, returns of capital) and the effective offset of losses within the group.

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 arrangement (PCG 2019/6). The document provides guidance to taxpayers to assess the risk of the hybrid mismatch rules apply to their circumstamces. Further detail is set out below under 'Use of hybrid instruments'.

c. Intellectual property

On 22 January 2020, the ATO released Taxapayer 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 Taxapayer 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 deducitbility 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

The Australian government has announced and implemented a number of tax-related measures in response to COVID-19 in Australia. 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 thresholds and the administration of this scheme are subject to change as the COVID-19 crisis progresses. The wage subsidy scheme will operate until 28 March 2021.
- Instant asset write offs for assets valued at less than AUD 150,000 and accelerated depreciation provisions for businesses with an aggregated turnover of less than AUD 500 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 have introduced various measures to defer, waive or discount payroll tax and, in some states, land tax liabilities.

All of the above measures are changing in response to the COVID-19 crisis, including the eligibility requirements such as thresholds and the time for which the measures will be available.

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 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 interest in land (defined broadly). In those circumstances where the shares are indirect taxable Australian real property the sale can be subject to capital gain tax (refer below).

Certain venture capital and private equity disposals may be considered revenue transactions by the 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 losses will be subject to a limitation following change of ownership.

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 lodgment of only one Australian income tax return on behalf of the group, the ability to ignore (for tax purposes) any intra-group 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 head 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") rollovers that are subject to specific conditions.

Further, all transactions within a tax consolidated group are ignored for Australian tax purposes. Transactions with a GST group are also effectively ignored for GST purposes.

e. 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 TSA is in place for the group.

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 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. Stock Purchase Advantages

The seller will typically realise tax benefits (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, which apply to assets sale provided that the sale is not subject to the landholder duty regime. See below.

i. Stock Purchase Disadvantages

None – if acquired through a tax consolidated group.

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 get a better tax outcome on a share sale compared with the underlying assets being sold and proceeds 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 buyer receiving a step up in cost base for an asset sale can be replicated under the tax consolidation regime.

d. Tax Free Reorganisations

Only 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 CGT withholding tax (non-final) can apply at 12.5% and in addition certain property sales may be subject to GST withholding (currently 10%). Specifically, foreign CGT withholding applies to the disposal of certain taxable Australian property.

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

- taxable Australian real property (defined broadly) with a market value of $750,000 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 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 buyer 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 (refer above).

Where withholding is required, the buyer 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 premises; or
- potential residential land included on a property subdivision plan.

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

- 1/11th 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.

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.

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 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 be in substance 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 (i.e 60 per cent 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 $2 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 $2 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 off 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

Earnouts 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 NZ 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

Refer to section 3.e above.

b. CbC and Other Reporting Regimes

Australia has implemented CbC reporting. Reporting obligations apply 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 A$1 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 A$1 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. PCG2018/7 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 6 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 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 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]

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.
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".

Footnotes	
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.
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).

Footnotes	
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.
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 securitization 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.

No.	Category	Sub-Category	Description of Request
14	Tax Due Diligence	Land tax	Copies of all land tax filings (if any) lodged by the Target for the past 12 months.
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 intra-group 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 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.
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.

No.	Category	Sub-Category	Description of Request
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 A$500,000) to which the Target is a party have been duly stamped.

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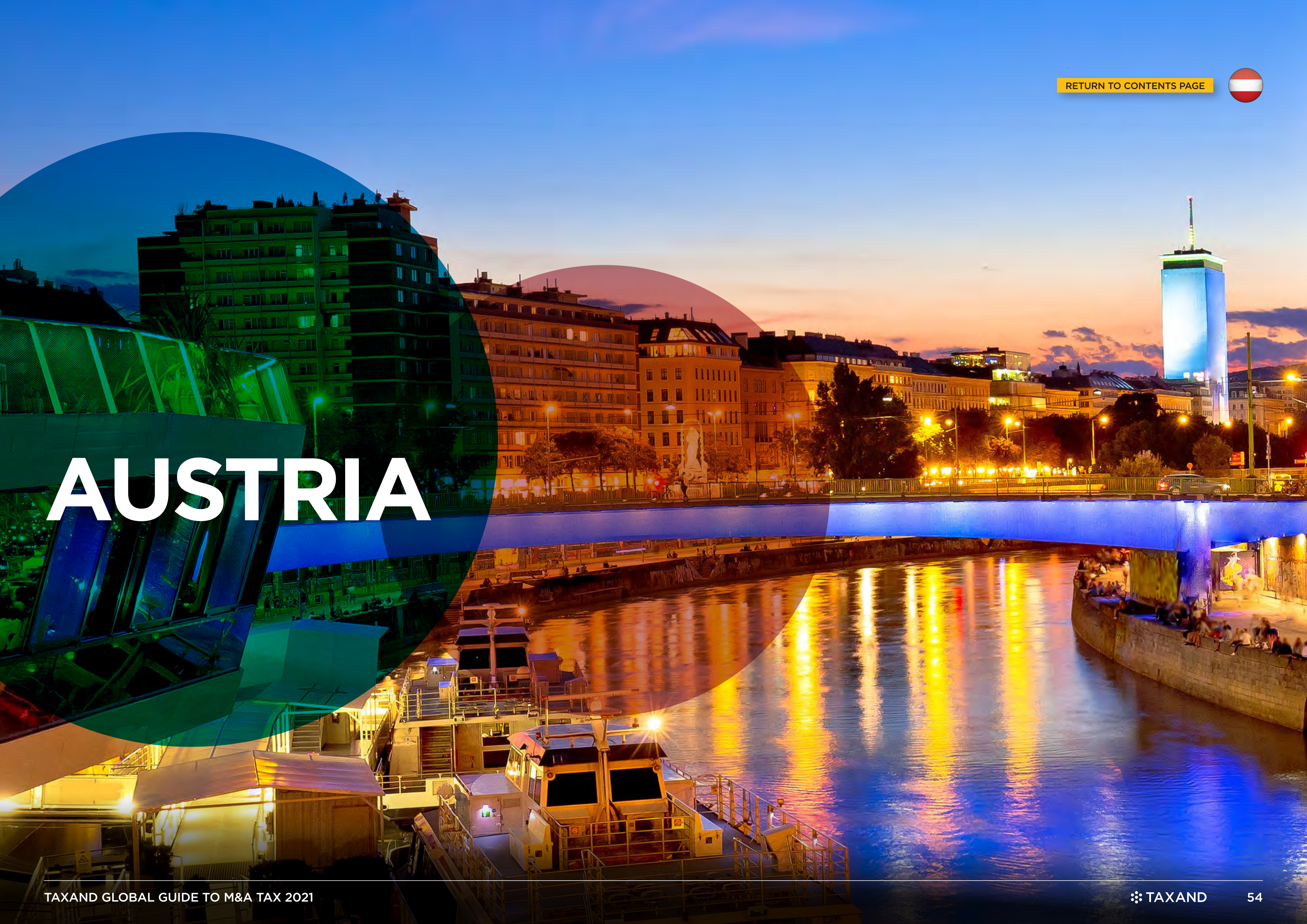

AUSTRIA

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"). Also 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. Dividend distributions are subject to WHT of 25% (legal entity recipients) or 27.5% (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 1 year). Neither trade tax nor additional income based local taxes are levied in Austria.

Income taxes on income of individual persons is levied based on progressive tax rates (i.e between 0% for income up to €11k and 55% for income exceeding €1m).

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 30.6.2020) a degressive depreciation is accepted);
- Provisions (e.g. special tax rules exist for provisions for certain personnel expenses; also 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 the distributing entity qualifies as low taxed (12.5% or less effective tax rate) passive entity; for capital gains see below point III.h);
- Write-downs of subsidiaries (spreading over 7 years or no deductibility in case of international participation or within a tax group).

2. RECENT DEVELOPMENTS

a. Austrian Tax Amendment Act 2018 ("Jahressteuergesetz 2018")

The most significant amendments to the Austrian Tax Code (Austrian Tax Amendment Act 2018 – ***"Jahressteuergesetz 2018") with effect for 2019 and thereafter*** were passed in late 2018, and entered into force (mostly) 1 January 2019 and provided e.g. for the following amendments:

- Implementation of a CFC-rule (based on EU-ATAD) with effect for financial years starting after 31 December 2018.
- 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.
- Expansion of Binding Advance Ruling to the following topics: "International Tax", "Abuse" (with effect as of 1 January 2019) and VAT (with effect as of 1 January 2020). This instrument allows taxpayers, prior to the implementation of a transaction, to obtain a binding ruling regarding the tax consequences of an envisaged transaction by the Austrian Tax Authority. Such binging rulings can be obtained only for "reorganisations", "tax groups" and the three mentioned categories. Generally, they should be issued within two months and are subject to a fee of up to €20,000 (depending on the size of the entity/group).
- With effect from 1 January 2019, the time frame for the payment of instalments with regard to the Austrian exit tax (generally available for exits to other EU-member states) was reduced from seven to five years.

b. 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 (Austrian Digital Tax Act 2020, "Digitalsteuergesetz 2020"). 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 €750,000,000 and a turnover in Austria of at least €25,000,000 from the provision of online advertising services.

c. 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 advisors) or tax payers 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. Austria has decided not to extend the deadline for filing the first reports as would have been possible according to the amended EU directive 2020/876/EU which provides for a deadline extension due to Covid-19. However, due to technical delays in the implementation of the reporting mechanism, the filing of reports was not possible before 1 October 2020 and therefore it has been announced that the deadline for filing the first reports was postponed until 31 October 2020.

d. Interest limitation rule according to EU-ATAD

Austria did not implement an interest limitation rule as stipulated in Art 4 of the EU-ATAD as the government believed that it had an equally effective interest limitation rule already in place (this rule forbids the deduction of interest/royalty payments to low taxed group recipients). Therefore, the transitional provision of Art 11 EU-ATAD should be applicable and the implementation of the rule may be delayed until 1 January 2024 at the latest. The EU commission, who is responsible for validating the fulfilment of the requirements of the transitional provision, however did not agree with Austria's position and therefore the interest limitation rule should have been implemented as of 31 December 2018. In July and November 2019, Austria was formally asked by the EU Commission according to Art 258 TFEU to transpose the interest limitation rule into national law. With effect from 1 January 2021 an interest limitation rule according to EU-ATAD was finally 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 taxpayers tax EBITDA of that year. In any case, exess interest expenses up to EUR 3 Million per tax year my be deducted. Exess interest expenses may be deducted in full if the taxpayer is fully consolidated and the taxpayers equity ratio is not more than two percent points lower than the equity ratio of the group according to the consolidated financial statements. Any not tax deductible exess interest expenses of a year may be carried forward to future years. Also, any portion of the 30% tax EBITDA which was not utilized may be carried forward up to five years. For Austrian tax groups special rules exist (eg, the interest allowance of EUR 3 Million is only available once in the whole group).

e. 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). Also 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 €5,000,000 may be used to offset profits of 2019 and 2018. The Austrian Ministry of Finance may stipulate in an ordinance that (expected) losses of 2020 may already be used to offset profits of 2019 or 2018 before a tax assessment for the year 2020 was issued; furthermore, details for utilising the 2020 loss in the year 2018 shall be included in the ordinance. In case of 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 €5,000,000 per group member whose income is attributable to the tax group.

As an additional measure to support the Austrian economy during the Covid-19 pandemic, a temporary tax free premium of up to 14% of new qualifying investments was introduced in the Investment Premium Act ("Investitionspärmiengesetz"). This measure is intended to provide incentives for companies to invest in fixed assets. For investments in depreciable fixed assets located in Austria, an investment premium can be applied for between 1 September 2020 and 28 February 2021. Climate-damaging investments (e.g. the construction or extension of installations for the extraction, transport or storage of fossil fuels and the construction of installations that directly use fossil fuels), undeveloped land, financial assets (including the acquisition of companies) and capitalised own work are not eligible. The investment premium generally amounts to 7% of qualifying costs and 14% of qualifying cost of investments in the area of digitisation, ecologisation and health/life science.

f. f. COVID-19 related state support measures

Numerous measures have been and will 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 will not be discussed in detail here.

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 comments above). 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 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 (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 considdered 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 Mantelkauf-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 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). The remaining loss surplus may be carried forward by the group leader without any time limit until the foreign losses are recaptured.

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 EC Merger Directive (90/434/EEC; see Annex III) – 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 loss carry-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 €1,500 and €20,000 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 CIT. 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 acquisitionss

In 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 in case the value of the shareholding sustainably decreases below the book value; in such 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 case 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. Stock 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). Also 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. Stock Purchase Disadvantages

The main disadvantage of stock 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:

- Extensive statutory liabilities apply to the purchaser e.g. Art 1409 Austrian general civil act ("ABGB"), Art 38 and 39 Austrian Commercial Code ("UGB"), Art 6 Labour contract law ("AVRAG"), § 14 Federal Fiscal Code ("BAO"), § 67 (4) Austrian General Social Security Act ("ASVG") and further contractual liabilities.
- The book value of the acquired assets is stepped-up subsequently 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.
- 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 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 EC Merger Directive (90/434/EEC; see Annex III) – 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 loss carry-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 €1,500 and €20,000 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 a 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).

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"), Art 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 above). For real estate investments partnerships are also a viable 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. Furthermore, no specific substance is required for setting up a holding company.

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 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 WHT just as normal dividends.

ii Limitations on interest deductions

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

Effective with 1 January 2021 also the EU interest limitation rule was transposed into Austrian tax law and needs to be considered. See other sections redarding more details on the rules on interest deduction.

iii Tax - and/or legal - relevant distinctions between related party debt and unrelated party debt

Based on Austrian case law a re-characterisation of a related party loan to equity is possible under very special conditions (see 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 WHT.

iv Standard means for accomplishing "debt-pushdowns" in the context of acquisitions

The Austrian corporate law provides for various restrictions (e.g. forbidden repayment of contributions as the main restriction) regarding debt push-down 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 push-down 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 grant (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, grants the right to receive dividends and liquidation revenue. However, they do not provide other 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. The instrument is considered a debt instrument in case the following criteria are met cumulatively:

- not subordinate to other debts and therefore no liability function;
- no profit/loss participation and/or a participation in the liquidation profit;
- no time limitation.

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 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 25% CIT. 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 €7,300 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.

Capital gains generated by an Austrian resident corporation from the sale of assets are generally subject to 25% CIT.

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 a rate of 25% CIT. This applies if the shareholding amounts to at least 1% in the capital of the corporation, at any time during the five preceding years.

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 gain was 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). 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.

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 (ie effective CIT of 12.5% or less) passive foreign entites, if the shareholding is at least 5%. See other sections for more details.

Outbound profit distributions resulting from the tax internal profit account (ordinary dividend payments) are generally subject to Austrian WHT at a rate of 27.5% (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 unitholders. 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 point 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 €750,000,000 in the preceding fiscal year must prepare and electronically file a country-by-country report.
- Austrian members of an MNE group with revenue exceeding €50,000,000 in both of the two fiscal years preceding the current fiscal year must prepare a master file and a local file.

General documentation of inter-company transactions must be maintained even if the threshold for master/local file (EUR 50 million revenue) is not exceeded.

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 strawmen 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 inter-company 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 per cent of R&D expenses. The cash tax credit is granted for in-house and contract R&D, however, only expenses of up to €1 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, Austrial 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 (see above).
- **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 KStG, implementing articles 7 and 8 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-tax 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 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:** 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 above for more details.
- Binding rulings are available in transfer pricing issues (costs amounting between €1,500 and €20,000 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. 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 €24,000,000
- Revenues: less than €48,000,000
- Average employees: less than 250 in the respective year

ii net method (consolidated figures):

- Balance sheet total: less than €20,000,000
- Revenues: less than €40,000,000
- 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% (potential relief through treaty law or EU Parent-Subsidiary-Directive). On the other hand, distributions from the tax equity account (repayment of share premium) 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. Generally (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 WHT) or as a capital repayment (not subject to Austrian WHT). 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 strawmen 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).

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.

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 generally not binding on the taxpayer and on the courts.

Legally binding advance rulings are available relating to company reorganisation, group taxation and transfer pricing. The Annual Tax Act 2018 extends the scope of the advance ruling procedure also to questions concerning international tax law (as of 1 January 2019), value added tax (as of 1 January 2020) and tax abuse (as of 1 January 2019). The advance ruling has to be issued within 2 months of application (effective from 1 January 2019) 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 €1,500 – €20,000).

15. MAJOR NON-TAX CONSIDERATIONS

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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]

AUSTRIA

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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] [35]
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 with the respective country is in place; therefore, the respective taxes have to be withheld according to domestic tax law.
2	Dividends - 25% 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.

Footnotes	
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.
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 ownes 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 goverment.
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%.

Footnotes	
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 goverment.
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%.
35	Dividends - Maximum rate of 15%. Reduced rate of 10% applies to dividends paid to a corporation (not partnership) that ownes 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 goverment.
36	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 last three years
2		Tax returns and tax assessments for the last three years
3		Tax adjustments for the last three years
4		FinanzOnline-Account statement for the Due Diligence period
5		Tax audit reports for the Due Diligence period
6		Correspondence with tax authorities (e.g. rulings, etc)
7		Documents regarding pending and closed appeals of the last five years
8		Transfer Pricing documentation
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
14		Information regarding stamp duty

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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"). Both types of entities 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 ("EIRELI"), which are established by one individual or legal entity. The EIRELI is different from the Limitada with a single quotaholder because the later does not require a minimum capital (equivalent to BRL 104,500 / approximately USD 19,5931).

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 treatment2. 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 (e.g. when a foreign individual is appointed as the company's legal representative).

b. Taxes, Tax Rates

Brazilian taxes can be imposed at the Federal, State and Municipal levels. 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 thousand; 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 fines, which may be considered as a non-deducible 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 be offset only with non-operational taxable gains (the 30% limitation also applies).
- The Presumed Profits 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 BRL 78,000,000 (approximately USD 14.6 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 subject transactions, or against other Federal taxes;
  - 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 upon the importation of goods and services, at the combined rates 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 situations and circumstances.

- 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.
- 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 between 17% and 19%
  - Interstate transactions: rates between 4% and 12%
  - This tax is also levied on imports of goods.
- 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%.

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. 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, it usually varies 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 case-by-case is recommended, in order to meet the compliance procedures established in the tax legislation.
- The Brazilian tax authorities have a 5 year statute of limitations 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, there are three different proposals being analysed by the Brazilian Congress:

- 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".

b. New CBS tax

On 21 July 2020, the Minister of Finance, Paulo Guedes, presented to the Brazilian Congress the first phase of the much anticipated tax reform proposal of the Federal Government, under Project of Law (PL) n. 3.887/2020.

In this first stage, from a total of four phases, the Government proposed the unification of social contributions ("PIS" and COFINS" in the Portuguese acronym), 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. Under the current system, the PIS and COFINS contributions are levied on payroll, on import transactions and on gross revenues, being applied at different rates. The use of PIS/COFINS credits is also very complex, as well as the respective ancillary obligations. The intention of the Brazilian Government with the introduction of CBS is to simplify, streamline and give more transparency to the taxation of goods and services, for both companies and taxpayers. Upon approval, the CBS will be charged within 6 months from the conversion of the PL into law.

The Project of Law also foresees the payment of CBS by digital platforms in the intermediation of operations in which the seller does not issue an electronic invoice (e.g. sales performed between individuals though the digital platform).

In addition, the new taxation system limits the number of especial regimes, reduces the volume of ancillary obligations, and exempts from CBS basic food supplies, services under the Brazilian public health system, transportation services, as well as charitable societies and churches. The cumulative regime for computation of the tax (with no use of credits and at different rates) is maintained for the oil and gas sector, and for the cigarette industry. The tax beneficial regime of the Manaus Free Trade Zone remains unaltered.

The PL n. 3.887/2020 is now heading for the analysis of the Brazilian Congress, where two other tax reform proposals are being processed, constitutional amendment proposals - "PECs" n. 45/2019 and n. 110/2019, presented by the Brazilian House of Representatives and the Federal Senate, respectively. These proposals shall be gathered in a single PEC, which approval is still pending.

c. Alignment with the BEPS initiative

Normative Instruction nº 1,846/2018, issued by the Brazilian Revenue Service, regulated the Mutual Agreement Procedure ("MAP") under international agreements and conventions to avoid double taxation, in accordance with Action 14 of the Base Erosion and Profit Shifting – BEPS initiative proposed by the Organisation for Economic Cooperation and Development - OECD.

Further, Normative Instruction nº 1,870/2019 introduced some changes to Brazilian Transfer Pricing rules, in line with BEPS Action 10.

d. Tax measures to cope with the COVID-19 pandemic crisis

The Federal ministries of Health and Economy have quickly established a series of measures to cope with the COVID-19 crisis. The most important measures were established by Provisional Measures proposed by the Federal Government which gave legal basis to normatives provided by other organs to deal with the economic and social crisis. The measures are centered in public expenditures in key areas, such as health and education; financial aid to vulnerable populations and to small businesses; job maintenance and facilitation of credit.

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 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 a progressive rate of 15% up to 22.5%. In the case of non-resident sellers, the tax must be withheld by the Brazilian acquiror or by 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 article 95 of Normative Instruction nº 1,585/2015 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%.

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 result in a tax deduction for corporate income tax purposes. 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.

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.

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

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, transfer 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 thousand per month, or if over the counter transactions (outside the Brazilian stock exchange) do not exceed BRL 35 thousand 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 as 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 as salary and 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” and therefore does not pay for such shares and does 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 and subject to social security contributions and 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 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 to 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. Purchase Price Allocation

For tax purposes, the Purchase Price Allocation ("PPA") is important 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 would provide the portion of the purchase price that is classified as "goodwill", subject to 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.

c. 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 IPI and ICMS.

d. 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.

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.

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. Depreciation and Amortisation

Currently, the legislation related to goodwill 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. As mentioned above, realisation of the investment (via a merger transaction, for example) is also a requirement to allow tax amortisation.

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 amortisation, observing its economic useful life.

g. Transfer Taxes, VAT

Assets 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 applied, depending on the nature of asset that is being sold (for example, these contributions are not applied 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, the transaction would be subject to ITBI, and the buyer would be responsible for paying the tax to the Municipality.

h. 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;

i. 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, labor 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 recently 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. 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 can opt for a deductible instrument named 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 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 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 percent 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-signer 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.

i Debt Pushdowns

Where the acquiror intends to push-down the debt used to finance an acquisition, a Brazilian vehicle or holding company are generally used to act as borrower. Following the purchase, this legal entity is typically merged into the acquired operational legal entity.

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 on 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 installments conditioned to 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 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 accrual basis and included on the income tax 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 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 December 31st of the calendar year in which they were recorded.

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, unless paid to an entity established in a tax haven jurisdiction or country with privileged regime;
- Capital reduction: a capital reduction may not generate capital gain if it is smaller than the acquisition cost registered with BACEN (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 subject to CIT at progressive rates of 15% to 22.5%.

- Interest on Net Equity (INE): the remittance of INE abroad is subject to WHT at the rate of 15% and the expense is considered as a deductible cost in the Brazilian entity;
- Interest: the remittance of interest abroad is subject to WHT at the rate of 15%, or 25% if the recipient is resident in a 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 tax haven jurisdiction). However, depending on the nature of services and other circumstances, the tax rate may be reduced under a double tax treaty.

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 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.

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 tax-haven jurisdictions or privileged tax regimes.

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 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 specific rules on the licensing of intellectual property. However, there are specific local rules regarding the rights and obligations related to intellectual and industrial properties, 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 tax haven jurisdictions) and to the CIDE, at the rate of 10% (please refer to our detailed comments above regarding these taxes). 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.

d. Special Tax Regimes

Many incentives and special tax regimes are provided by 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 liability, 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.

12. OECD CONSIDERATIONS

Brazil is engaged in the OECD discussions, however few directives from the BEPS initiative have been formally adopted in the Brazilian tax legislation – e.g. 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 set 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 for becoming a member of the Organisation for Economic Co-operation and Development (OECD). The process is still ongoing with no specific timeline for conclusion.

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 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.

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 investment.

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

There are four other DTTs signed between Brazil and Switzerland, Uruguay, Singapore and United Arab Emirates, which are not yet in force in Brazil.

BRAZIL

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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	
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	

Jurisdiction	Dividends % [1]	Interest % [2]	Royalties % [3]	Footnote Reference
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]
Trinidad and Tobago	10 / 15	15	15	
Turkey	10 / 15	15	10 / 15	
Ukraine	10 / 15	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 limination 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 indentified in Brazil (subject to a specific analysis on a case-by-case basis).

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

Remittances made to 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 other 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 5 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 5 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 5 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 5 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 5 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 5 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 5 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 5 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 5 years and on a montlhly basis, when applicable
19	Tax Due Diligence	Tax Litigation	Updated certificates issued by the relevant offices of the Federal, State and Labor 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

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CANADA

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").

2. RECENT DEVELOPMENTS

a. Canada has ratified the Multilateral Instrument or "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.

b. 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. 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 5 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 Nonresident 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 carryforwards from earlier years) in post-AOC years will be restricted or prohibited. A special one-time 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.

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 gain tax liability (if any), rather than a separate tax. See "Canada's Section 116 System for Nonresident 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) acquires all shares of another Canadian corporation (Target) and then merges or liquidates Target up into itself, Parent 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. Stock 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 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 loss carryforwards) 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 "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 rather than amounts that are fully included income (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 "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. Because 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). 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 ETA exemption described above).

f. Depreciation & Amortisation

For Canadian tax purposes, depreciable properties are grouped into different classes, with each class having its own separate rate of CCA. 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 "Nonresidents 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 "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 Vehicle

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 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 the heading "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. Because PUC is created where new shares are issued but not when shares are merely transferred from one holder to another, 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+ 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, $100 of equity supports interest deductibility on $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.

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 in-bound 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 sold, 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 5 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 5 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 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 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 provide appropriate recognition for 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 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 the heading "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 Euro750 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-arm's-length non-residents. The statutory rules themselves are simply stated, and require the taxpayer's transactions with non-arm's-length non-residents to correspond to what would occur between similarly-situated arm's-length parties. 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 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 Canada Revenue Agency 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 effort go into (determining and contemporaneously) documenting transfer pricing of all transactions between the Canadian entity and non-arm's length non-residents 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 or "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 have retained earnings or some similar surplus to pay a dividend or return capital, although most statutes require that the distribution not result in the corporation being unable to repay its liabilities.

The tax character of a distribution generally follows from its corporate law character, *viz.,* 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

This section is left intentionally blank.

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. Because 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, and 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 / 0	15 / 0	[4]
Argentina	10 / 15	12.5 / 0	3 / 5 / 10 / 15	[14]
Armenia	5 / 15	10 / 0	10	
Australia	5 / 10 / 15	10	10	[5] [29]
Austria	5 / 15	10 / 0	10 /0	[3]
Azerbaijan	10 / 15	10 / 0	5 / 10	[15]
Bangladesh	15	15 / 0	10	
Barbados	15	15 / 0	10 / 0	[21]
Belgium	5 / 15	10 / 0	10 /0	[3] [6]
Brazil	15	10 / 15 / 0	25 / 15	[5] [8] [16]
Bulgaria	10 / 15	10 / 0	10 / 0	[21]
Cameroon	15 / 20	15 / 20	15 / 20	[9] [17] [29]
Chile	10 / 15	15	15	
China (PRC)	10 / 15	10 / 0	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	
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]

Jurisdiction	Dividends % [1], [2]	Interest %	Royalties %	Footnote
Guyana	15	15 / 25	10	[9] [31]
Hong Kong	5 / 15	10	10	[7]
Hungary	5 / 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	10	10 / 0	[3] [7]
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	[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]

CANADA

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	10	10 / 0	[21]
Sri Lanka	15	15	10 / 0	[21] [24] [27] [28]
Sweden	5 / 10 / 15	10	10 / 0	[3]
Switzerland	5 / 15	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	10 / 0	[21]

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	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 re-negotiated.
6	Signed but not yet in force - This treaty is designated by the Canadian government as signed but not yet in force.
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.

Footnotes	
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.
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 fils (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 authorized to convene under Order-in-Council PC 1975-2883 dated 11 December 1975."

Footnotes	
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.
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 trade marks, 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 trade marks, 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, visit: https://www.fin.gc.ca/treaties-conventions/in_force--eng.asp For the current status of tax treaty negotiations, visit:https://www.fin.gc.ca/treaties-conventions/treatystatus_-eng.asp	

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

The following is a Canadian tax due diligence document request list for each of CANADIAN COMPANIES (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 years, 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 4 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 4 years in respect of income taxes.
Tax Due Diligence	Canadian Tax	High	Open	Details of any intercompany or related party transactions during the last 4 years, including intercompany financing arrangements, loans or indebtedness, and inter-company 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 2018 calendar year, 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.

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 4 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 2 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 4 years.

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CHINA

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 treatments (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 treatments 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 5%, 10% or 15%.

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 properties (including land use rights). Indirect transfers of immovable properties should technically not be subject to LAT in China; although in some rare occasions, certain local PRC tax authorities have sought to impose LAT even on indirect transfers of immovable properties 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 properties), etc.

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.

- **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 exempted 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 quickly guaranteed exemptions for the donors.

These exemptions cover goods donated through charity organisations, government authorities, or directly donated to the hospitals which leading coronavirus containment are entitled to be exempted from VAT and Surtax.

In addiiton, 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 impacts 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, CIT losses incurred in 2020 will be extended from five years to eight years.

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 locates in) 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 in the "early part" of 2021. Although specific dates are to be clarified.

- 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 ACQUISITION

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 China companies, related via 100% direct equity ownership;
- The transfer occurs at net book value;
- Neither party recognises gain or loss under China 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];
- 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

3 Cai Shui [2014] No.109. and Cai Shui [2009] No.59

- In the case of a transfer of a China resident enterprise by a non-China resident enterprise to its wholly-owned non-China resident enterprise, the transferor shall 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 (1) timely complete the appropriate reporting, (2) 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 (3) 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].

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%);

4 Announcement of the SAT [2015] No.7 ("Circular 7", replacing Circular 698 re. indirect share transfer tax)
5 Article 1, Circular 7.
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.

   - 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.

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-China resident transferor's indirect investment and indirect transfer of China 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.

8 Article 4, Circular 7; generally speaking, the "red zone" is used to recharacterise transactions exclusively involving "shell companies."

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. Stock 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 China 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 administrative 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. Stock 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.

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 qualified 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.

9 Note that, if the tax authorities believe a share transfer was effected solely for the purpose of tax avoidance, they may treat the share transfer as an asset transfer and impose LAT on it.

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

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).

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. Foreign Acquisition Vehicle

Historically HK, 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 HK under the double tax treaty arrangement between China and HK, (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. Debt

i Thin capitalisation

Financial costs incurred during the usual course of business are generally deductible for CIT purpose, 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 re-characterised 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 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

ii 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.

iii 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.

7. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. CFC Regime

China has implemented controlled foreign corporation ("CFC") rules. CFC's will be regarded as Chinese tax residents and their incomes 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 in-charge 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 are 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 exempted from being deemed as distributed dividends and exempted from being included in the current income of the Chinese resident enterprises[10].

8. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

None.

9. 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 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 Purposes 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.

10. 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).

10 Guo Shui Han [2009] No.37.

Service fees normally will be 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, a 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 treatments adopted may be subject to audit/investigations by the tax authorities within the statute of limitation period.

11. 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]

CHINA

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	
Katar	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]

Jurisdiction	Dividends % **	Interest %	Royalties %	Footnote
Macao	10	7 / 10	10	[35]
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	15	10	10	
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	
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]

CHINA

Jurisdiction	Dividends % **	Interest %	Royalties %	Footnote
Spain	10	10	6 / 10	[47]
Srilanka	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 Netherland	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]
U.S.A	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]
Viet Nam	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 per cent 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 per cent of the capital of the company paying the dividends.
11	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 per cent 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 per cent 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 per cent of the capital of the company paying the dividends.

Footnotes	
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.
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 per cent of the capital of the company paying the dividends and has invested more than 2 million Euro 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 per cent of the capital of the company paying the dividends and has invested more than 100,000 Euro 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 per cent 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 per cent 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 per cent 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 per cent 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 percent 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 per cent of the capital of the company paying the dividends.

Footnotes	
31	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.
32	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.
33	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.
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 cinematograph 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 per cent 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 per cent 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 per cent 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 per cent 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 per cent 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.

Footnotes	
47	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.
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 per cent 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 per cent 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 per cent of the company paying the dividends.
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 per cent of the capital of the company paying the dividends;
53	Dividends - The 15% rate applies if the recipient holds directly at least 25 per cent 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 per cent 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 per cent 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 per cent 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 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 per cent 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 per cent 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.
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.

Footnotes	
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 per cent 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 per cent 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 per cent of the company paying the dividends.

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

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, restructurings, 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
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

No.	Category	Sub-Category	Description of Request
20	Tax Due Diligence	Financial Statement Information	Details on any events considered by management to be unusual or nonrecurring
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.

No.	Category	Sub-Category	Description of Request
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.
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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CYPRUS

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, and the articles of association contain the regulations under which the company is managed as well as restrictions that satisfy the definition of "private company", viz. restrictions to 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

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.

The income tax law in Cyprus for individuals is taxed in accordance with the progressive scale of state taxation in Cyprus as follows:

Personal tax rates:

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		

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

a. BEPS and other international tax-related developments:

- Cyprus signed the Multilateral Convention to Implement Tax Treaty Related Measures ("MLI") to Prevent Base Erosion and Profit Shifting ("BEPS") on 7 June 2017. Subsequently, Cyprus ratified the MLI on 23 January 2020.
- On 19 June 2020, the Cyprus Parliament voted into law the remaining 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 will be 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 PE in Cyprus.
- The GAAR provided by the ATAD has been transposed into the domestic law with effect from 1 January 2019.
- With effect from 1 January 2019, Cyprus implemented in its domestic law the controlled foreign company ("CFC") rules provided by the ATAD, which apply to (i) resident companies; and (ii) permanent establishments of non-resident companies.
- With effect from 1 January 2020, Cyprus implemented in its domestic law the exit taxation rules provided by the ATAD I in 2019.
- Cyprus has also implemented EBIDTA-based limitations on interest deductibility with effect from 1 January 2019. These rules limit the otherwise deductible exceeding borrowing costs of the Cyprus corporate income taxpayer or Cyprus group to 30% of adjusted taxable profit (earnings before interest, taxes, depreciation and amortisation ("EBITDA").
- On 18 March 2021, the Cyprus Parliament voted into law the provisions of the EU Directive on Administrative Cooperation, commonly known as DAC6.
- On 30 June 2017, the tax authorities issued a circular with respect to the new rules for the taxation of intra-group 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.

b. Covid measures

The Republic of Cyprus undertook numerous plans for supporting its citizens and businesses both in the private and public sectors. In short, most of the businesses and self-employed individuals who applied for support received compensation up to 60% of their salaries (with a cap of €1,200.00 per person) for the period from March to June 2020. Moreover, a new plan of measures to support the Economy was presented on 16 July 2020 by the Ministers of Finance and Labour. The economic support package included five targeted sectors to support workers and businesses over the next four months.

The Republic of Cyprus, to support the tenants, has introduced a tax incentive scheme. According to article 9E of the amended Income Tax law 58 (I) 2020, landlords who lease their real estate to individuals or legal entities were granted a tax credit equal to 50% of the rent reduction provided that the monthly reduction is not more than 50% and less than 30%. The monthly rent reduction concerns the maximum period of three months.

3. SHARE ACQUISITION

a. General Comments

Acquisition of a Target company can be made either with the acquisition of its shares (share acquisition) or acquisition of its business (asset acquisition). With share acquisition, no direct taxes are usually triggered for the buyer. Institutions 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. Of course, 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 €1- €5.000 - Nil.
- For sums 5.001- €170.000 - 1.5%.
- For sums exceeding 170.000 2% capped at a maximum of €20,000.

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 a company and 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 - i.e. originally sells computers and then stops to commence trading in pharmaceuticals). 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.

Losses may be surrendered by a Company resident in Cyprus (the "surrendering company") to another Company resident in Cyprus (the "claimant Company").

c. Tax Grouping

No fiscal consolidation regime exists under the domestic law. However, companies of the same group can use the group relief provisions for offsetting 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.

Offsetting of losses between group companies will be granted only 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 "reorganisation", it is exempt from corporation tax, capital gains tax, stamp duties and transfer fees.

"Reorganisations" includes 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 Cyprus 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 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 or done 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, not required to be stamped in Cyprus are:

- Instruments of 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
- Instrument 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 Cyprus company should prepare financial statements in conformity with International Accounting Standards (IFRS's).

h. Share Purchase Advantages

One important tax advantage of the share acquisition is that the sale of shares is totally exempt from all taxes in Cyprus unless there is an 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 exempted from capital gains tax.

i. Share Purchase Disadvantages

The buyer with the share acquisition is also acquiring all of its historical, current, prospective and contingent liabilities, whether the buyer is aware of them or not. In addition, the assets in the company sold will not be revalued at market value.

4. ASSET ACQUISITION

a. General Comments

By the 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 €85,000 of the sale price or market value.
- 5% on amounts between €85,001 and €170,000.
- 8% on any amount exceeding €170,000.

The above transfer fees are reduced by 50% in case the purchase of 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 the varying rates, which applied per owner and not per property. Again, 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, which is currently rated at 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 will be 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 exempted from direct taxes in Cyprus. Gains from the disposal of an immovable property (business or not asset) situated in Cyprus is subject to 20% capital gains tax.

d. Tax Free Reorganizations

When a transaction falls into the definition of "reorganisation", it is exempt from corporation tax, capital gains tax, stamp duties and transfer fees.

"Reorganisations" includes 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 Cyprus 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 3c).

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 amounts) 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. 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 Cyprus 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. While in the case that land and buildings are sold, it is advised that professional consultancy is requested.

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, alike the sale of shares. However, depending on the nature of the assets, corporation tax or capital gains tax may be imposed in the case of sale. Further that, the benefits of assets acquisitions should not be ignored, particularly as purchased goodwill is tax-deductible. Further to that, no previous liabilities of the company are inherited. The acquisition of asset 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 the transferred to the buyer or 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 the 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 €750k per category.

Further on, to mitigate tax effects, in the cases 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 Cyprus 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 Cyprus 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 after, 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 allowed to be deducted.

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 partner using the profit-sharing ratio.

e. Strategic vs Private Equity buyers

A private equity may use a limited liability company, and a strategic buyer may consider an alternative investment fund ("AIF"). Alternatively, 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 Cyprus regulated AIF and a limited liability company qualifying as an AIF managed by an authorised AIF manager ("AIFM"), except that RAIFs are not subject to prior authorisation from the Cyprus financial regulator as they must be managed by a fully authorised AIFM.

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 distribution by a Cyprus company to a foreign recipient is generally subject to 0% withholding tax.
- Dividend income is not subject to income tax, however special defence contribution ("SDC") is payable on dividends.
- Currently, SDC rate is subject to 17%, applicable only to tax resident individuals that are also Cypriot domiciled. Non-resident individuals and generally companies are not liable to SDC.
- Dividends are exempted if received by non-resident individuals.

ii Notional interest deduction.

In 2015, Cyprus introduced 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 Limitation on the use of debt

Cypriot income tax law does not provide for any specific debt-to-equity ratio. However, it does provide for interest limitation rule (see below).

ii Limitations on Interest Deductions

Cyprus has three 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; and (iii) the limitation to interest deduction provided by the ATAD.

Limitation related to the purpose of the expense: only expenses wholly and exclusively incurred for business purposes are tax-deductible. In addition, following an amendment to the Cyprus 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 the ATAD: As from 1 January 2019, with the implementation of the Anti-Tax Avoidance Directive into the Cyprus legislation, the interest limitation rule provides that the excess borrowing cost which exceeds the 30% before interest, tax, deduction, and additions ("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 the EBITDA. The excess borrowing cost is deducted up to the amount of EURO 3.000.000 euros per fiscal year, per company or Cypriot group. Where the company is a member of the Cyprus Group, the interest limitation rule is applied at the level of the Cyprus Group, as this is defined in the Income Tax Law (75% participation group).

The interest limitation rule does not apply to:

- financial undertakings;
- to 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 the Cyprus Group, the interest limitation rule is applied at the level of the Cyprus Group, as this is defined in the Income Tax Law (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.

The ratio is considered to be equal to the equivalent ratio of the group if it is equal to or at lower by 2% of the group ratio.

iv Debt Push-Down

With a properly designed tax structure, debt push-down can be achieved. Cyprus Companies Law specifically provides for the prohibition on 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 push-down, given that this may be treated as an 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 Cyprus Law may prove to be beneficial in achieving debt push-down. An intermediary Company may be incorporated in order to acquire the target. The intermediary Company can subsequently be merged with the target Company.

To implement this plan, proper 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. Deferment of the debt (i.e., debt to be carried forward by postponing the payment of liability to the future) is also possible, allowing allocation of obligations.

From a Cypriot perspective, any losses that would have been subject to tax if they were to be gained may be offset against other sources of income in the same tax year. When the income is not sufficient, the losses may be carried forward and offset against profits in subsequent years. In the case of change of ownership of a Company, as well as the change in the nature of the activities of a Company, previous losses may not be carried forward and used by the new owners. A Company may also surrender tax losses to another company from the same group (specific criteria exist for group loss relief involving foreign entities).

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 Cyprus 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 will be 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 PE in Cyprus and covers the following hybrid mismatch arrangements:

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 as "acting together."

The law also introduces a definition of the concept of 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.

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 Cyprus 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. Capital Gains taxation of Cyprus 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 the flat rate of 20%.

Further, as per the recent amendment to the relevant law, as from 17 December 2015, the definition of 'property' is 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 Cyprus immovable property.

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% exempted from Capital Gains Tax when:

- They were/ will be 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, neither by way of exchange, trade nor in a way of settlement of debt, and the sale must not be related to any foreclosure agreement either.

b. Capital Gains taxation of Cyprus non-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

A tax treaty can restrict Cyprus to exercise the above rights.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

Cyprus applies a worldwide 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 Cyprus companies on operation 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-Cyprus tax resident company in which the Cyprus CIT 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 Cyprus tax resident company that is exempt from tax in Cyprus (exempt foreign PE).

A non-Cyprus tax resident company (or an exempt foreign PE) is considered as 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 Cyprus corporate income tax rules had it been a Cyprus tax resident company.

Exceptions:

The CFC rule does not apply to non-Cyprus tax resident companies (or exempt foreign PEs):

- With accounting profits of no more than EURO 750.000 and non-trading income of no more than €75,000; 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 non-Cyprus tax resident company (or an exempt foreign PE) meets the definition criteria of a CFC, the Cyprus 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 Cyprus 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 established 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 Cyprus tax burden.

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 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 the 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 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 partner using the profit-sharing ratio.

d. Cash Repatriation

Dividends distributed by a Cyprus 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 Cyprus 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. In case though that capital gains tax is imposable, 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, 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 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 are rated between 3% and 8% (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 €750 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 & 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 6xth Directive on administrative cooperation ("DAC 6"), 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 intra-group 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 intra-group 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 2021. Such rules are expected to be aligned with the 2017 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. The circular regarding intra-group 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 €750k per category. As a consequence, following the ratification of the draft TB bill, all intra-group 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 new Cyprus IP box allows for a deductible notional expense calculated as 80% on qualifying profits from qualifying IP. The corporation tax in Cyprus is 1$!%, 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.

As of 1 July 2016, new rules apply 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 new Cyprus IP box regime has been introduced 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 €7.5 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:
- 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 ring-fencing companies. However, as noted above, in 2015, Cyprus introduced NID in its tax law, which relates to a notional interest deduction on new equity, which can be set against taxable income generated by a company as a result of the funds from the new equity. 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.

12. OECD BEPS CONSIDERATIONS

Cyprus is not a member of the OECD. However, to a large extend, 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. What is more, 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 ATAD 2, Cyprus had to adopt the EU Directives. As a result, Cyprus is adopting the majority of the OECD BEPS action points.

a. OECD BEPS

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: it 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: It articulates the Principal Purpose test 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 ("IFRSs") 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 stipulate 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;
- 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 are the management and control requirements, and no detailed guidelines have been issued by the 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 at the Cyprus level 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.

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 & II, the EU Directives on administrative cooperation in tax matters, so-called "DAC" 1 to 6, etc.).

d. Tax Rulings & Clearances

The CTA is issuing (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 is stipulated in the Cyprus Companies law, Chapter 113. According to the legislation, mergers and acquisition could take various forms. Under section 201 of Chapter 113, it 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. The merger and acquisition by division arise once the company that is about to be dissolved transfers to one or more than one existing companies (the benefiting companies) its assets and liabilities. 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 said shareholders who obtain the shares in those benefiting companies subsequently receive the corporate contributions resulting from the division and any offsetting amount in cash.

Mergers and acquisitions to be effective 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	

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]

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

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 documentantion.
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 years. Specific reference and 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 annualy 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 corncern.
18	Tax Due Diligence	Immovable Property Tax	Request previous payments and applicable rates.

CYPRUS

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FINLAND

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 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. Its 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.

The Finnish capital income tax rate for resident individuals is 30% up to €30,000 and 34% over €30,000; 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 e.g. dividends and capital gains arising from shares. As a main rule, dividends from EEA-sources are 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

The most recent developments in Finland relate closely to the implementation of Anti-Tax Avoidance Directive ("ATAD") and to the corporate income tax reform. 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 €3,000,000 of net interest expenses would be applicable. Although the implementation is in line with the minimum standards set forth in ATAD, the existing rules remaining in force are more stringent in comparison to ATAD, which will restrict intra-group debt financing. In addition, the CFC regulation has been amended due to ATAD as of 1 January 2019.

The Finnish corporate income tax reform entered into force on 1 July 2019 and the amendments are applied for the first time to fiscal year 2020. Due to the reform, the taxable income of Finnish companies is in general calculated in accordance with the Finnish Business Income Tax Act ("BITA"). The amendments benefit taxpayers by allowing cost deductions and offsetting of losses against income from business and other sources of income. In addition, as a consequence of the reform, from fiscal year 2020 onwards group contribution is also available to holding companies and ordinary real estate companies ("REC's") irrespective of whether they carry out business activities or not. Other entities than corporations, such as limited partnerships still remain to have separate sources of income.

b. Coronavirus (COVID-19) actions and measures

The Finnish Government, alongside with the President of the Republic, decided on additional measures and declared a state of emergency on 18 March 2020 in Finland to address the COVID-19 outbreak. The Government and the competent authorities have implemented the 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 e.g., a possibility to request more time to file tax returns, removing of late-filing penalty, temporary refund of VAT to the companies, temporary exemptions of import duties and VAT on imports outside of the EU, as well as allowing payment arrangements with eased terms and removals of late-payment interest. The state of emergency was declared to end on 16 June 2020. However, some of the measures are still valid despite the end of the state emergency. For example, companies may apply for amendments to the amounts of the tax prepayments, payment arrangement with regular terms, or more time for filing income tax return or real estate tax return.

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 e.g. 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.

VAT on acquisition costs can be recovered by the buyer in the proportion the company acquiring the shares has VAT taxable activities such as supplies of taxable management services. In addition to the taxable activity, a certain level of substance is required from the holding company (namely, at least one employee).

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, eligible contribution is deducted from taxable income of the contributing company, whereas the contribution is considered as taxable income of the acquiring company.

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. Due to the Finnish corporate income tax reform entering into force on 1 July 2019, group contribution will also be available to holding companies and REC's as of fiscal year 2020 irrespective of if they carry out business activities.

In VAT 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.

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

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 such as repayment of a target company's loan to the sellers (by the buyer).

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. 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 of the change in the 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, a share deal bears on two significant tax disadvantages. Firstly, the 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 disadvantage is that the deduction of VAT incurred on transaction costs is generally denied as being considered to relate directly to the VAT exempt sale of shares and thus, VAT is regarded as non-deductible. However, according to a recent Finnish Supreme Administrative Court ("SAC") ruling, a seller of shares was able to deduct the VAT on costs relating to a sale of shares as overhead costs when the shares were sold in connection with closing down a part of the business. We expect that there will be more SAC rulings, which will provide further clarity on circumstances where the VAT deduction can be made.

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 e.g. costs and loss deductions.

Similar to a share acquisition, 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. The purchase price for goodwill may be depreciated during its probable economic impact period (maximum ten 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.

In VAT, the transaction costs are generally considered overhead expenses of the seller and therefore the VAT incurred on the costs is deductible in the proportion of the taxable activities of the seller. In comparison to a sale of shares, this is an advantage for the seller. However, according to a new ruling, 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 finally we would add that exceptions may apply if, for example, the acquired assets only consist of real estate.

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 organised as Finnish limited liability companies are used in acquisitions. The use of Finnish holding companies may facilitate the use of group contribution, which group companies' use to offset profits and losses and to use it as a means 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 minimise possible Finnish income tax and transfer tax implications in acquisitions of Finnish REC's and MREC's (i.e. forms of Finnish real estate company). Due to the limited applicability of the Finnish participation rules, foreign holding companies may also be used in order to ensure 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 €500,000 is applied; if net interest expenses (including third party and related party interests) exceed €500,000, 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 €3,000,000 is applied to net interest expenses on third party loans irrespective of the EBITD threshold. Third party loans will be deemed to be intra-group 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.

ii Debt push-down in acquisitions

For most acquisitions the preferred means to push down debt is the usage of a Finnish Special Purpose Vehicle ("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. However, this 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. The recent case law denying deductibility of interest expenses arising from the share acquisition debts of a Finnish branch should not impact typical debt push-down strategies.

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 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, e.g. Finnish companies are liable to tax for 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 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 3/5 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 the 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 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 provides 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 acquisition 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. Its 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 ("DTA's") 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 €15,000 may be imposed if either the intermediary or the taxpayer neglects to fulfill the reporting obligation.

10. TRANSFER PRICING

In acquisition structures attention should be paid to transfer pricing issues relating to intra-group financing, which should always be carefully analysed.

In recent years, the Finnish tax authorities have challenged the taxpayers' right to choose its business model and the most appropriate transfer pricing method. In recent case law, the Supreme Administrative court has restated that a corporation's income taxation could not be reassessed based on recharacterisation of an assumed business model of the taxpayer. The principle "as structured" applies in Finnish transfer pricing.

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. 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 were recently implemented in Finland. The new rules entered into force on 31 December 2019 and have been applicable from 1 January 2020 onwards. However, the so-called reverse hybrid rule included in Article 9a of ATAD2 will be implemented at a later date.

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. Tax treaties not covered by the multilateral instrument are the Nordic Income Tax Treaty and the Bulgarian Income Tax Treaty.

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 than many other jurisdictions have. However, applicability of the Finnish General Anti-Abuse Rule and adoption of Principal Purpose Test through 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	[16]
Armenia	15	5 (25)	10	[6]
Australia	15	5 (10)	5	[6] [13] [8]
Austria	10	0 (10)	5	[2] [13] [23]
Azerbaijan	10	5 (25)	5	[8] [4]
Barbados	15	5 (10)	5	[5] [13] [1]
Belarus	15	5 (25)	5	[2] [1] [23]
Belgium	15	5 (25)	5	[2] [1] [23]
Bosnia-Herzegovina	15	5 (25)	10	
Brazil	20 / 30	20 / 30	20 / 30	A [2] [1] [23]
Bulgaria	10	10	5	[2] [1] [23]
Canada	15	5 (10)	10	[13] [1]
China	10	5 (25)	10	[25]
Chile	20 / 30	20 / 30	20 / 30	B
Colombia	20 / 30	20 / 30	20 / 30	C
Croatia	15	5 (25)	10	[2] [23]
Cyprus	15	5 (10)	0	[2] [23]
Czech Republic	15	5 (25)	10	[2] [1] [14] [23]
Denmark	15	0 (10)	0	[2]
Egypt	10	10	25	
Estonia	15	5 (25)	0	[2]
France	0	0	0	
Georgia	10	5 (10)	0	[8]
Germany	15	5 (10)	0	[2] [8]
Great Britain	0	0	0	[5]
Greece	13	13	10	[2] [1] [23]

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Jurisdiction	Dividends (portfolio) / interest on cooperative capital %	Dividend (direct investment*) %	Royalties %	Footnote
Hungary	15	5 (25)	5	[2] [1] [23]
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] [13] [5]
Israel	15	5 (10)	10	[2] [1] [23]
Italy	15	10 (50)	5	[2] [1] [23]
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)	10	[2] [11] [23]
Liechtenstein	20 / 30	20 / 30	20 / 30	[2] [22]
Lithuania	15	5 (25)	10	[2] [11] [23]
Luxembourg	15	5 (25)	5	[2] [1] [23]
Macedonia	15	0 (10)	0	[13]
Malaysia	15	5 (10)	5	
Malta	15	5 (10)	0	[2] [13]
Mauritius	20 / 30	20 / 30	20 / 30	D
Mexico	0	0	10	
Moldova	15	5 (25)	7	[6]
Morocco	10	7 (25)	10	[2]
Netherlands	15	0 (5)	0	[2]
New Zealand	15	15	10	
Norway	15	0 (10)	0	[2]
Pakistan	20	12 (25)	10	
Philippines	20 / 30	15 (10)	25	[3]

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Jurisdiction	Dividends (portfolio) / interest on cooperative capital %	Dividend (direct investment*) %	Royalties %	Footnote
Poland	15	5 (25)	5	[2] [23]
Portugal	20 / 30	20 / 30	20 / 30	[2] [2] [23]
Puerto Rico	20 / 30	20 / 30	20 / 30	F
Romania	5	5	5	[2] [17] [23]
Russia	12	5 (30)	0	[7]
Serbia and Montenegro	15	5 (25)	10	
Singapore	10	5 (10)	5	[13]
Slovak Republic	15	5 (25)	10	[2] [1] [14] [23]
Slovenia	15	5 (25)	5	[2] [23]
South Africa	15	5 (10)	0	
Spain	15	5 (10)	0	[2] [24] [13]
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	[12]
Turkey	15	5 (25)	10	
Turkmenistan	15	5 (25)	10	[8]
Ukraine	15	5 (20)	10	[15]
United Arab Emirates	20 / 30	20 / 30	20 / 30	[21]
United States	15	5 (10)	0	[20] [13]
Uruguay	15	5 (25)	10	[18]
Uzbekistan	15	5 (10)	10	[13] [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	
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
	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 > USD 100 000 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 5% on royalties paid for the use of industrial, commercial or scientific equipment
12	Tax 15% if the payer is also an industrial enterprise
13	The 10% is calculated on the total voting stock
14	Tax 1% for finance lease of equipment, 5% for operating lease of equipment and computer software
15	Tax 5% for the use of secret process or for know-how, no tax for computer software or patent
16	Tax 10% on industrial royalty, 3% on royalties to news agency and 5% on artistic royalty to the author or his mortis causa successor
17	Tax 2.5% on royalties paid for the use of industrial, commercial or scientific equipment or computer software
18	Tax 5% on royalties paid for the use or the right to use of industrial, commercial or scientific equipment or software
19	Tax 15% if the recipient is a company

FINLAND

Footnotes	
20	No tax on dividends to qualified parents-subsidiaries and pension funds (Article 10 paragraph 3)
21	No tax, if the recipient proves that he has domicile (individual) or is incorporated in the Arab Emirates
22	If corporate entity tax is 15% or 20% , § 3 paragraph 2 and 3, Act on Tax at source
23	No tax on royalties between associated companies meant in EU Directive (2003/49/ C, 2013/13/ U) (§ 3 b-f, Act on Tax at source)
24	No withholding tax if the recipient is a pension scheme
25	Tax 7% on industrial, scientific and commercial royalties

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

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			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 advisors. Has the company received any written instructions, notes or memoranda from external tax advisors 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
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	Income tax	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.

No.	Category	Sub-Category	Description of Request
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 5 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.
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

No.	Category	Sub-Category	Description of Request
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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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:

- (1) the joint stock company (société anonyme - "SA"), having minimum share capital is €37,000.
- (2) the limited liability company (société a responsabilité limitée - S.à r.l.), having no minimum share capital.
- (3) 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:

- (1) the commercial partnership (société en nom collectif – "SNC"); and
- (2) 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 and reduced from 33 1/3% in 2017 to 25% for financial years open on or after 1 January 2022 (see section 2 for the applicable rates). The top French rate for personal income tax amounts to 45%. 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 3.72% 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:

<table>
<tr><th>Portions of taxable income</th><th>2019</th><th>2020</th><th>2021</th><th>2022</th></tr>
<tr><td>Turnover < € 7.63 M *</td><td></td><td></td><td></td><td></td></tr>
<tr><td>€0 – €38,120</td><td>15%</td><td>15%</td><td>15%</td><td>15%</td></tr>
<tr><td>€38,120 – €500,000</td><td>28%</td><td rowspan="2">28%</td><td rowspan="2">26.5%</td><td rowspan="2">25%</td></tr>
<tr><td>>€500,000</td><td>31%</td></tr>
<tr><td>Turnover €7.63M – €250M</td><td></td><td></td><td></td><td></td></tr>
<tr><td>€0 – €500,000</td><td>28%</td><td rowspan="2">28%</td><td rowspan="2">26.5%</td><td rowspan="2">25%</td></tr>
<tr><td>>€500,000</td><td>31%</td></tr>
<tr><td>Turnover >= €250M</td><td></td><td></td><td></td><td></td></tr>
<tr><td>€0 – €500,000</td><td>28%</td><td>28%</td><td rowspan="2">27.5%</td><td rowspan="2">25%</td></tr>
<tr><td>>€500,000</td><td>331/3%**</td><td>31%</td></tr>
<tr><td colspan="5">* Subject to compliance with the conditions set forth in Article 219, I-b of the CGI
** The rate of 33⅓% applies to fiscal years beginning in 2019 and ending on or after March 6, 2019</td></tr>
</table>

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 (roll-over 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 roll-over regime to contributions of shares to reinforce an existing controlling situation; and
- 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.

1 Second amended Finance Law for 2017, article 23.

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 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 €200,000. 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 said tax group provided that certain conditions are met (notably filing 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 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 implemented by the French government are 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 EAVC instalments;
- Possibility to suspend payments of EAVC, ELC and property tax, etc;
- Early repayment in 2020 of account receivables for losses carried back;
- Deferment of DAC 6 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.

Please note that the French government also implemented social and financial measures to support companies during this period.

i. 2021 Finance Bill

The 2021 Finance Bill includes the following tax measures (subject to Parliamentary approval):

- Diminution of the 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;
- Spreading of the capital gain realized during a sale and leaseback of a real estate asset by a company;
- Extension of the reduced CIT (15%) rate on part of the profit of companies with a turnover lower than €10 million (instead of €7.63 million); and
- Landlords waiving rents to companies with less than 250 employees closed or impacted by the lockdown would obtain a tax credit equal to 50% of the rent waived.

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 French Tax Code 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 intra-group 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 €1,000,000 and thereafter only against 50% of such year's income exceeding 1 million. Up to €1,000,000 of losses may be carried back one year.

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 intra-group 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 CIT[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.

2 Please refer to BOI-ANNX-000071-20150506 for a list of tax equivalent to CIT in the French tax guidelines.

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 roll-over 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 French tax authorities 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.

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 warranty 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 in the share purchasing agreement notably considering the existence of a tax consolidation group.

g. Transfer taxes on share transfers

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.

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.

Registration duty is assessed against the purchase price of the company interests reduced by the product of (1) the ratio of number of shares purchased divided by total number of shares issued by the acquired company and (2) €23,000.

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

Acquisition costs of shares

The acquisition costs of shares are the transaction costs which are connected directly with the acquisition of the shares, e.g. fees for legal, accounting and tax advice, bank advisory fees (other than fees attributable to the financing of the acquisition), 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 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 5-year period. In case of acquisition in the course of a fiscal year, the deduction is pro rated. Acquisition costs include registration duties, commissions, fees (auditor fees, external appraiser fees, advisor fees…) 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.).

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, 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:

5 Finance Act for 2019, Article 26.
6 BOI-IS-BASE-30-10 n°30.

- 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. 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” correspond to a tax loss which can be subject to the tax long term regime, if the cancelled shares have been hold for more than two year. 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 prorata 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 prorating 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.

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.

7 Section 39-1-1° quarter of the FTC; BOI-BIC-CHG-20-30-40 n°1

I. 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 in 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

Tax losses are forfeited if a company changes its activity.

An addition 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 business transfer 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, 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.

f. Depreciation and Amortisation

In principle, the amortisation of goodwill is not allowed in France, either in share deals or asset deals. However, in some specific cases, pursuant to the regulation of the ANC dated 23 November 2015, amortisation may be recorded in the case there is any time limit on the use of the business asset (for example: a concession or license).

Amortisation of intangible assets is only possible if it is foreseeable, at the dates of their creation or acquisitions, that their beneficial effects will end on a given date. Intangible assets that grant the company temporary rights are amortisable.

However, certain items such as securities and going concern cannot be subject to amortisation.

g. Transfer Taxes, VAT

The transfer of assets qualifying all together as a going concern are subject to registration duties at:

- 0% up to €23,000
- 3% of the sale price from €23,000 to €200,000
- 5% of the sale price exceeding €200,000

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.

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.

In cases of mergers and assimilated operations (described above), under Article 816 of the 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;
- It is possible to acquire only part of a business.

i. Asset Purchase Disadvantages

The main disadvantages of an asset purchase are the following:

- Possible need to seek transfer consents or renegotiate supply, employment and technology agreements;
- Capital gains derived from the sales of assets are subject to 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;
- The benefit of any losses incurred by the target company remains with the seller (although such losses may be available to seller to offset any gains on the asset dispositions).

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 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 foreign acquisition vehicle.

9 Finance Act for 2019, Article 26.

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 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
- 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 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].

10 A privileged tax regime refers to 2 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 Administrative Court, January 13, 2017, No. 3911196, SAS Ingram Micro.

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 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 French tax authorities are focusing special attention on taxpayer compliance with these provisions.

Anti-hybrid legislation

As from 1 January 2020, new rules against hybrid schemes have been introduced into French tax legislation in order to implement ATAD 1 and ATAD 2 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 instrument[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 ATAD 2 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;

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.
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 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.

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 mother 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, compensate another payment qualified as hybrid mismatch in a third country).

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 case of ordinary hybrid mismatch, one could consider that flows involving UCITS are out of the scope of the regulation as well.

In this respect, and even if not clearly broaden by parliamentarians while voting the transposition of the Directive, the reasons justifying the exclusion of UCITS of reverse hybrid mechanism may also be applicable in case of ordinary hybrid mismatch[20].

In any case, the FTA's guidelines commenting this new limitation should resolve uncertainties surrounding the specific case of UCITS.

Limitation based on EBITDA

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 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 €3,000,000.

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.

20 National Assembly report, 1st reading, n° 2301, dated October 10, 2019 & Senate report, 1st reading, n° 140, dated November 21, 2019.

- 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 5 tax years.

If the company or group is thin 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 €3,000,000 to the extent related party debt does not exceed 1.5 times the company's (or group's) equity (fonds propres).
- 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 €1,000,000 to the extent related party debt amount does not exceed 1.5 times the company's (or group's) equity (fonds propres).

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.

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 €3,000,000 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 expense 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 furthered with 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 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. French tax authorities recently permitted such a situation between two holding companies in the case of a secondary leveraged buy-out). 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 upon, resulting in capital gains taxation at the effective rate of 3.47% maximum.

Qualifying shareholdings must satisfy both of the following conditions:

- They must be qualified as controlling interest (specific class of shares for accounting purposes that enables the shareholder to have a controlling interest[21]) or, be eligible for the dividend participation exemption regime (i.e 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.

21 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.

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[22].

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 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 permanent establishment of a French company when the actual cash tax imposed on such subsidiary or establishment 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 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

In 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.

22 Section 244 bis-B of the French Tax Code.

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[23] 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 €400,000,000 must maintain extensive transfer pricing documentation. Companies with sales less than €400,000,000 but in excess of €50,000,000 must maintain "light" transfer pricing documentation if annual payments to related foreign entities exceed €100,000.

France introduced a country-by-country reporting requirement in 2016 for groups with an aggregated turnover of €750,000,000 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 French tax authorities transfer pricing documentation (a master file and local file) that largely follows the OECD's recommendations.

23 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 the 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 patents[24] (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 privitisation 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[13].

24 This rule applies only to patents (with certain exceptions) and not to any other types 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 Cod 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	10 / 15	15	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 / 30	0	0 / 31	[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]

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]

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	Dividends - To qualify for the lower rate, a 10% holding is required.
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 7 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.
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.

Footnotes: this table only refers to outcome flows from France to contracting States	
19	No double tax treaty with the respective country is in place; therefore, the respective taxes have to be withheld according to domestic tax law, as follows : Dividends - To qualify for the zero rate, the company must, inter alia, hold 10% of the capital for 2 years. Otherwise, 30% rate applies. Interest - 0%. Royalties - The zero rate applies to royalties paid between "associated companies" (holding 25% of the capital for 2 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.
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 2 years. Otherwise, 30% rate applies. Interest - 0%. Royalties - The zero rate applies to royalties paid between "associated companies" (holding 25% of the capital for 2 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 6 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 6 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 €76,225. 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.

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 mustn't 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

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 for the last 3 fiscal years (“FY”)
4	Tax Due Diligence	Corporate income tax	Form n°2572 for the last 3 fiscal years (“FY”)
5	Tax Due Diligence	Corporate income tax	Financial statements for the last 5 FYs
6	Tax Due Diligence	Corporate income tax	General ledgers for the last 5 FYs
7	Tax Due Diligence	Corporate income tax	General and spcial statutory auditors’ reports for the last 3 FYs
8	Tax Due Diligence	Corporate income tax	Minutes of the shareholders general ordinary and extraordinary meetings for the last 3 FYs
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 for the last 3 FYs
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 for the last 3 FYs
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 for the last 3 FYs
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 for the last 3 FYs
20	Tax Due Diligence	Competitive and employment tax credit (“CICE”)	CICE tax credit form 2079-CICE for the last 3 FYs

No.	Category	Sub-Category	Description of Request
21	Tax Due Diligence	FEC (“Fichier des écritures comptables”)	FEC files for the last 3 FYs
22	Tax Due Diligence	VAT	VAT returns for the last 3 FYs
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 for the last 3 FYs
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 3 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 3 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 conclued between the companies of the group
32	Tax Due Diligence	Intercompanies agreements	If applicable, any loan agreements conclued between the companies of the group
33	Tax Due Diligence	Transfer pricing	Transfer pricing documentation for the last 3 FYs and choice of pricing method
34	Tax Due Diligence	Transfer pricing	If applicable, French 2257-sd filling forms for the last 3 FYs
35	Tax Due Diligence	Transfer pricing	Country-by-Country Reporting (CbCR), where applicable
36	Tax Due Diligence	Transfer pricing	Documents containing discussions with the French tax authorities on this subject (e.g. exchange letters, tax rulings…)
37	Tax Due Diligence	Transfer pricing	Any analysis performed by advisors on the transfer pricing policy
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	French Tax Authorities (“FTA”) agreements for the transfer of tax losses and of the special merger tax regime

No.	Category	Sub-Category	Description of Request
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 + acknowledgment of receipt for the last 5 civil years
45	Tax Due Diligence	Filing requirements	DAS 2 forms for the declaration of wages, commissions and fees + acknowledgment of receipt for the last 5 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 for fiscal years 2012, 2013 and 2014

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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 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 14% and 17%.

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 recent change of German tax law.

Another significant development with respect to tax loss forfeiture rules was the European Court of Justice ("ECJ") decision of 28 June 2018 in which the ECJ annulled a decision by the European Commission in 2011 on the state aid status of the restructuring clause ("Sanierungsklausel"), arguing that the European commission applied an incorrect reference system for purposes of the selectivity analysis. This restructuring clause, under certain conditions, prevents the application of the loss forfeiture rules in spite of a harmful change in ownership. In response, the restructuring clause was reinstated retroactively to 2008 through a recent change of German tax law. While it remained unclear whether the ECJ confirmed that the restructuring clause is not an unlawful state aid, the European Commission subsequently announced on 22 January 2020 that it will not initiate further infringement proceedings.

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 could also be affected by possible amendments of the real estate transfer tax ("RETT") rules for share deals. Firstly, it is proposed to lower the harmful threshold of direct and indirect share transfers in real estate holding companies from 95% to 90%. Secondly, an additional RETT event for corporations holding real estate shall be 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 will be subject to RETT, i.e also the transfer to two or more unrelated investors would trigger RETT. Thirdly, the holding periods, e.g. for the seller regarding its minority interest in a partnership holding real estate as well as for certain RETT exemptions, shall be extended from five to ten or, respectively, fifteen years. Certain consequential amendments to the RETT Act are discussed. On 31 July 2019, the Federal Cabinet adopted the government draft of the Real Estate Transfer Tax Amendment Act regarding these RETT changes. However, in a joint press release of 24 October 2019 the coalition parties declared that the reform will be postponed. Against this background, especially in cases where a share transfer of at least 90% of the shares or interests is presently contemplated, the legislative process should be monitored closely and potential precautionary measures should be analysed. It is possible that the legislative process will be resumed shortly. In order to cater for respective uncertainties in transaction processes, insurance providers offer a special tax indemnity in relation to a retroactive application of the tightened RETT rules for share deals.

On 24 March 2021, the German Federal Cabinet adopted a draft law implementing the Anti-Tax Avoidance Directive (Directive (EU) 2016/1164 and Directive (EU) 2017/952 (ATAD I and II)). Under the proposed 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. Another proposed anmendement relates to the revision of German CFC rules for assessment periods from 2022 onwards.

With its Council Directive 2018/822/EU dated 25 May 2018 ("DAC 6") the European Commission amended Council Directive 2011/16/EU on administrative co-operation 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 or, respectively, a filing period until 31 August 2020 for all such "historical" tax planning arrangements where the first step was implemented between 25 June 2018 and 30 June 2020. Due to the COVID-19 pandemic there have been requests to postpone these reporting obligations. In this respect, the European Commission with its Council Directive 2020/876/EU dated 24 June 2020 again amended Council Directive 2011/16/EU for the purpose of a six-months deferral: that is, the member states can opt to change the reporting deadline for the historical tax planning arrangements to 28 February 2021, and the date for the beginning of the 30 days period (for arrangements that become reportable between 1 July and 31 December 2020) to 1 January 2021. However, the German Federal Ministry of Finance in a press conference of 6 July 2020 announced that Germany will stick with the initial DAC 6 reporting deadlines.

On 20 January 2021, the German Federal Cabinet adopted a draft law on the modernisation of the relief from withholding taxes. The proposed changes concern, in particular, (i) a specific anti-abuse rule against treaty shopping. The previously proposed limitation of German limited (non-resident) taxation of income from IP where the only German nexus is the registration in a domestic register – which had been included in the prior draft bill of the German Federal Ministry of Finance dated 20 November 2020 – was not included anymore. With respect to these cases of limited taxation, the German Federal Ministry of Finance issued a decree regarding a simplifed tax procedure simplification rule for payments received by 30 September 2021.

On 16 December 2020, the German Federal Parliament ("Bundestag") passed the Annual Tax Act 2020 which was approved by the German Federal Council ("Bundesrat") on 18 December 2020. The ATAD implementation rules as well as the proposed amendments to the RETT rules for share deals were not included in the Annual Tax Act 2020. For certain tax reliefs contained in the Annual Tax Act, see below (Section 2.b).

b. On 24 March 2021, the German Federal Cabinet adopted a draft bill 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 proposed changes of law shall be applicable for assessment periods resp. reorganisation dates from 2022 onwards. 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 is reduced from 19% to 16%, and the reduced VAT rate is reduced from 7% to 5%.

The Second Coronavirus Tax Assistance Act implements the first key elements of the government's stimulus package of 3 June 2020. Further key tax measures of this stimulus package include the extension of the tax loss carry-back possibilities for the years 2020 and 2021 to €5,000,000 (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 (see above). On 25 September 2020, the German Federal Government issued a response to a request on the timeline and content of a draft law for the "option model" that the implementation work has not yet been completed and it is therefore not possible to make statements on the content.

The Annual Tax Act 2020 contains certain tax reliefs such as a tax lump sum of €5 euros per day (limited to a tax deductible amount of €600 p.a.) for employees and self-employed persons.

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 5 year period leads in principle to a complete forfeiture of current tax losses and tax loss carry-forwards. The law provides for several options to avoid the forfeiture of losses and loss carry-forwards:

- **Intra-group escape**

The acquisition of shares in principle no longer results in the loss (or partial loss) of losses and loss carry-forwards 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. Intra-group reorganisations that fulfil these (strict) requirements can therefore be carried out without the forfeiture of losses and loss carry-forwards.

- **Hidden-reserve escape**

In addition, a corporation's unused tax losses are preserved to the extent they are compensated for by built-in gains in such target entity, i.e a positive difference between the purchase price and the tax book value of the target entity's equity, where such positive differences attributable to shareholdings in another corporation or to foreign assets are disregarded (whether built-in gains in a tax group member can be accounted for is not finally decided 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 partner in a partnership or controlled company in a tax group) will prevent the application of the escape. In practice, this provision is often difficult to handle.

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 push-down (see Section VIc.). 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 also be 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 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. This 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 on or before 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, RETT is basically levied if at least 95% of the partnership interests are transferred within a period of five years. A transfer of shares in corporations triggers RETT only if a buyer (or a RETT group) acquires at least 95% of the shares. The tax base is in principle the fair value of the real estate. These provisions could also be subject to changes due to the RETT reform (see Section 2.).

RETT could be avoided by, for example, selling only 94.9% to a single purchaser and having the shareholder or a third party retain the remaining 5.1% shareholding. In this respect it is to be considered that (ongoing) M&A deals could be affected by potential changes to the RETT rules (see Section 2.).

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.

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 also 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 95% tax-exempt. However, capital losses from share deals are not tax-deductible at all. 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 loss carry-forwards 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 €1,000,000 and no sufficient losses of the current year are available (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 in the case of a corporate seller is 95% tax exempt) provided that the future exit takes place at this level. 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 (regarding potential changes of the law see Section 2.). Various options are available for the buyer to achieve a debt-push down (e.g. down-stream merger, implementation of fiscal unity). 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 roll-over 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 (corporate) 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 loss carry-forwards of the seller. In this context the seller has to take into account Germany's minimum taxation rules. These rules limit the deduction of loss carry-forwards in a fiscal year to the amount of €1,000,000 plus 60% of the income exceeding €1,000,000. 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 lower tax burdens for the buyer in the future.

A debt push-down 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 VIc.).

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 a 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 case 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 to 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 95% participation in a real estate holding company is a RETT event, the contribution of other assets than cash results in a realisation of built-in gains 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 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 recently ruled that capital gains from the sale of shares in a corporation realised by a non-domestic 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 intra-group 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 carry-forwards (non-deductible interest might be deductible in future years if there is sufficient EBITDA in such a year). Interest carry-forwards are 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 is met:

- The net interest expenses of the respective fiscal year (based on the tax authorities' view including any interest carry-forwards) are less than €3,000,000 (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 world-wide 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 €100,000 is exceeded).

v Debt Pushdown

Various options are available to achieve a debt push-down. 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 VIc.). The German capital maintenance rules also have to be kept in mind.

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 effect at the transfer date).

7. DIVESTITURES

a. Taxable

In principle, capital gains from the disposal of assets (including partnership interests) 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 p.a.). Individuals selling shares can benefit from rules similar to those described for real estate (applicable to capital gains of up to €500,000). 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 applies (see Section 7.b.).

Non-domestic seller: A capital gain realised by a foreign shareholder is only subject to German (corporate) income tax if the foreign shareholder held 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.

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.

Non-domestic seller: The same rules also apply to the disposal of shares by non-German resident seller. 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 German resident shareholders hold the majority in the voting rights. 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. 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. It can be expected that the German CFC regime will be subject to amendments to adopt the regulations of EU-Anti Tax Avoidance Directive ("ATAD") I and II.

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 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 5 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 750 million Euro. 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 €5,000 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 €100 applies for each full day of delay and may amount up to €1,000,000.

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 €500,000. 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. It is not unlikely that further provisions, in particular regarding hybrid mismatches (BEPS Action 2), will be introduced in future.

In addition to the BEPS Action plan, Germany is committed to implement ATAD I and II and the German Federal Ministry of Finance released a revised draft law in this respect (see Section 2.a.). Although German tax law already implemented many of its principles there are still some areas where need for adjustments exist (e.g. CFC regime, hybrid entities/structures).

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 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. This substance has to be proven to the Federal Central Tax Office in order to receive either a refund for WHT or an exemption certificate so that no WHT is due on future distributions. The ECJ recently held that the previous version of the rule was in violation of EU law (see ECJ decision of 20 December 2017, C-504/16 and C-616/16). Based thereon, the German Federal Ministry of Finance takes the position that (i) the old version of the anti-treaty/directive-shopping is basically no longer applicable and (ii) the new version is handled in a more favourable way for the taxpayer with respect to the substance and activities test (cf. decree of the Federal Ministry of Finance of 4 April 2018).

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 €109,736). 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	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] [18] [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
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 / 15	0 / 8	8	[44] [45]
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	[0] / 5 / 10 / 15	0	0	[1] [58] [2] [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 loan secured by real estate in Germany, profit participating loans and silent partnerships))

Royalties: 15.825% (15% plus 5.5% solidarity surcharge)

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 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 recognized 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 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.
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.

Footnotes:	
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 Malta tax law the tax chargeable on the profits of a company may be offset against the shareholder’s income tax. In such case the Malta 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 Malta 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 payed 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 €80,000 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%. 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.

Footnotes:	
45	Interest - Maximum rate of 8%. Reduced rate of 0% applies on interest arising in (i) the Federal Republic of Germany and paid to the Government of Singapore, the Monetary Authority of Singapore and the Board of Commissioners of Currency, the Government of Singapore Investment Corporation Pte. Ltd. or any other similar institution as may be agreed from time to time between the competent authorities of the Contracting States and interest paid in consideration of a loan guaranteed by ECICS Credit Insurance Ltd., and (ii) Singapore and paid to the Federal Republic of Germany, a Land, a political subdivision or a local authority thereof, 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") or any other similar institution as may be agreed from time to time between the competent authorities of the Contracting States and interest paid in consideration of a loan guaranteed by HERMES-Deckung.
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.

Footnotes:	
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%).
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 apply in case of certain German real estate stock corporations or German investment funds/corporations). 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, it is currently unclear whether the Parent-Subsidiary Directive [1] and the Interest and Royalties Directive [2] will be applicable after April 12, 2019.
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.

Footnotes:	
61	Dividends - Maximum rate of 15%. Reduced rate of 5% applies to dividends paid to a company 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 vencuela.

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

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 incl. 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 carryforwards and interest/EBITDA carryforwards as of 31 December 2019 and 2020 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 FY19 and estimate for FY20) 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.
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 since FY 2012 including the tax consequences as well as the status of tainted shares/holding periods for tax purposes.

No.	Category	Sub-Category	Description of Request
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 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).
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.

No.	Category	Sub-Category	Description of Request
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 €150,000 per transaction including extraordinary transactions (cf. Sec. 90 para. 3 German Tax Code).

GERMANY

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GREECE

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 "ΕΠΕ") or 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 ΕΠΕ and IKE is subject to a minimum capital requirement (i.e € 25,000 as of 1 January 2019). The ΕΠΕ 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. Profits earned by 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. Such credit institutions are subject to 29% tax rate.

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 € 1,500,000.

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 depreciations and/or provision not provided in the tax law, including as regards the legal classification of a transaction.

2. RECENT DEVELOPMENTS

a. Recent tax changes

A recently introduced regime offers tax incentives for the establishment in Greece of family offices managing and administering the wealth and assets of Greek tax resident individuals and their families. Qualifying family offices should incur annual expenditure of at least EUR1 million and should employ at least five employees. The taxable gross revenues of family offices are determined by adding a 7% profit mark-up on all costs incurred, thereby ensuring the full tax deductibility of the relevant costs. Services provided between the family office and its members shall fall outside the scope of VAT.

The Law 89 cost plus regime for shared-service centers established in Greece (either in the form of a separate affiliate or as a non-resident company), allowing the advance pricing of intragroup services, is being constantly modernised and enhanced, with the last amendments having occurred in July 2020. The regime offers tax certainty, in that all expenses taken into account for calculating the profit margin are deductible whereas it is ensured that the said activities do not give rise to effective management in Greece. Qualifying activities include consulting services, software development, IT support, data management and storage, HR management and training, supply chain management, and computer-based call centers. Straightforward cash subsidies are also available for new types of activities and additional job positions.

Subject to a governmental audit, a supertax deduction of an additional 100% of certain R&D expenses, including any depreciation of machinery and equipment used for R&D purposes, is available at the time such expenses are realized. The said rate has been increased from 30% to 100% applicable as of 1 September 2020.

Other recent changes include:

- The reduction of the corporate income tax rate from 28% to 24% with effect from 1 January 2019.
- The reduction of the domestic dividend withholding tax rate from 10% to 5% for distributions following 1 January 2020.
- The introduction of capital gains participation exemption. As from 1 July 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.
- The introduction as of 1 January 2020 of favourable tax treatment for stock options and share plans allowing for relevant benefit to be taxed, under conditions, in accordance with the capital gains tax provisions and not as salary income.
- The implementation of e-books and e-invoicing processes resulting to the entering of the taxpayers record on an online platform of the tax administration enabling thus direct audit verifications. Based on the latest extension provided by the Greek Tax Administration, the mandatory implementation of e-books commences as of 1 April 2021. A set of incentives was also introduced for the implementation of e-invoicing through E-invoicing Providers as an exclusive method of fiscal documents issuance. Such option must be declared with the Tax Administration and excludes the hard copy issuance of fiscal documents for as long as it applies. Incentives introduced for businesses implementing e-invoicing through Providers consist of: Reduction of the Statute of Limitation period from 5 to 3 years for fiscal years in which e-invoicing applies; Granting of a 100% super-deduction of the expenses incurred for, initial purchase of technical equipment and software required for e-invoicing implementation (one-off depreciable); production, transmission and electronic archiving of e-invoices for the first year of issuance of sales fiscal documents; and reduction of the tax refunds processing time by the Tax Administration from 90 days to 45 days.
- The implementation of parts of the EU tax avoidance package including the exit taxation rule and rules on hybrid mismatches with third countries.
- The implementation of DAC6 mandatory disclosure of aggressive tax planning arrangements by intermediaries was also transposed into domestic legislation within 2020.
- Transposition of, Council Directive (EU) 2017/1852 on tax treaty dispute resolution mechanisms aiming to establish an effective and efficient procedure to resolve tax disputes.

b. Coronavirus Aid Relief related tax changes

The Greek Government has introduced, starting from March 2020, a set of temporary measures to financially support enterprises whose business was being disrupted (the “affected enterprises”). Greek enterprises qualify as “affected” to the extent that their operation was suspended by virtue of State decision and/or their active primary Business Activity Codes (KAD) are included in a list published and revised by the Ministry of Finance. Measures in question concern a number of financial liabilities of affected enterprises and are generally subject to the condition that the benefiting enterprises retain their employees. Relevant measures have been implemented and in many cases extended. The initial lockdown period was from 23 March to 3 May 2020 and some measures have been further extended and are valid until the year 2021 (e.g. extension of payment of certain tax and social security liabilities) while the list of “affected enterprises” is being regularly revised with the addition and or deletion of categories of affected enterprises. Such measures include:

- Extension of VAT and social security payments.
- Extension of payment of assessed debts and instalments of arrangements/ settlement schemes.
- Granting of Discount in case of timely payment of taxes and social security contributions.
- Extension of deadlines of various tax returns due to the restrictions resulting of the lockdown.
- Reduction of the VAT rate from 24% to 6% on products necessary for the protection from the coronavirus and its containment 24 March 2020.
- Acceleration of tax refunds of amounts not exceeding €30,000 by the tax authorities.
- Financing of affected enterprises in the form of a refundable prepayment.
- Extension of various deadlines in connection with tax audits, administrative and of judicial appeals.
- Reduction of rentals by 40% applicable both to businesses and their employees whose employment contracts have been suspended.
- Tax credits and refunds to real estate owners whose rental income has been reduced by law.
- Reduction of the tax prepayment assessed with the income tax return filed within 2020 to report income of FY 2019 proportionally to the reduction of the taxpayer’s revenues during the first semester of 2020 compared to the respective semester of 2019.

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 0,20% sales tax that applies exclusively in case of transfer of shares admitted for trading in a stock Exchange (see below in section f).

Share transactions are also preferable 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 July 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 statute of limitation (“SOL”) that apply for fiscal years before and after 2014 as well as of different type of taxes, e.g. property taxes, indirect taxes, gift taxes. Current SOL in case of infringements that are classified as tax evasion 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 listed on the Athens Stock Exchange effected on or off exchange. 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. Certain exemptions apply in respect of transactions in listed shares by market makers.

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 to the tax authority where the real estate is located. Land registration duties are paid to the land registry or the Cadastral 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

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 III.

e. Purchase Agreement

Asset purchase agreement 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 acquisition of business as a going concern.

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 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 between 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, are 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 type 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 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 € 1,500,000 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 July 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 grandfather 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 3d above).

Equity financing is subject to 1% 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 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 payment 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 trading on trading venues within the EU or on organised markets outside the EU, provided such markets are regulated by an authority accredited by the International Organisation of Securities Commission.

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 earning-stripping rules. In particular, net interest expense, if in excess of € 3 million, is deductible provided that it does not exceed 30% of the company's EBITDA. EBITDA is assessed under the Greek accounting principles following the readjustments for tax purposes. Net interest is defined as the amount by which interest expenses on loans and other financing arrangements and relevant financing costs exceed interest revenues. Interest which exceeds the said thresholds may be carried forward indefinitely. Credit institutions, leasing and factoring companies are exempt from the scope of the earning-stripping rules (said rule has been assessed equally effective to the ATAD rule and may remain unchanged until 1 January 2024).

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. Same jurisdictions have neither signed a mutual assistance agreement with Greece in Tax Matters nor the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matter nor have they committed themselves to the automatic exchange of financial information starting in 2018 the latest. 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 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 dividends and capital gains participation exemption is not tax deductible.

iii Related Party Debt

Interest on related party loans is subject to transfer pricing rules whereas interest on third party loans, other than interest on loans by banks, inter-bank loans, as well as corporate bond loans, exceeding specific statistical thresholds set by the Bank of Greece is 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 ITC effective as of 2014 and the limitation of the interest deduction on borrowing for financing the acquisition of shares it is uncertain 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 dividend. 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 the anti-hybrid rules in the context of the transposition of the EU Anti-Tax Avoidance Directive into Greek law. Relevant rules aim at ensuring that tax deductions or credits are taken only in one jurisdiction without resulting in double non-taxation.

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 -otherwise applicable 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. There are no guidelines by the Greek Tax Authorities in connection with the time that possible positive or negative price adjustment is taxable.

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 reorganization 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 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.

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 01 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 thereafter.

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 FY 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 installments. The first installment 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 listed on the Athens Stock Exchange effected on or off exchange.

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 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 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;
- 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 case, 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. Remittance of profits 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.

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 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 €750 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 € 20,000 shall be imposed in case of non-filing, whereas a penalty of € 10,000 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 intra-group 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 as the Greek ITC attributes a taxable status (opaque status) to almost any type of domestic companies, irrespective of their legal personality i.e irrespective of whether they are incorporated as general partnership, limited partnership, civil company, for profit or not-for-profit silent company, profit-aiming joint venture operating within the Greek territory, societe anonyme, limited liability partnership and private company.

b. Use of Hybrid Instruments

As regards the hybrid instruments and relevant considerations, please refer to Section 6d. Greece has also implemented the measures set forth in the Anti-Tax Avoidance Directive (EU) 2016/1164, as modified by Council Directive (EU) 2017/952 ("ATAD") in relation to the anti-hybrid mismatches.

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 sale of the assets or the provision of services that incorporate 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. Relevant profits are recorded in non-taxable reserves until they are distributed or capitalised.

No patent box regime is provided in Greece. However, specific incentives apply to instruments and equipment used for research and development, as well as R&D expenses including amortisation of instruments and equipment used for R&D 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 of certain services to their head offices or to other associated foreign companies;
- the tonnage tax regime applicable to vessels and shipping enterprises;
- the venture capital companies and funds regimes; 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 is bound to transpose into domestic law the EU Directives that implement OECD/G20 BEPS conclusions at EU level. Since the introduction of a new income tax code on 1 January 2014, Greece has already implemented certain measures which are compliant with the BEPS principles, namely CFC rules (Action 3), interest deduction limitations (Action 4), the EU Directives providing for automatic exchange of information on cross-border tax rulings and advance pricing agreements between EU member states (Action 5), 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 (Action 14). 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.

Greece has ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI") (BEPS Action 15) adopting 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 measures relevant to permanent establishment status.

13. ACCOUNTING CONSIDERATIONS

a. Combinations

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.

Tax depreciation treatment following combinations depends largely on whether such combinations are effected under a tax neutral reorganization regime or not. Moreover, only the reorganization regime of Law 1297/1972 allows for the partial stepping-up for tax purposes of assets transferred under a combination (such as a merger).

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 are more challenging from an accounting perspective given that the price must be allocated to each of the assets to be transferred including goodwill.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Refund of previously injected capital authorised by means of a corporate resolution approving a share capital reduction is 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 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 shares and they are not returned to the shareholders through a share capital reduction within a ten years 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 ("ATAD"). ATAD introduces 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 3d. 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 typology of the 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
Argentina *	5	15	20	
Australia *	5	15	20	
Austria	5	8	7	[1] [2] [3]
Belgium (revised version)	5	5 or 10	5	[1] [2] [4] [5]
Brasil *	5	15	20	
Canada	5	10	10	[6]
Chile *	5	15	20	
China	5	10	10	[7]
Colombia *	5	15	20	
Croatia	5	10	10	[1] [2] [8]
Cyprus	5	10	0	[1] [2] [9]
The Czech Republic	5	10	10	[1] [2]
Denmark	5	8	5	[1] [2] [10]
Finland	5	10	0 or 10	[1] [2] [11] [12]
France	5	10	5	[1] [2]
Germany	5	10	0	[1] [2] [13]
Hungary	5	10	0 or 10	[1] [2] [14] [15]
India	5	15	0	
Indonesia *	5	15	20	
Ireland	5	5	5	[1] [2] [16]
Italy (revised version)	5	10	0 or 5	[1] [2] [17] [18]
Japan *	5	15	20	
Luxembourg	5	8	5 or 7	[1] [2] [19] [20]
Malaysia *	5	15	20	
Malta	5	8	8	[1] [2] [21]
Mauritius *	5	15	20	

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Mexico	5	10	10	[22]
The Netherlands	5	8 or 10	5 or 7	[1] [2] [23] [24] [25]
Norway	5	10	10	[1] [2] [26]
Philippines *	5	15	20	
Poland	5	10	10	[1] [2]
Portugal	5	15	10	[1] [2] [27]
Puerto Rico *	5	15	20	
Romania	5	10	5 or 7	[1] [2] [28] [29]
Russia	5	7	7	[30]
Serbia	5	10	10	[31]
Singapore *	5	15	20	
Slovakia	5	10	10	[1] [2]
Slovenia	5	10	10	[1] [2] [32]
South Africa	5	8	5 or 7	[33] [34]
South Korea	5	10	10	[35]
Spain	5	8	6	[1] [2] [36]
Sweden	5	10	5	[1] [2] [37]
Switzerland	5	7	5	[38]
Turkey	5	12	10	[39] [40]
UK	5	0	0	[1] [2] [41] subject to Brexit
U.S.A.	5	0 or 15	0	[42]
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.

Footnotes	
1	Pursuant to the provisions of the EU Parent-Subdiary 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.
2	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.
3	Dividends - 5% applies according to Greek domestic legislation since in the latter case 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.
4	Dividends - 5% applies according to Greek domestic legislation since in the latter case the Treaty provides for a higher rate of 15% or 5% when 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
5	Interest - Reduced rate of 5% applies only to bank loans.
6	Dividends - 5% applies according to Greek domestic legislation since in the latter case the Treaty provides for a higher rate of 10% or 5% when 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.
7	Dividends - 5% applies according to Greek domestic legislation since in the latter case the Treaty provides for a higher rate of 10% or 5% when 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.
8	Dividends - 5% applies according to Greek domestic legislation since in the latter case the Treaty provides for a higher rate of 10% or 5% when 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	Dividends - 5% rate applies according to Greek domestic legislation, since in the latter case the Treaty provides for a higher rate of 25%.
10	Dividends - 5% rate applies according to Greek domestic legislationt, since in the latter case the Treaty provides for a higher rate of 38%
11	Dividends - 5% rate applies according to Greek domestic legislation, since in the latter case the Treaty provides for a higher rate of 47%.
12	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.
13	Dividends - 5% rate applies according to Greek domestic legislation, since in the latter case the Treaty provides for a higher rate of 25%.
14	Dividends - 5% rate applies according to Greek domestic legislation, since in the latter case the Treaty provides for a higher rate of 45%.
15	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.

Footnotes	
16	Dividends - 5% applies according to Greek domestic legislation since in the latter 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.
17	Dividends - 5% rate applies according to Greek domestic legislation, since in the latter case the Treaty provides for a higher rate of 15%.
18	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”.
19	Dividends - 5% rate applies according to Greek domestic legislation, since in the latter case the Treaty provides for a higher rate of 38%.
20	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
21	Dividends - 5% applies according to Greek domestic legislation since in the latter case 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.
22	Dividends - 5% rate applies according to Greek domestic legislation, since in the latter case the Treaty provides for a higher rate of 10%.
23	Dividends - 5% rate is applicable when the distributing company is a Greek tax resident, since in the latter case the Treaty provides for a higher rate of 35%.
24	Interest - Maximum rate 10%. Reduced rate of 8% is applicable when the interest is paid to a bank or a financial institution.
25	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.
26	Dividends - 5% rate applies according to Greek domestic legislation, since in the latter case the Treaty provides for a higher rate of 40%.
27	Dividends - 5% rate applies according to Greek domestic legislation, since in the latter case the Treaty provides for a higher rate of 15%.
28	Dividends - 5% rate applies according to Greek domestic legislation, since in the latter case the Treaty provides for a higher rate of 45%.
29	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.
30	Dividends - 5% applies according to Greek domestic legislation since in the latter case the Treaty provides for a higher rate of 10% or 5% when 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.
31	Dividends - 5% rate applies according to Greek domestic legislation, since in the latter case the Treaty provides for a higher rate of 10%.
32	Dividends - 5% applies according to Greek domestic legislation since in the latter case the Treaty provides for a higher rate of 15% or 5% when 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	
33	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.
34	Dividends - 5% applies according to Greek domestic legislation since in the latter case the Treaty provides for a higher rate of 15% or 5% when 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	Dividends - 5% applies according to Greek domestic legislation since in the latter case the Treaty provides for a higher rate of 15% or 5% when 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.
36	Dividends - 5% applies according to Greek domestic legislation since in the latter case the Treaty provides for a higher rate of 10% or 5% when 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
37	Dividends - 5% rate applies according to Greek domestic legislation, The Treaty provides that when dividends paid by a company which is a resident of Greece to a resident of Sweden shall in Greece be subject to Greek income tax provided that such dividends are deducted from the amount of the company's total net income subject to the income tax on legal entities (as per Article VII par. 2 of the Greek – Swedish Treaty).
38	Dividends - 5% applies according to Greek domestic legislation since in the latter case the Treaty provides for a higher rate of 15% or 5% when 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."
39	Dividends - 5% rate applies according to Greek domestic legislation, since the Treaty provides for a higher rate of 15%.
40	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].
41	Dividends - 5% rate applies according to Greek domestic legislation, since the Treaty does not include any provision for dividends.
42	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 the tax certificates issued for the previous five years (based on the standard applicable Stautute 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 slides, 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 balaces, 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
13	Tax Due Diligence	General	Copies of the lists of agreements filed with the tax authorities for the previous five years.

No.	Category	Sub-Category	Description of Request
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 2018 (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.).

No.	Category	Sub-Category	Description of Request
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.
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 therefrom 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.

FOR MORE INFORMATION CONTACT:

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HUNGARY

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

Taxes generally applicable for businesses

Tax name	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)
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 3.2 million) and less than 50 employees	Business activity	Adjusted cash-flow balance increased by disbursement of personal costs	13% (if chosen, it replaces CIT, social contribution tax and vocational training contribution)
Value added tax	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

Employment taxes

Tax name	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	19.5% until 1 July 2019 17.5% between 1 July 2019 – 30 June 2020 15.5% after 1 July 2020 (tax allowances are available)
Vocational training contribution	Employer	It is an employment tax	Gross salaries	1.5% (exemptions 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	HUF 1,341,000 (EUR 4,190) per year

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 the motor vehicle and trailers are also creating 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, electric equipment etc.) became waste in the territory of Hungary, the tax subject is the person first placing the product on the domestic market, or using it for own.
- 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.

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 an IFRS based accounting instead of the Hungarian accounting standards, specific tax base adjusting items apply.

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

= Tax base -9% CIT decreased by tax allowances, as follows:

- 80%: development tax allowance
- 70% (of the remaining tax liability): investments aiming at increasing energy efficiency; subsidies to film production and certain team sports; tax allowance for SMEs; live music services

= 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 HUF 0.5 billion to HUF 10 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

State of emergency rules were in place in Hungary between 18 March – 18 June 2020. 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 between March-June 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. 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. State support 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.

Tourism as another preferred area was supported with tax exemptions between March – December and with the increase of attractivity to tourism-oriented benefit-in-kinds. State aid programs are still 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 HUF 10 billion (EUR 28.5 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. These programmes are still available.

Surtaxes were also levied to finance the economic package. Retail surtax was reintroduced with a permanent and long-term character, while banking surtax was temporary 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 tax payer 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).

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 Hungarian-located real estate, further details are included in f. below.
- In a domestic transaction, capital gains deriving from the quota sale are subject to the 9% CIT, which may be offset by the losses carried forward up to 50% of the tax base.
- Reported participation scheme is available in local transactions to achieve exemption from future capital gains for exit (for details see VII.a.).
- CIT liability over capital gains may arise for the sale of real estate holding companies even in an international scenario (for details see IX.a.).
- Limitation on loss carry-forward at the level of the target may apply (see III.b.i.).

b. Tax Attributes

Restricting regulations are in place in Hungary limiting the loss carry forward 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. Carry-forward losses of the company can only be utilised in proportion to the revenues realised from its former activity.

c. Tax Grouping

As of 1 January 2019, corporate group taxation became 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 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:

- Only TP documentation at the group level shall be prepared, i.e transactions within the domestic tax group members will be exempted from the TP documentation and related price adjustment obligation 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, transformation qualifies as preferential only if the transaction is supported by real business and commercial reasons, and the owners of the predecessor obtain shares in the successor, and cash amounting to maximum 10% of the nominal value of the acquired shares, i.e pay out of leaving owners 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 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 arisen on the capital gain realised by the private person seller is taxable based on Hungarian tax law. Regarding the capital gain deriving from the purchase price received from the Hungarian corporate buyer, the Hungarian corporate buyer is liable to calculate and withhold taxes and social security contributions due on it 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 person seller. The buyer shall obtain numerous information concerning the private person 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 to 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 HUF 1 billion (approximately EUR 3.125 million), and 2% above this threshold. The tax will be capped, however, at HUF 200 million (approximately EUR 625,000) per property. The transfer of the shares held in a real estate company between related parties is, however, free from the 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, by filing a so-called ("VBBA") form. 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 the 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 (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.

h. Share Purchase Advantages

In 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. However, these revisions do affect the CIT base.

In Hungary, it is not possible to acquire a tax clearance certificate. Nevertheless, the Hungarian Tax Authority qualify the taxpayers based on their previous operation (at least three years of operation, taxpayer position, in the past five years no tax shortage higher than 3% of their tax liabilities, max. HUF 500,000 (EUR 1,562) net outstanding tax liabilities, subject to default penalty in the past years max. two times, no enforcement procedure etc.). In case a company fulfils the qualification criteria it is qualified as "reliable" taxpayer. These taxpayers receive preferential treatment (only 50% of the tax penalty applicable based on general rules is levied in case of a tax shortage, VAT refund with a shorter deadline, shorter audit periods etc.). The Hungarian Tax Authority also qualify "risky taxpayers" (in case of net outstanding tax liabilities or tax shortage higher than HUF 100 million (EUR 312,500), undeclared employees) and these taxpayers face negative discrimination in form of higher penalties and longer audit periods.

Although tax clearance certificates are not available in Hungary, there is an extensive ruling system.

i. Share Purchase Disadvantages

- The buyer may not recognise goodwill on a share deal in his standalone financial statements.
- Potential restriction on the utilisation of the loss carry forwards of the target company, further details are noted in Section 3b. 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 deal is subject to VAT (27%).
- Goodwill can only arise in connection with an asset deal.
- Preferential schemes available: gains realised on reported intangibles and development reserve for intangibles may be exempted from CIT if certain conditions are met.
- If the transferred asset is an immovable property located in Hungary or real estate related rights, the transaction triggers a transfer tax liability (for details see IV.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.

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 loss carryforwards, should be taken into account and may offset the taxable gain up to 50% of the tax base. The 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, e.g. loss carryforwards do not carry over 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 may not have the legal effect of the supply of goods, i.e the transaction may be treated as VAT exempt if certain conditions are met (TOGC regime). 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.

In CIT, 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 shareholding in the acquiror in consideration for the assets. Special rules apply to the utilisation of carry-forward losses generated by the business line prior to the transfer.

e. Purchase Agreement

If an asset deal qualifies as tax exempt under the TOGC regime, it is recommended to include this fact in the purchase agreement, along with the declarations of the transferee required by the Hungarian VAT Act (e.g. 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

As of 16 June 2016, goodwill cannot be accounted for in a company's separate financial statements in case a company acquires the majority of the shares of another company. According to the new definition, 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 here) is a functional part of the company that entails the necessary assets and all of the linked liabilities. Consequently, goodwill can only arise in case of an asset deal. If the useful life cannot be estimated, goodwill shall be amortised over at least five but maximum 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.

In the CIT the accepted amortisation key of 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 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 exempt from 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 case of real estate and related rights, a tax rate of 4% of the market value up to HUF 1 billion (approximately EUR 3.125 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 HUF 200 million (approximately EUR 625,000) per property. Preferential rates apply (3% or 2%) in case of acquisition of land plots for building residential properties. As per 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. Specific transition rules apply until 30 June 2021.

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. Specific transition rules apply until 30 June 2021.

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 aids, 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.

5. ACQUISITION VEHICLES

a. General Comments

If a holding company intends to decrease its CIT base by any costs emerged at the level of the holding, further, if it intends to deduct input VAT, real economic activity shall 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 own fixed assets, as well as sufficient number of personnel to perform economic activities.

Neither the wording of the law, nor any publicly available tax authority guidelines provide for an explanation as per the level of substance requirements; however, we may rely on an old guideline that was applicable on the substance requirements of CFCs. Specific investigation is suggested 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 sale of shares at the level of the Domestic Acquisition Vehicle. (for details see 7a.)
- Corporate group taxation is available only for domestic taxpayers (see Section 3c.).

- Establishing a Hungarian special purpose vehicle (SPV) might be recommended for debt push down purposes, provided that the purchase of the shares is financed mostly with foreign capital, however debt push down 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 aiming 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 9a.).

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 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 as 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 middle-sized corporations or start-ups who could act as acquirors is limited. A great number of successful middle-sized corporations are family businesses who consider M&A as 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 administrative hindrances to the transfer of funds either to the country or out of the country.

b. Equity

In Hungary, there are no tax incentives aiming 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 dividend, 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 own equity drops less than the half of the registered capital due to a loss, or (2) the 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, when deciding about the financing of an acquisition, interest deduction limitation rules and the general approach of the Hungarian Tax Authority concerning debt push down shall be taken into account.

ii Limitations on interest deductions

As of 1 January 2019, new thin capitalisation 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 HUF 939,810,000 (approximately EUR 3 million) – whichever is higher – the excess part will not be acknowledged in the CIT base of the given tax year. However, the not acknowledged excess borrowing costs 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 kind 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 a consolidated financial statement.

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 parallelly.

iv Debt Pushdown

Leveraged buyout is a possible strategy that may be accepted from a debt push down perspective. In case of a leveraged buyout, own contribution required by the financial institute providing for the loan is merged in an acquisition company (i.e a holding), assuming that more than one investor is planning the acquisition. The holding acquires the target company and after that the two entities merge in order to decrease administration burdens. However, debt push down and the consideration of related interest expenses as tax base decreasing items might be challenged by the tax authority, provided that 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 I and II include provisions on hybrid mismatches too, which are implemented into the domestic law as of 2020. 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 in the Hungarian GAAP, therefore, there are some uncertainties among professionals on this topic. According to a 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 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 shall 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 shall be performed based on the tax legislation 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 a numerous Hungarian double tax treaty, 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). In lack of a tax treaty proportional offsetting of foreign corporate tax liability against the domestic tax liability is possible.

b. CFC Regime

As of 1 January 2019, the CFC rules were amended again compared to the previous year. Following the new rules, 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 persons state of tax residence or of the foreign business establishments state of location represents profits of no more than HUF 243,952,500 (approximately EUR 762,350) and its non-trading income represents profits of no more than HUF 23,495,250 (approximately EUR 73,420), 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 EUR 750 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.

c. 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).

d. 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. These royalty exemption rules, however, 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 TP-related information in the documents. Taxpayers had to prepare their TP documentation based on the new requirements for the 2018 financial year. The preparation of proper transfer pricing documentation is of high importance, especially in the light of the Yearly Audit Guidelines of the Hungarian Tax Authority published in February 2019. The compliance with TP rules will be in the focus of the Tax Authority's audit activity this year. 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. Moreover, the penalties are rather high: HUF 2 million (approximately EUR 6,250) 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 in-transparent for corporate tax, while some other countries regards these entities as transparent, from which company groups may benefit from, according to the foreign rules.

At the same time, Hungary regards foreign entities as transparent or in-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 which is in effect since January 2018. 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, which include provisions on hybrid mismatches too. The respective provisions were implemented into domestic law of the Member States from 31 December 2019.

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 frequency of such entities, the Hungarian Tax Authority focusses its investigations to screen out entities overperforming the pure low risk/function schemes.

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

Should a Hungarian corporation alienate any kind of intangibles held, the gain deriving from the alienation is taxable in Hungary. In the 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), is treated as an accounting cost that decreases the accounting profit before tax. Furthermore, it is an item that decreases the tax base in respect of CIT. This cost is tax deductible twice but can only be done so in relation to R&D costs, associated to a taxable person's own activities, which includes sub-contractor R&D expenditure.

The detdevelopment. These expenses are deductible in the tax year that they are incurred, or in the year of taking into account the depreciation based on capitalised costs for experimental development were capitalised.

As of 2014, the above R&D advantages could be shared among Hungarian related parties. As of 26 July 2018, the tax base allowance could be shared even between the domestic R&D service provider and the customer; however, this allowance could not be forwarded to related parties.

A four-fold R&D cost deductibility is available (up to HUF 50 million, or approximately EUR 156,250) for projects carried out jointly with universities or scientific institutions.

ii Development tax allowance

Development tax allowances (80%) 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 became effective on 1 January 2017. 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 percentage points may be applied for SMEs). The tax allowance is capped at EUR 15 million 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 production 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 the 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 (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 has 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 tax liability in Hungary even if the tax treaty allows taxations right for Hungary in case of dividends.

Another solution for cash distribution from reserves is decreasing the subscribed capital. In case 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)
- inter-company loans (interest limitation rules shall be observed)

All these transactions fall under the strict transfer pricing rules in order to avoid tax inefficiencies.

b. Substance Requirements for Recipients

In case of received services, it is 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 HUF 200,000 (approximately EUR 625).

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 expected to be fully implemented into Hungarian domestic law by 31 December 2019.

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 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 tax shortage itself. Contrary to other types, 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 of the respective tax return (CIT, PIT, LBT). A binding ruling is issued for five years that can be extended with two years. In case there is a change in the legal system or in the background facts of the transaction the non-binding ruling becomes inapplicable. A special form of durable binding ruling is also available for taxpayers who exceed certain thresholds (more than 200 employees in the previous year or a total asset value higher than 1 billion) in regard the CIT aspects of a given transaction. Even durable binding ruling is issued for 3 years. It is not influenced by changes of the legal system, nevertheless a change in the background facts still renders such a ruling inapplicable. The deadline of issuing a binding ruling is 90 days with max. 60 days extension. The payable fee for such procedures depends on the nature of the ruling and the urgency (HUF 5-11 million, approximately EUR 15,600 – 34,400) for binding rulings.

ii Advance Pricing Agreement

For transfer pricing purposes, Hungary applies a good working APA (Advanced Pricing Agreement) system, in place since 2007. The taxpayer has the possibility to request the Tax Authority 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 Tax Authority, are HUF 2 million (approximately EUR 6,250) for a unilateral statement. In case of a multilateral statement, the fee is HUF 2 million multiplied by the number of competent authorities involved. APA procedure shall 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 with a fee of HUF 500,000 (approximately EUR 1,560), 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 HUF 350 million (approximately EUR 970,000). Such transactions must be notified to the Home 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
- 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]

HUNGARY

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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.
21	Royalties - Reduced rate of 5% applies to royalties on industrial, commercial and scientific rentals.

Footnotes:	
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.

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

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 for now
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	General	Who were the persons responsible for financial accounting taxes and controlling within the review period
11	Tax Due Diligence	General	Summary of the business results for the review period
12	Tax Due Diligence	CIT	CIT returns for the review period
13	Tax Due Diligence	CIT	Supporting documents and calculations for the significant tax base adjustments in the review period between
14	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
15	Tax Due Diligence	CIT	Transfer pricing documentation for the review period
16	Tax Due Diligence	CIT	Are there any R&D activities?
17	Tax Due Diligence	Local taxes	LBT returns for the review period
18	Tax Due Diligence	Local taxes	Supporting documents and calculations for the significant tax base adjustments in the review period between
19	Tax Due Diligence	Local taxes	Division of the tax base between tax authorities (if relevant)
20	Tax Due Diligence	Local taxes	Allowances, R&D in local business taxes

No.	Category	Sub-Category	Description of Request
21	Tax Due Diligence	Local taxes	List of establishments within Hungary, how many local tax authorities are affected within the reviewed period
22	Tax Due Diligence	Local taxes	Any tax audits from local governments, correspondences with local authorities
23	Tax Due Diligence	Local taxes	Any other local taxes: property taxes, etc
24	Tax Due Diligence	Employment taxation	Type of employments: own workers, rented workers, students, etc
25	Tax Due Diligence	Employment taxation	What is the typical remuneration package for employees: fixed wages, performance wages, premiums, bonuses
26	Tax Due Diligence	Employment taxation	In-kind benefit packages, cafeteria elements – please specify them and their taxation methods within the reviewed period
27	Tax Due Diligence	Employment taxation	Company cars, mobiles, other assets used for private purposes – please specify them and their taxation methods within the reviewed period
28	Tax Due Diligence	Employment taxation	Tax-free items for employees
29	Tax Due Diligence	Employment taxation	Expatriates, posted workers
30	Tax Due Diligence	Employment taxation	Business trips inland and abroad
31	Tax Due Diligence	Employment taxation	Home office workers
32	Tax Due Diligence	Employment taxation	How payroll management is carried within the company
33	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
34	Tax Due Diligence	VAT and Customs	What is the typical VAT position of the entity
35	Tax Due Diligence	VAT and Customs	Tax authority relations, audits, consultations, etc
36	Tax Due Diligence	VAT and Customs	Special transactions e.g. triangulations, chain transactions, call-off stock, consignments, stock or tooling outside, special services

No.	Category	Sub-Category	Description of Request
37	Tax Due Diligence	VAT and Customs	Typical price reductions
38	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.).
39	Tax Due Diligence	VAT and Customs	Introduction of the EKAER handling – brief description of workflow, sample of electronics notifications performed
40	Tax Due Diligence	VAT and Customs	Invoicing e.g. own invoicing, self-billing, paper or electronic invoices
41	Tax Due Diligence	VAT and Customs	Online invoice data reporting, invoicing software, plug-in software
42	Tax Due Diligence	Other taxes	Green taxation – introduction of scope of products that are within the liability, tax returns and calculations
43	Tax Due Diligence	Other taxes	Other

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INDIA

1. INTRODUCTION

The idea behind this guide is to introduce the basic aspects relating to mergers and acquisitions as per the current tax and regulatory environment in India.

An overview of available types of legal entities for investment in India are as under:

a. 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. Income of a company is liable to tax as per domestic tax rates. Dividend received from a company is liable to tax in the hands of shareholders.

b. Limited Liability Partnership ("LLP")

A LLP is a form of business entity which provides an ability for individual partners to be shielded from the liabilities created by another partner's business decision or misconduct. 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 governed by the Ministry of Corporate Affairs. LLP is permitted to carry out those activities which are agreed between the partners in the LLP Agreement. LLP is generally funded with Partner's capital. FDI are permitted in 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. Profits of an LLP are liable to tax as per domestic tax rates. Such profits after tax in the hands of the LLP, are freely distributable to the partners as share in profit of the LLP and are not liable to any further tax in the hands of the LLP or the partner.

c. Partnership

A partnership firm 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 Indian Partnership Act, 1932 and are governed by the regional registrar of firms. A partnership agreement forms the constitutive documents of a partnership firm and lays down the manner in which the partners would operate the firm. A partnership firm is generally funded through partner's capital contribution. Any investment by foreign entities is permitted in Indian partnership firms subject to prior approval of RBI. Profits of a partnership firm are liable to tax as per domestic tax rates. Such profits after tax in the hands of the partnership firm, are freely distributable to the partners as share in profit of the partnership firm and are not liable to any further tax in the hands of the partnership firm or the partner.

d. Liaison Office ("LO")

The LO functions as a representative office of a foreign company and it has no separate legal existence in India. An 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. 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 an 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.

e. Branch Office ("BO")

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 limitation 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 discharged in India. BO is treated as a PE/business connection of the foreign enterprise and profits attributable to such BO are taxed at 40% (plus applicable surcharge and education cess). 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 annual income or the actual payment of HO expenses attributable to Indian business, whichever is lower.

f. Project Office ("PO")

A foreign company preferably engaged in one-time turnkey or installation project, generally sets up a PO in India. Such PO does not constitute a separate legal entity in India. Such PO can be set up upon obtaining 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.

Tax rates in India are subject to change every year. The applicable effective rates of tax for the tax year 2020-21 and proposed for tax year 2021-22 are as under:

Particulars	Taxable income below INR 10 million	Taxable income between INR 10 million to INR 100 million	Taxable income exceeding INR 100 million
Domestic Company - if turnover or gross receipt does not exceed INR 4 billion in the FY 2019-20)	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 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%

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. Covid-19 response

The Prime Minister of India announced an economic relief package of INR 20 trillion with the moto of "Atmanirbhar Bharat". This covers a gamut of economic, financial & social measures with a vision of self-reliant India and development of Global Supply Chain originating in India. The Finance minister has also announced certain tax measures like extension of compliance timelines, reduction in the rates of withhold taxes on payments made to residents. The Finance bill, 2021 proposes the following benefits in light of Covid scenario:

- Leave Travel Concession ("LTC") Cash scheme - This scheme provides for exemption in respect of the value of travel concession or assistance received by or due to an employee from his current or former employer for himself and his family, in connection with his proceeding on leave to any place in India. In view of the situation arising out of outbreak of COVID pandemic, it is proposed to provide tax exemption on cash allowance in lieu of LTC.
- With a view to incentivize home buyers and real estate developers, the Finance Bill, 2021 proposed to increase safe harbor limit from 10% to 20% for specified primary sale of residential units. Safe harbor limit pertains to margin of fluctuation allowed between the stamp value of the residential unit and consideration received against the same.

b. Tax on transfer of money or property by a partnership firm/Association of Persons/Body of Individuals to its partners or members

The Finance Bill, 2021, provides that where a partner receives any capital asset or stock-in-trade from a firm in connection with the dissolution or reconstitution of such firm, then it shall be considered as a transfer to the partner. Further, it provides that any profits and gains arising from such deemed transfer of capital asset or stock in trade, by the firm shall be deemed to be the income of the firm.

c. Depreciation on Goodwill

The Finance Bill, 2021, proposes to exclude "Goodwill of a business or profession" from the definition of "block of assets" and from the list of assets eligible for depreciation. Thus, such an amendment could lead to an additional tax burden and increased costs of acquisition. This amendment being retroactive in nature, meaning that depreciation on any past goodwill, or partly claimed in the past, would not be available going forward. However, in case where goodwill is acquired, the consideration paid for acquisition of such goodwill will continue in the tax books as non-depreciable asset, the cost of which will be available as a deduction in computing capital gains on any subsequent transfer of business.

It is also proposed that in a case where the goodwill of a business/ profession forms a part of the block of assets for prior years, and the taxpayer has claimed depreciation, the written down value in such a case will be determined by reducing the below from the actual cost of goodwill -

- Amount of depreciation actually allowed for such goodwill before the year 1987-88, and
- Amount of depreciation that would have been allowable from the year 1987-88 as if the goodwill was the only asset in the relevant block of assets.

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 FA 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 Bill, 2021 proposes the below amendments:

- 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.

e. Abolition of dividend distribution tax

Earlier, domestic companies paying dividends to its shareholders were required to pay dividend distribution tax (DDT) @20.56% and such dividend was exempt 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 dividend received by holding company from its subsidiary company on payment of dividend to the shareholders of the holding company. Dividends distributed to non-resident shareholders are liable to withholding @ 20% or respective DTAA 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 Bill, 2021 has proposed that dividends paid to Foreign Institutional Investors (FII) from certain securities shall be subject to withholding tax at the rate of 20% or DTAA rate, whichever is lower, subject to the FII furnishing a Tax Residency Certificate to the payer.

f. Overseas listing

Presently, Indian companies are allowed 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 Companies (Amendment) Bill, 2020 provides power to allow listing of shares of companies in permitted stock exchanges. Ministry of Corporate Affairs and SEBI are yet to announce norms for overseas listing. Earlier, SEBI had suggested that only financially stable companies would be allowed to list in the overseas markets.

g. General Anti-Avoidance Rules ("GAAR")

The provisions of GAAR were first introduced in India by Finance Act, 2012. However, after introduction, its applicability was deferred, and finally, it came into force from FY 2017-18. Further, Central Board of Direct Taxation (CBDT) vide circular 7 of 2017 dated 27 January 2017 issued certain clarifications in the form of FAQs for specific questions on provisions of 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.

h. Long term capital gains (“LTCG”) on transfer of listed shares

The Finance Bill 2021 proposes to exempt the capital gains, arising or received by a non-resident, on account of relocation from the original fund to the resultant fund. In this regard, the meaning of original fund, resultant fund and relocation is specified below. Presently, the LTCG (exceeding INR 0.1 million) arising on transfer of equity shares listed on a recognized stock exchange would be taxed at a concessional rate of 10%, if securities transaction tax (STT) has been paid on both acquisition and transfer in case of equity shares; and on transfer of units of equity-oriented mutual funds or units of business trust (subject to certain exceptions). However, indexation, rebates and certain deductions will not be available on the same. In case of non-residents, the benefit of computation of LTCG in foreign currency shall not be available. The meaning of the terms stated above are as follows:

- **“original fund”** means a fund established or incorporated or registered outside India, which collects funds from its members for investing it for their benefit and fulfills the following conditions, namely:—
    - the fund is not a person resident in India;
    - the fund is a resident of a country or a specified territory with which an agreement referred to in sub-section (1) of section 90 or subsection (1) of section 90A has been entered into; or is established or incorporated or registered in a country or a specified territory as may be notified by the Central Government in this behalf;
    - the fund and its activities are subject to applicable investor protection regulations in the country or specified territory where it is established or incorporated or is a resident; and
    - fulfils such other conditions as may be prescribed;(iv) fulfils such other conditions as may be prescribed;
- **“relocation”** means transfer of assets of the original fund, or its wholly owned special purpose vehicle, to a resultant fund on or before the 31 March 2023, where consideration for such transfer is discharged in the form of share or unit or interest in the resulting fund to
    - the shareholder or unit holder or interest holder of the original fund in the same proportion in which the share or unit or interest was held by such shareholder or unit holder or interest holder in such original fund, in lieu of their shares or units or interests in the original fund.
    - the original fund, in the same proportion as referred to in sub-clause (i), in respect of which the share, or unit or interest is not issued by resultant fund to its shareholder or unit holder or interest holder;
- **“resultant fund”** means a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership, which––
    - has been granted a certificate of registration as a Category I or Category II or Category III Alternative Investment Fund, and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012 made under the Securities and exchange Board of India Act, 1992; or International finance services Centres Authority Act, 2019; and
    - is located in any International Financial Services Centre as referred to in sub-section (1A) of section 80LA;’.

i. Valuation of unquoted equity shares

Finance Act, 2017 introduced new provisions to provide that where consideration for transfer of shares of a company (other than a quoted share) is less than the FMV of such a share, the FMV determined as per the prescribed rules shall be deemed to be the full value of consideration for computing “capital gains”. Further, in July 2017, the CBDT has issued final rules for the determination of FMV of unlisted equity shares for this purpose.

j. Benefits available to International financial service center (IFSC) in India

- **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 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 IFSC.
- **Transactions not regarded as transfer** - Any transfer of below capital assets, made by a non-resident on a recognized 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 are as below:
    - bond or Global Depository Receipt
    - rupee denominated bond of an Indian company
    - derivative
    - 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 @ 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 the 1st day of April, 2020 but before the 1st day of July, 2023,

Further, the Finance Bill, 2021 proposed the below amendments in respect of IFSC:

- **Relaxations in certain conditions for relocation of eligible fund manager** – The Finance Bill, 2021 proposes to empower the Government to notify 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 March 31, 2024.
- **Exemption to investment division of offshore banking unit** – The proposed amendment provides for exemption to specified funds in case of any income accrued or arisen to, or received by the investment division of 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** – The proposed amendment provides for exemption in the hands of non-residents on any income accrued or arisen 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 March 31, 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, on account of relocation of fund** – A new section is proposed to be inserted which exempt any income of the nature of capital gains, arising or received by a non-resident, which is on account 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 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 Bill, 2021 specifies that this restriction pertaining to 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 2h.

  - **Extension of income-based tax holiday for units located in 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 March 31, 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.
  - **Taxation of Income from Global Depository Receipts (GDRs) issued by Overseas Depository Bank situated outside India or IFSC** - Where an Indian company distributes dividend 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 gain arising from transfer of such GDRs shall also be taxable at concessional rate of 10%. The Finance Bill, 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.

k. Aligning the purpose of entering into DTAAs with Multilateral Instruments ("MLI")

MLI is effectively applicable to certain DTAAs entered by India from April 1, 2020. In order to ensure that the DTAA benefits are not misused, Finance Act amended the purpose of availing DTAA to align it with the purpose of MLI. Accordingly, as per the amended provisions, the Central Government may enter into an agreement with the Government of any country outside India for avoidance of double taxation of income under the Act and under the corresponding law in force in that country. This would be done without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance including through treaty-shopping arrangements and indirect benefits.

l. Alterations in tax treaties

In India, taxpayer has an option to be governed by the provisions of the tax treaty to the extent they are more beneficial. Favorable taxation regime for capital gains under certain tax treaties between India and countries like Mauritius, Singapore and Cyprus have encouraged a lot of foreign investment into India and these countries have always remained a favored destination for making investments in India. However, the Indian tax authorities have time and again, challenged the substance and residential status of investor entities by holding that they were merely made for availing treaty benefits. In this regard, the following treaty amendments which now provide source-based taxation instead of residence-based tax are noteworthy:

i Tax treaty between India and Singapore

As per the amendments to India's tax treaties with Singapore, India shall now have the rights to tax capital gains arising from the alienation of the shares of an Indian company acquired on or after 1 April 2017. In this regard, the following provisions will apply:

- On shares of an Indian Company acquired after 1 April 2017 and transferred between 1 April 2017 and 31 March 2019 - On fulfillment of limitation of benefit clause, the tax rate applicable on such gains shall not exceed 50% of the domestic tax rate in India.
- On shares of an Indian Company acquired after 1 April 2017 and transferred after 1 April 2019 - Gains on such sale would be fully taxable in India.

Investments made in Indian company's shares before 1 April 2017 have been grandfathered and will continue to enjoy the benefits of the erstwhile provisions of the respective tax treaties and will not be subject to capital gains tax in India.

ii Tax treaty between India and Mauritius

With respect to taxability of capital gains, amendments to the provisions the India-Mauritius tax treaty are similar to the abovementioned amendments to India-Singapore tax treaty. Further, in respect of interest payment, the erstwhile provisions of tax treaties did not provide any limit on the levy of tax in India on the interest arising in India and paid to a resident of Mauritius (except banks). However, as per the amended tax treaty between India and Mauritius, interest arising in India and paid to a resident of Mauritius may be taxed in India at the rate of 7.5% of the gross amount of interest if the beneficial owner of the interest is a resident of Mauritius.

iii Tax treaty between India and Cyprus

As per the amended tax treaties, while India shall have the right to tax capital gains arising from transfer of the shares of an Indian company acquired on or after 1 April 2017, investments made before 1 April 2017 have been grandfathered and will continue to enjoy the benefits of the erstwhile provisions of the India-Cyprus tax treaty and not be subject to capital gains tax in India.

iv List of tax treaties entered into/ amended by India recently

India has recently entered into following tax treaty:

- Tax treaties entered into by India - Hong Kong and Marshall Islands
- Amendment in tax treaties - India's tax treaties with Austria, China, Sri-Lanka, Spain, Kenya, Kuwait, Qatar and Morocco

3. SHARE ACQUISITION

a. General Comments

One of the options for acquisition of a business is through acquisition of shares. Share acquisition is probably the most conventional mode of acquiring another business. The target company remains exactly the same, only its ownership changes. Share acquisition would result in taxation in the hands of transferor of shares in the form of capital gains arising on transfer of shares. Further, a deemed gift tax may also be triggered in the hands of the transferee in certain situations. Under this route, step-up in the cost of the underlying business is not possible.

b. Tax attributes

Following are key considerations to be kept in mind before acquiring the shares of a company:

i Carry forward and set off of losses

One of the key considerations to be kept in mind at the time of acquisition through share purchase is the set off and carry forward of losses. In case of closely held companies, losses are restricted from being carried forward and set-off against future profits unless on the last day of the year in which such losses are sought to be set-off, the shares carrying not less than 51 percent of the voting powers are beneficially held by persons who beneficially held shares carrying at least 51 percent 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.

To incentivize start-ups, Finance Act, 2017, amended the provisions of ITA to allow eligible startups to carry forward their losses of first 7 years indefinitely subject to certain conditions, even if there is a change in more than 49% of the shareholding.

ii Valuation of shares

As discussed above, in case of transfer of shares at a price lower than the FMV, the FMV of the such shares is deemed as the full value of consideration for such transfer. Further, the difference between FMV of shares and the full value of consideration shall be liable to tax in the hands of the transferee as income from other sources. In respect of the above, FMV of shares is to be determined in the prescribed manner. 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

There exists a mechanism for obtaining a tax clearance certificate for transfer of assets/ business subject to certain conditions. In the case of a pending proceeding against the transferor, the tax authorities have the power to claim any tax on account of completion of the proceeding 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 reorganizations

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 an NCLT approval. In India, mergers are used extensively to achieve a tax-neutral consolidation of legal entities in the course of corporate reorganizations since they enjoy favorable treatment under 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 a consideration in the form of issue of shares of transferee company to the shareholders of the transferor company on a proportionate basis, is regarded as demerger. A demerger of an undertaking also requires approval from the NCLT. Generally, a demerger is taxed under the head capital gains. However, if the following conditions are satisfied, then the demerger would be considered tax neutral and shall 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 a shareholder of the demerged company is);
- Shareholders holding at least 3/4th in value of shares in the demerged company become shareholders of the resulting company by virtue of the demerger. Shares in demerged company already held by the resulting company or its nominee or subsidiary are not considered in calculating 3/4th 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.

e. Purchase Agreement

Share purchase agreement is a legal contract between a transferor and transferee of shares. Purchase agreement contains the details of 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.

f. Taxes on share transfers

i Securities Transaction Tax (“STT”)

Transfer of shares through recognized 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 recognized stock exchange in India.

ii Stamp duty

Generally, delivery-based transfer of shares is 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 on account of transfer of equity shares held for more than specified holding period (12 months in case of listed shares and 24 months in 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 (“STCG”). The provisions of the ITA in respect of taxation of capital gains arising on transfer of shares is summarized as under:

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 INR 100,000	10% without the benefit of indexation and foreign exchange fluctuation.
	In any other case	20% with indexation	20% in other cases
STCG	STT paid on both acquisition and transfer	15%	40%
	In any other case	Normal domestic tax rates as applicable to the taxpayer	

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. Rate of applicable tax would be 30%/25% (excluding surcharge and cess) in case of residents and 40% (excluding surcharge and cess) in case of non-residents.

v Indirect tax

No implications shall arise under goods and services tax ("GST") on transfer of shares.

g. Applicability of "purchase accounting" to a direct or indirect acquisition of shares

In India, purchase accounting is not applicable in case of direct or indirect acquisition of shares.

h. Advantages of share purchases

Following are the advantages of share purchase:

- Faster execution process, because no court approval is required (except where the open offer code is triggered, or government approval is required);
- Taxable at concessional rates when compared with the other modes of business re-organization;
- Low cost of compliance; and
- GST is not applicable.

i. Disadvantages of share purchase

Following are the disadvantages of share purchase:

- In case of share acquisition, value of intangibles and fair valuation of assets cannot be captured in the books of accounts and amortization expense on account of goodwill is not available;
- In case of acquisition of more than 25% of shares in case of listed companies, compliances under Securities Exchange Board of India (SEBI) Takeover Code is mandatory. This would entail higher transaction cost and time;

- Cost on account of capital gains tax for the sellers;
- In case of physical form of shares, cost on account of stamp duty at the rate of 0.015%;
- No benefit of amortization can be availed in respect of the amount paid in excess of the book value of underlying assets as opposed to the case of asset acquisition. Hence, consideration paid for acquisition of shares is locked-in until such shares are sold;
- Cost on account of compliances and approvals from the government and SEBI; and
- Pricing guidelines of the RBI to apply for valuation purposes in certain cases.

j. Other considerations

- **Mode of discharge of consideration** - Generally, consideration for share acquisition has to be discharged in cash. Discharge of consideration in kind or shares of transferred company, may subject to certain restrictions under CA 2013 and exchange control regulations and needs specific evaluation.
- **Exchange control regulations** - The acquisition and transfer of shares of an Indian Company between a resident and a non-resident or two or more residents 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, applicability of pricing guidelines, etc.

4. ASSET ACQUISITION

a. General Comments

Purchase of assets can be achieved either through purchase of a business on going concern basis or purchase of individual assets. Thus, 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 lumpsum consideration without assignment of values to the individual assets and liabilities. In case of a slump sale, the entire business is transferred as a going concern.
- **Finance Bill, 2021 Amendment** - The Finance Bill, 2021 proposes to amend the definition of Slump sale to include within its scope all types of transfers, such as sale, exchange, relinquishment of asset etc. thus proposing to tax slump exchange of an undertaking as Slump Sale. Hence, this increases the scope for the levy of tax on slump sale by any means. It also provides that the fair market value of the capital assets (being an undertaking or division transferred by way of slump sale) as on the date of transfer shall be calculated in the prescribed manner. Such FMV shall be deemed to be full value of the consideration received or accruing as a result of transfer of such capital asset. Further, it is also provided that the value of goodwill, which has not been purchased shall be taken as nil for computation.
- **Itemized sale** - An itemized sale typically occurs either where only specific assets are transferred OR where the buyer has an option to pick 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** - 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 allocation of the purchase price on a fair value or other reasonable commercial basis. Generally, reports from independent valuations providers are also acceptable.
- **Itemized sale** - The cost paid by the acquirer as agreed upfront may be accepted as the acquisition cost, subject to certain conditions.

c. Tax Attributes

Following are key tax attributes of asset acquisition:

- **Tax losses** – In case of asset acquisition, tax losses are retained by the seller and 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 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 finalizes terms and conditions related to the purchase and sale of a company’s assets. It is important to note in an APA transaction, it is not necessary for the buyer to purchase all of the assets of the company. In fact, it is common for a buyer to exclude certain assets in an APA. Provisions of an APA may include payment of purchase price, monthly installments, liens and encumbrances on the assets, condition precedent for the closing, etc. Defining and controlling behavior 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 & amortization

- **Goodwill** - In case of slump sale, when the consideration paid is higher than the total FMV/cost of the assets acquired, goodwill shall arise. Such goodwill, being excess of consideration over the value of the assets, arises because of the underlying value of intangible assets. However, no depreciation shall be allowed 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 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. In this regard, the Finance Bill, 2021, has proposed to exclude such goodwill from the meaning of “block of assets”.

Further, when the assets are used for more than 180 days in the first year, the entire eligible depreciation for that year is allowed. However, in case where the assets are used for less than 180 days, only 50% of the eligible 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. Taxes on transfer of assets

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 ranges between 5-10% and for movable property range between 3-5%.

ii Income-tax

The income-tax implications under asset sale are as under:

- **Slump sale** – Before the Finance bill, 2021, 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 books of accounts. In this regard, the manner of computation of aggregate value of total assets is prescribed. If the undertaking is held for more than 36 months, the capital gains shall be considered as LTCG and liable to tax @ 20% (plus surcharge and cess). In case of the contrary, capital gains would be treated as STCG and liable to tax at normal tax rates applicable to the transferor. The Finance Bill, 2021 proposes to tax slump exchange as a slump sale thereby under Section 50B of the Act.
- **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

The Goods and Service Tax is made 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 itemized sale), GST will be applicable on the rates applicable on the transferred goods.

g. Advantages of asset purchase

Following are the advantages of an asset purchase:

- Unlike share acquisition, there is no need to make an open offer for acquisition (applicable for listed companies);
- Selective acquisition and assumption of assets and liabilities is possible;
- Recognition of value of brand, goodwill and other intangibles and claim of depreciation thereon may be possible;
- No court approval is required and thus, execution process is faster;
- Values of the assets can be restated by the acquirer for accounting and tax purposes subject to certain conditions; and
- Unlike share purchase, tax and other commercial liabilities of the whole entity/ company are not necessarily transferred upon acquisition.

h. Disadvantages of asset purchase

Following are the disadvantages of an asset purchase:

- Applicable stamp duty on asset purchase is higher than other modes of acquisition;
- Levy of GST may apply in an itemized 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 jeopardized.

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 the purchasers.

b. Domestic Acquisition Vehicle

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, a foreign-investors can invest in India directly through a foreign parent company.
- **Non-resident intermediate holding company** – To minimize tax leakage in India and avail favorable 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 implication of 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, JV are also set-up to create synergies between the intellectual properties/skills of the JV partners.

6. ACQUISITION FINANCING

a. General Comments

An acquisition can be carried out by various modes of finance like debt, equity and hybrid instruments that combines 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 companies distributing such dividend are required to withhold tax on such dividends. Non-resident shareholders may be eligible to claim foreign tax credit of such 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 pre-determined 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 at par with equity and need not 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 avail ECB, which limits up to USD 750 million per company/ LLP per year in under the automatic route depending on the sectors the companies are doing business. Further, there remain restrictions on minimum average maturity period.

Thin Capitalization 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 8 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 its 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 exceeds INR 10 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-to-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 aspects. 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, RBI has notified 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 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 historic 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 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 case of earn-outs, the transfer of an asset takes place in a particular year whereas the consideration for such transfer is crystalized 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. COMBINATIONS AND DIVESTITURES

a. 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 an NCLT approval. In India, mergers (amalgamations) are infrequently used for acquisition of business, but they are used extensively to achieve a tax-neutral consolidation of legal entities in the course of corporate reorganizations. Amalgamations enjoy favorable treatment under 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 capital assets, 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 8 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 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, unamortized 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 acquisition, Accounting Standard 14 allows amortization of goodwill over a period not exceeding 5 years unless a longer period can be justified. Ind AS 103 requires amortization 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 not be amortization. However, the ITA does not specifically provide whether depreciation shall be allowed on acquired goodwill. 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 Bill, 2021 specifically excludes goodwill from the definition of "block of assets", not allowing any depreciation hereafter on such goodwill.
- Amalgamation expenses can be amortized in five equal annual instalments, starting in the year of amalgamation.

iv Indirect tax

There are no GST implications. 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. Demerger of Indian companies

The transfer of a business undertaking by a transferor company to a transferee company for a consideration in the form of issue of shares of 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 under:

i Income-tax

Generally, a demerger is taxed under the head capital gains. However, if the following conditions are satisfied, then the demerger would be considered tax neutral and shall 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 a shareholder of the demerged company is);
- Shareholders holding at least 3/4th in value of shares in the demerged company become shareholders of the resulting company by virtue of the demerger. Shares in demerged company already held by the resulting company or its nominee or subsidiary are not considered in calculating 3/4th 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.

The Finance Bill, 2021 proposed that 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 neither permissible in books of accounts nor 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 amortized in five equal annual instalments, starting in the year of demerger.

iii Indirect tax

There are no GST implication 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 business re-organizations

i Cross border mergers

Recently, the CA 2013 has notified provisions for cross border merger. As per the said provisions, 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 permitted jurisdiction

However, it is pertinent to note that prior approval of 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. Also, 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

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 3/4 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

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 USD 5 million may be subject to certain pricing guidelines.

a. Tax on foreign operations of domestic target in India

In India, taxability is determined based on residential status of the person. In case of tax residents of India, worldwide income earned by such tax resident is liable to tax in India, irrespective of the source of income.

i Residential Status of a Company

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 INR 500 million or less in a financial year.

ii Foreign tax credit

The domestic target entities can avail 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) and alternate minimum tax 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. Total available FTC shall be 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 the 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

Generally, dividend received by an Indian company from a foreign company in which the Indian company holds 26% or more of the equity share capital, is taxable at a concessional rate of 15% (plus surcharge and cess as applicable). In respect of the above dividend, no deduction on account of any expenditure or allowance is allowed.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. 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:

- Transaction is not at arms' length price;
- Motive of the transaction is to abuse the tax provisions;
- Transaction lacks commercial substance and is not undertaken for bonafide purpose.

GAAR is not applicable to the following transactions:

- Foreign Institutional Investors (FIIs) who do not avail benefit of tax treaties;
- Non-resident who have invested in such FIIs;
- Transactions where the aggregate tax benefit from an arrangement in relevant FY does not exceed INR 30 million.

If GAAR provisions are invoked, the following consequences shall 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 become more vexed. 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, all future Schemes proposed to be presented to the NCLT may have to be smell tested for GAAR before they are submitted with the NCLT. 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 Authority for Advance Rulings for achieving certainty and clarity.

b. 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 INR 100,000,000; 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 end 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.

c. Country by Country reporting ("CbCR")

If the total consolidated group revenue of the international group is INR 55 billion or more in the preceding accounting year, then the resident parent entity or the alternative reporting entity is required to file 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 2 months before the due of filing of return in India.

If more than 1 CE of the either of the following international group are resident in India, then 1 of the entities has to be designated by the international group as the designated entity to furnish CbCR:

- Where the parent entity 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 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 6 months from the end of the month in which intimation is given of this systemic failure.

d. 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 INR 5 billion; AND
- The aggregate value of international transaction of CE:
  - During the accounting year exceeds INR 500 million; OR
  - In respect of purchase, sale, transfer, lease or use of intangible property during the accounting year exceeds INR 100 million.

The due date of filing master file is date of filing of return of income i.e, 30 November.

10. TRANSFER PRICING

a. International transaction

As per the provisions of ITA, definition of international transaction includes a transaction of business restructuring or reorganisation, entered into by an enterprise with an 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 ALP and should be reported.

Further, the Finance Bill, 2021 proposes an amendment that, 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 re-compute the book profit and tax payable of the past years in the prescribed manner.

b. 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.

c. 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 involves 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 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 erstwhile entities after the re-organisation, 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.)

Following are some of the issues with respect to intellectual properties (IPs) that need to be kept in mind:

- Aligning IP protection to business objectives like expanding existing coverage through strategic filing programs 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 license 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 MAT 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

Organisation for Economic Co-operation and Development's ("OECD") base erosion and profit shifting (BEPS) action plan is gaining significant thrust, and governments all around the world are amending their tax laws to incorporate and reflect some of these guidelines. M&A deals have never been straightforward; however, the intricacies and complexities are only going to increase in a post-BEPS environment, and BEPS is probably going to cause a fundamental overhaul in the M&A and deals landscape. Some specific issues around BEPS and M&A transactions are discussed below:

a. Inheritance of aggressive structures

BEPS may compel business buyers to relook diligence procedures—for instance, detailed processes may need to be carried out to determine if any aggressive tax structures are being inherited as a part of the acquisition. Reputational risk is of paramount significance and this will be increasingly considered in the overall risk assessment. Adequate upfront knowledge of aggressive tax structures and of potential consequences are likely to be factored in the valuation.

b. Tax treaties and substance

Action 6 (treaty abuse) and Action 7 (PE) will become very relevant, especially for private equity players, funds, etc. Increased levels of substance at the fund and holding structure level will be a key factor, the absence of which might restrict access to tax treaties. Companies will need to shed light on how decision-making and management functions are carried out and demonstrate how such structures meet business purpose and commercial rationale tests. This might increase the operational costs of maintaining these structures. Further, a more expansive definition of PE fund management activities could trigger taxable business presence concerns.

c. Hybrid financial instruments

The benefits of deal financing and tax credits may be impacted given Action 2 (hybrid mismatch arrangements) and the narrowing of relief under Action 4 (interest deductions).

d. Operations model planning

Operating models will have to undergo changes based on the place of actual economic activity and value creation. Allocation of profits to various functions in the value chain and ability to claim special incentives (such as patent box or other schemes supporting research and innovation) will need to be given a closer look under Actions 8–10 (TP). Separately, operational policy integration and review of structures post acquisition will be imperative to achieve overall M&A objectives.

e. Overall transparency

Enhanced and complex compliance and reporting obligations will be necessary under Action 13 (country by- country reporting). Processes and technology will need to be put in place to capture detailed data, leading to more management time and costs. In summary, some of the key focus areas for an M&A transaction against the backdrop of BEPS are:

- Detailed tax due diligence procedures will be needed to assess tax risks broadly—for instance, consider reputational risks due to increased focus by media, politicians, etc.
- Impact on existing operations as well as holding or financing structures will need to be re-examined more closely. Operational policy integration of structures post acquisition will also be an important consideration.
- Organizations will need to bear in mind any possible restrictions on hybrid mismatches and interest deductions, including any changes in the target's overall supply chain, as this might impact valuation and tax profile.
- Certainty through advance pricing agreements or mutual agreement procedures may become important—this will give the buyer more comfort. However, aligning transaction deadlines with these processes could pose a challenge.

India became a signatory to MLI in June 2017 and submitted the instrument of ratification with OCED on June 25, 2019. MLI is effectively applicable in India from April 1, 2020. The MLI project aims to ensure that multinationals pay tax in the jurisdiction where economic value is created or added. An MLI is a multilateral treaty that will enable jurisdictions to swiftly modify their bilateral tax treaties to implement measures designed to better address multinational inter-jurisdictional tax avoidance. Treaty measures that will be covered in the MLI include those on hybrid mismatch arrangements, treaty abuse, permanent establishment, and mutual agreement procedures. India has included its 93 tax treaties currently in effect as "covered tax agreements" under the MLI. Few of the countries, however, have chosen not to include their treaty with India as a covered tax agreement.

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 requires domestic law changes. Tabulated below are the amendments made in Indian tax laws to align it with BEPS.

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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 @ 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 e-commerce 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 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
Action Plan 5	Harmful tax practices	The Finance Act, 2016 introduced Section 115BBF providing a concessional tax regime @ 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 atleast 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 in to force 1 October 2019 (Effective from FY 2020-21)

13. ACCOUNTING CONSIDERATION

Accounting norms for companies are governed by the Accounting Standards issued under the Companies Act. 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). Therefore, acquisition accounting may give rise to goodwill, which is normally amortized over 5 years.

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 amortized; 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 recognized 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 INR 2.5 billion or more from 1 April 2017. Other companies will continue to apply existing accounting standards.

14. OTHER TAX CONSIDERATIONS

a. Tax clearances

In case where any transfer is made for inadequate consideration and any proceeding 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 ITA provides mechanism for obtaining a tax clearance certificate for transfer of assets/ business subject to certain conditions.

b. Buy back

Amongst the other options available for a company to provide exit to the shareholders, one of available options is buy back of shares. Buyback of shares provides an investor the ability to extract earnings as capital gains and consequently take advantage of tax treaty benefits. However, buybacks in India has 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 buyback may be affected only from certain permitted sources.

In terms of taxability, any domestic company proposing to buy back its shares from shareholders is required to pay a buyback tax. Any amount of "distributed income" by a domestic company on buyback of unlisted shares from shareholder is chargeable to additional income-tax @ 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 under:

- Shares issued by way of subscription

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 buyback

Amount received in respect of shares less sum so returned. However, no such deduction is allowed in respect of DDT.

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

Acquisition of shares is permissible with prior approval of the audit committee and board of directors. Share sale 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 / 2	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]
Hungary	10	10	10	[A] [B] [C] [D] [E] [F]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
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]
New Zealand	15	10	10	[A] [B] [C] [D] [E]

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
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]
United Kingdom	10 / 15	10 / 15	10 / 15	[A] [B] [C] [D] [E] [J]

INDIA

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
United States	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 organizations 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]	Most favoured nation clause - The scope of the definition of royalties/interest may be restricted and/or a reduced rate of tax may be available under the most-favoured-nation (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 3 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 3 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 3 years
7	Tax Due Diligence	Direct tax	Transfer pricing accountant's reports along with the transfer pricing documentation for last 3 years.
8	Tax Due Diligence	Direct tax	Tax status of the Company/ assessment status chart
9	Tax Due Diligence	Direct tax	Copies of the assessment orders/ transfer pricing orders for the latest 3 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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IRELAND

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.

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 caselaw 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.

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 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.

ii 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 will apply 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.

iii 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.

See section 10 below for further detail.

iv 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 VIII(b) below for further details.

b. COVID-19 related measures

The Irish government has been 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 31 March 2021. 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 a point which is worth bearing in mind from a due diligence perspective.

As part of the July Stimulus package introduced on 23 July 2020, the government announced a temporary reduction in the standard rate of VAT. The standard rate of VAT has been decreased from 23% to 21% for the period from 1 September 2020 to 28 February 2021.

Revenue has indicated that it will continue to prioritise the approval and processing of tax repayments and refunds (primarily VAT repayments, PSWT refunds and excess R&D tax credits) to taxpayers. Specific measures were also brought in to enhance corporate tax loss relief. Repayments of corporation tax that would otherwise become due over the next 18 months will be accelerated. The maximum amount of the expected current year loss which will qualify for early carry-back will be 50%. The balance will qualify for carry-back under the normal rules in due course.

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 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 type 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 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 $63 billion (€52 billion) takeover of Allergan PLC.

Abbvie took a case to the TAC to appeal against the €587 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 is 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 intra-group 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 €1,000 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%. 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").

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 the 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.

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 IV 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 sometime 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.

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.

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. Historic 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 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 will be obliged to introduce a general interest limitation rule pursuant to which the tax deduction of net financial expenses would be limited to 30% of the taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA) or to a maximum amount of €3million, whichever is higher (subject to several exceptions). It is not clear when these changes will be introduced. The latest date for their introduction is 2024. However, it is anticipated that they will be introduced earlier than this.

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 off-set 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 (see II(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

Withholding tax

A withholding tax applies where, on a purchase of shares in a company, the consideration exceeds €500,000 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 CG50 (CGT Clearance Certificate). A CG50 is also required when the consideration for the shares exceeds €500,000, 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 CG50 from Revenue and delivers it to the purchaser prior to the consideration being paid.

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.

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.

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.

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 intra-group exceeds €25 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 intra-group 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 re-characterise 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 €50 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 €4,000 or €25,000 (depending on size), while larger taxpayers will be subject to a further €100 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 €50 million or assets of less than €43 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.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

As discussed at II(a)(ii) above, Ireland introduced anti-hybrid legislation in Finance Act 2019 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 at II(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 favorable 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 proposed introduction of interest limitation rules and the introduction of anti-hybrid rules;
- 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 CG50 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") and
- 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").

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) 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]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Hong Kong	0	0 / 10	3	[40]
Hungary	5 / 15	0	0	[41]
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]
Korea (Republic of)	10 / 15*	0	0	[49]
Kuwait	0	0	5	
Latvia	5 / 15	0 / 10	5 / 10	[50] [51] [52]
Lithuania	5 / 15	0 / 10	5 / 10	[53] [54] [55]
Luxembourg	0	0	0	[56]
Macedonia	0 / 5 / 10	0	0	[57]
Malaysia	10	0 / 10	8	[58]
Malta	5 / 15	0	5	[59]
Mexico	5 / 10	0 / 5 / 10	10	[60] [61]
Moldova	5 / 10	0 / 5	5	[62] [63]
Montenegro	0 / 5 / 10	0 / 10	5 / 10	[64] [65] [66]
Morocco	6 / 10	0 / 10	10	[67] [68]
Netherlands	0 / 15	0	0	[69]
New Zealand	15*	10	10	
Norway	0 / 5 / 15	0	0	[70]
Pakistan	5 / 10	0 / 10	10	[71] [72]
Panama	5	0 / 5	5	[73]
Poland	0 / 15	0 / 10	10	[74] [75]
Portugal	15	0 / 15	10	[76]

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Qatar	0	0	5	
Romania	3	0 / 3	0 / 3	[77] [78]
Russia	10	0	0	
Saudi Arabia	0 / 5	0	5 / 8	[79] [80]
Serbia	5 / 10	0 / 10	5 / 10	[81] [82] [83]
Singapore	0	0 / 5	5	[84]
Slovakia	0 / 10	0	0 / 10	[85] [86]
Slovenia	5 / 15	0 / 5	5	[87] [88]
South Africa	5 / 10	0	0	[89]
Spain	0 / 15*	0	5 / 8 / 10	[90] [91]
Sweden	5 / 15*	0	0	[92]
Switzerland	0 / 15*	0	0	[93]
Thailand	10	0 / 10 / 15	5 / 10 / 15	[94] [95]
Turkey	5 / 10 / 15	10 / 15	10	[96] [97]
Ukraine	5 / 15	0 / 5 / 10	5 / 10	[98] [99] [100]
United Arab Emirates	0	0	0	
United Kingdom	5 / 15	0	0	[101]
United States	5 / 15*	0	0	[102]
Uzbekistan	5 / 10	5	5	[103]
Vietnam	5 / 10	0 / 10	5 / 10 / 15	[104] [105] [106]
Zambia	7.5	0 / 10	8 / 10	[107] [108]

* 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 100,000 Euros 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. 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.
50	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.
51	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.
52	Royalties - Maximum rate of 10% applies. Reduced rate of 5% applies where royalties paid for the use of industrial, commercial or scientific equipment.

Footnotes	
53	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.
54	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.
55	Royalties - Maximum rate of 10% applies. Reduced rate of 5% applies where royalties paid for the use of industrial, commercial or scientific equipment.
56	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 .
57	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.
58	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.
59	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, Malta tax on the gross amount of the dividend shall not exceed that chargeable on the profits out of which the dividends are paid.
60	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.
61	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.
62	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.
63	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.
64	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.
65	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.

Footnotes	
66	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.
67	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.
68	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.
69	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.
70	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.
71	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.
72	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.
73	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.
74	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.
75	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.
76	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.
77	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.
78	Royalties - Maximum rate of 3% applies. Reduced rate of 0% applies where royalties are attributable to any copyright.

Footnotes	
79	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.
80	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.
81	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.
82	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.
83	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.
84	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.
85	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.
86	Royalties - A 10% rate applies to payments for patents and intangibles whereas a reduced rate of 0% applies to payments for copyright.
87	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.
88	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.
89	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.
90	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.
91	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.
92	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.

Footnotes	
93	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.
94	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.
95	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.
96	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.
97	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.
98	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.
99	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.
100	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.
101	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.
102	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.
103	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.
104	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.
105	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.

Footnotes	
106	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.
107	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.
108	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

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 claw-back 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?

No.	Legal/Commercial	Query
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?
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 in the period under review?
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)?

No.	Legal/Commercial	Query
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?
45		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 Are travel expenses for employees paid in line with Revenue guidelines? Either on a vouched basis or in line with civil service rates? Do employees get paid for any home to work travel?
49	Tax – Payroll Taxes (PAYE and PRSI)	Expenses Please explain how expenses are dealt with in the company? Who is responsible for authorising / paying expenses and who monitors whether the expenses can be paid without the deduction of tax? Does the company have adequate control procedures in place? Do employees claim expenses regularly? Are there any significant recurring expenses? Are there any Revenue approvals in place to allow certain expenses to be paid without deduction of PAYE? Are expenses paid solely on a vouched receipts basis?

No.	Legal/Commercial	Query
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.

FOR MORE INFORMATION CONTACT:

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ITALY

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.

For non-financial holding companies, the standard rate is 4.65% and it is levied on the sum between (i) the taxable base described for commercial and manufacturing companies and (ii) the difference between positive and negative interests (negative interests are deductible in the limit of 96% of their amount).

Non-resident companies having a PE in Italy are also subject to IRAP.

2. RECENT DEVELOPMENTS

a. General Comments

The Legislative Decree No. 142 of 29 November 2018, published on 28 December 2018, implemented the ATAD Directives n. 1164/2016 and 952/2017. Such Decree amended (i) the interest expenses deduction rules (see section VI.c), (ii) the exit and entry tax rules, (iii) the CFC regulation (see section VIII.b) and (iv) the tax regime applicable to foreign dividends and capital gains (see section VII.c). In addition, the Decree introduced new provisions targeting hybrid mismatches (see section VI.d).

Italian Budget Law for 2020 introduced a 3% digital service tax ("Italian DST") on revenues deriving from certain digital services provided to users located in Italy, which applies to entities that meet certain revenue thresholds. Italian DST applied from 1 January 2020, without the need for any ministerial implementing decree, and will be repealed once measures agreed at international level to tax the digital economy enter into effect (sunset clause). According to the explanatory notes of Budget Law for 2020, Italian DST is inspired by the European Commission Directive Proposal of 21 March 2018 (EU DST Proposal). Italian DST applies to resident and non-resident entities, which meet, individually or at group level, the following conditions in the previous calendar year: (i) total amount of worldwide revenues not lower than EUR 750 million; (ii) total amount of revenues deriving from qualifying digital services provided to users located in Italy not lower than EUR 5.5 million. Therefore, an entity is subject to Italian DST on taxable revenues realised in 2020, if revenues realised in 2019 exceed both thresholds. In line with article 3 of the EU DST Proposal, Italian DST applies to revenues deriving from the provision of the following digital services: (i) the placing on a digital interface of advertising targeted at users of that interface, (ii) the making available to users of a multi-sided digital interface which allows users to find other users and to interact with them, and which may also facilitate the provision of underlying supplies of goods or services directly between users and (iii) the transmission of data collected about users and generated from users' activities on digital interfaces.

The regime providing for an allowance for corporate equity ("ACE"), namely a deduction from corporate income tax of a deemed interest computed by applying a certain rate to the net equity increases arising after 2010, has been reinstated by Italian Budget Law for 2020 with effect from fiscal year 2019. Starting from fiscal year 2019 the rate applicable in computing the ACE benefit is 1,3%.

Law Decree no. 124/2019 and Legislative Decree no. 75/2020 introduced a number of criminal tax offences (e.g. offence of fraudulent tax return through the use of invoices or other documents for inexistent transactions; offence of issuing of invoices or other documents for inexistent transactions and cross border significant VAT frauds) in the context of corporate criminal liability as set forth under Legislative Decree no. 231/2001.

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.

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.

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, 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 in the 2020 financial statements the values of tangible and intangible fixed assets as well as participations, provided that the mentioned assets are included in the 2019 financial statements. The step-up can be executed only for accounting purposes or also for 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 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).

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:

- the shareholding has been held at least since the first day of the 12th month prior to the disposal;
- 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);
- the owned company is not resident in a jurisdiction which has a privileged tax regime;
- 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 5 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-tax 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-tax 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 de-multiplication 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.

An 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 de-mergers. 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 de-mergers.

In transactions which allow the transfer of tax attributes (like mergers and de-mergers), 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 new 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 de-merger 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 Euro 5 million, 14% on the portion of the step-up from Euro 5 million to Euro 10 million, and 16% on the portion of the step-up in value exceeding Euro 10 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 5 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 (ii) but the depreciation/amortisation can be deducted starting from the second fiscal year following the one in which the substitute tax is paid.

Please note that the differences between tax and accounting values existing in 2019 financial statements may be realigned in the 2020 financial statements with the payment of the substitute tax mentioned above.

Moreover, given that the same step up regime, as described above under (iii), is generally allowed where the qualified participation is acquired for consideration in a share deal, if the Italian acquiring company does not merge the target, but includes it in its consolidated financial statement, the step-up regime can be applied.

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 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 Euro 200 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 (Tobin 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 3 years, it may elect to tax the capital gain in equal instalments over a period of up to 5 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 3d.).

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 (Euro 200) for registration tax purposes (and for cadastral/mortgage tax 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. Mortgage and cadastral taxes are levied at Euro 50 each 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 VAT-taxable person will likely be subject to VAT. In case of transfer of a real estate, registration, mortgage and cadastral 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 5 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 5 years from the end of the construction/ renovation;
- the vendor is the construction enterprise or has performed substantial building works, the sale occurs after 5 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 MLBO (Merger Leverage Buy Out) 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 purpose of (i) push down the debt and (ii) transfer 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 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% 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 risks 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.

More in particular, a shareholder loan might be recharacterised into equity when, for example:

- payment of interest and repayment of capital must occur after the repayment of capital and interests of third-party debts;
- financial covenants of third-party debt treat shareholders loans as equity;
- 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 in 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 starting 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 shall be 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 of the tax consolidation. In other terms, 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 stand-alone basis may be transferred to the consolidating entity and deducted if and to the extent another company has excess of 30% EBITDA.

No other limitation rules apply in Italy even in the case of a thinly capitalised company.

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 96% of their amount).

In 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-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 shall be exempt – to the extent of their arm's length value, provided that (i) the lender is the beneficial owner of the interests, (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 1 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 (D/NI) 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 (D/D) 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 D/NI) 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 D/D, (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 D/NI, (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 D/NI, 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.

e. Other Instruments

In principle, the payment of interest due on bonds is subject to a withholding tax 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 VI.c), the zero WHT provided by the Interest-Royalty Directive would apply.

In 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 withholding tax - must be applied by the intermediaries intervening in the payment (Legislative Decree n. 239/1996).

However, such substitute tax should not be applied 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 case of Bonds issued by companies different from 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, subject to the same tax regime of the capital gains (see section 3.a. and 7.c.).

7. DIVESTITURES

a. 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. 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 3 years, it may elect to tax the capital gain in equal instalments over a period of up to 5 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

As from 1 January 2021 no witholding tax is applied on dividends paid to foreign collective investment funds ("OICR") settled in EU States or in European Economic Area States and whose managing entity is subject to supervision by the authorities of its foreign State.

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 whitelisted 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 upon 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. Foreign income is generally included in the taxable basis to corporate income tax for its full amount.

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 1/3 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 re-determined pursuant to Italian tax rules and taxed in the hands of the Italian shareholder in proportion of 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.

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 codes 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 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 constitutes 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 VIII.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 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 per cent 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 Euro 750 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 2017 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 2017 OECD Transfer Pricing Guidelines;
- describes the five transfer pricing methods providing guidance, in line with Chapter II of the 2017 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.

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 grants 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 grants a 100% exemption on capital gains arising from the sale of qualifying IP under certain conditions.

The main aspects of the new patent box include the following.

- Elective: the Italian patent box regime is elective. The election is irrevocable and lasts for five years.
- Qualifying taxpayer: both resident entities and permanent establishments of non-resident entities may opt for the regime (in the case of a non-resident, only if it is resident in a country that has a bilateral tax treaty with Italy and if the exchange of information between Italy and its country of residence is effective).
- Qualifying IP: the regime covers patents, know-how and other intellectual property subject to legal protection. The qualifying IP may be either self-developed or acquired. The regime applies if the taxpayer performs R&D activities to maintain/develop the qualifying IP. The taxpayer may perform R&D activities by itself or it may outsource them to third parties. Beginning in 2017, trademarks are excluded from the patent box regime, whereas they were included before such fiscal year.
- Income exemption: the regime grants a 50% exemption of the gross income derived from the exploitation or the direct use of qualifying IP, both for corporate income tax (IRES) and local tax purposes (IRAP). If the qualifying IP is directly used by the taxpayer, an advance ruling with the Italian tax authorities is required to determine the income allocable to the qualifying IP. However, starting from fiscal year 2019, pursuant to article 4 of Law Decree no. 34/2019, instead of filing a ruling with the Italian tax authorities, taxpayers may opt to directly calculate the amount of qualifying income, indicating all necessary information for such determination in appropriate supporting documentation. "Directly used" means that the taxpayer uses the qualifying IP itself, without licensing it to other entities.
- Capital gain exemption: capital gains arising from the sale of qualifying IP will be totally exempted if at least 90% of the sale's consideration is reinvested, within the following two fiscal years, in the maintenance or development of another qualifying IP. The qualifying IP, as stated above, may be either self-developed or acquired
- OECD "nexus approach": the regime is in line with the OECD "nexus approach." The regime only applies to the amount of income derived from the qualifying IP, which is determined by applying the ratio of (1) R&D expenditures incurred by the taxpayer for maintaining/developing the IP, increased by part of the costs of the acquisition of the IP, if any, to (2) the total cost of producing that IP.

e. Special tax regimes

No specific rules are applicable.

12. OECD BEPS CONSIDERATIONS

Italy signed the 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 (in 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 asked whether it is possible to book a 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 typologies 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).
- 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, interests, royalties or other items of income, paid to/received from non-resident companies.
- 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 EUR 20 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.

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
Argentina	15	0 / 20	10 / 18	[1] [2] *
Australia	15	10	10	*
Austria	15	0 / 10	0 / 10	[1] [3] *
Belgium	15	15	5	*
Brazil	15	15	15 / 25	[4] *
Canada	5 / 15	10	5 / 10	[5] [6] *
Chile	5 / 10	5 / 15	5 / 10	[7] [8] [9]
China**	10***	10****	10*****	*
Colombia	NO TREATY			
Croatia	15	0 / 10	5	[1] *
Cyprus	15	10	0	[10] *
Czech Republic	15	0	0 / 5	[11]
Denmark	0 / 15	0 / 10	0 / 5	[1] [12] [13] *
Finland	10 / 15	0 / 15	0 / 5	[1] [14] [15] *
France	5 / 15	0 / 10	0 / 5	[13] [16] [17] *
Germany	10 / 15	0 / 10	0 / 5	[2] [7] [17] *
Greece	15	0 / 10	0 / 5	[1] [2] *
Hungary	10	0	0	
India	15 / 25	0 / 15	20	[1] [18] *
Indonesia	10 / 15	0 / 10	10 / 15	[1] [7] [19] *
Ireland	15	10	0	*
Japan	10 / 15	10	10	[20]
Luxembourg	15	0 / 10	10	[1] *
Malaysia	10	15	15	*
Malta	15	0 / 10	0 / 10	[1] [11] *
Mauritius	5 / 15		15	[7] *
Mexico	15	0 / 15	0 / 15	[1] [13] [21] *
Netherlands	5 / 10 / 15	0 / 10	5	[1] [22] *

Jurisdiction	Dividends %	Interest %*	Royalties %	Footnote Reference
Norway	15	0 / 15	5	[1] [7] *
Philippines	15	0 / 10 / 15	25	[23] [25] *
Poland	10	0 / 10	10	[1] *
Portugal	15	0 / 15	12	[1] *
Puerto Rico	NO TREATY			
Romania	0 / 5	0 / 5	5	[1] [24]
Russia	5 / 10	10	0	[26]
Serbia	10	10	10	
Singapore	10	12.5	15 / 20	[2] *
Slovakia	15	0	0 / 5	[11]
Slovenia	5 / 15	0 / 10	5	[1] [7] *
South Africa	5 / 15	0 / 10	6	[1] [12] *
South Korea	10 / 15	0 / 10	10	[7] *
Spain	15	0 / 12	4 / 8	[1] [2] *
Sweden	10 / 15	0 / 15	5	[1] [27] *
Switzerland	15	12.5	5	
Turkey	15	15	10	
UK	5 / 15	0 / 10	8	[5] [17] *
USA	5 / 15	0 / 10	0 / 5 / 8	[17] [28] [29] *
Venezuela	10	0 / 10	7 / 10	[1] [2] *

*Many treaties provides for the 0% rate for certain types of interest, e.g. interest paid to the state, local authorities, central banl, credit institution or in relation to sales on credit. Such exemptions are not considered in this column but are highlighted with an apostrophe

** On 23 March 2019, the Chinese and Italian Governments signed a new agreement for the avoidance of double taxation and the prevention of fiscal evasion.

*** Under the new agreement, a 5% rate would apply when the recipient company directly holds at least 25 per cent of the capital of the distributing company and such a condition is met for a minimum holding period of 365 days. The current 10 per cent rate will continue to apply in all residual cases.

**** Under the new agreement, a 8% rate would apply in case the interest income is paid to financial institutions of the other State in relation to loans (i) having a minimum maturity of three years and (ii) destined to financing investment projects. The current 10 per cent rate will continue to apply in all residual cases.

***** Under the new agreement, a 10% rate would be applied only on 50 per cent of gross amount.

Footnotes	
1	Interests - The 0% rate applies, inter alia, to interest paid by public bodies.
2	Royalties - The lower rate applies to copyright royalties.
3	Royalties - The higher rate applies if the recipient company owns more than 50% of the capital in the distributing company.
4	Royalties - The higher rate applies to trademarks.
5	Dividends - The lower rate applies if the recipient company controls directly or indirectly at least 10% of the voting power in the distributing company.
6	Royalties - The lower rate applies to royalties for computer software or any patent or information concerning industrial, commercial or scientific experience.
7	Dividends - The lower rate applies if the recipient company controls directly or indirectly at least 25% of the voting power in the distributing company.
8	Interests - The 5% rate applies to interest derived from loans granted by banks and insurance companies, bonds and securities regularly and substantially traded on a recognised securities market and qualifying sales on credit of machinery and equipment. The rates under the treaty, by virtue of a most favoured nation clause, may be reduced.
9	Royalties - The 5% rate applies to royalties for industrial, commercial or scientific equipment. The rates under the treaty, by virtue of a most favoured nation clause, may be reduced.
10	Dividends - The rate under the treaty, by virtue of a most favoured nation clause, may be reduced.
11	Royalties - The higher rate applies to royalties for patents, trademarks, etc., and industrial, commercial or scientific equipment, etc.
12	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.
13	Royalties - The lower applies to copyright royalties, excluding films, etc.
14	Dividends - The 10% rate applies if the recipient company owns directly more than 50% of the capital in the distributing company.
15	Royalties - The higher rate applies to royalties for films, patents, trademarks, and industrial, commercial or scientific equipment, etc.
16	Dividends - The 5% applies if the recipient company has owned at least 10% of the capital in the distributing company for at least 12 months.
17	Interests - The 0% rate applies to interest paid by public bodies and trade credits, and to interest arising from the sale of equipment.
18	Dividends - The lower rate applies if the recipient company owns at least 10% of the capital in the distributing company.
19	Royalties - The lower rate applies to equipment leasing and royalties for know-how.
20	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.
21	Interests - The rates under the treaty, by virtue of a most favoured nation clause, may be reduced.
22	Dividends - The 5% 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 10% 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.

Footnotes	
23	Interests - The 0% rate applies to interest on public bonds paid by public bodies. The 10% rate applies to interest on other public issues of bonds.
25	Royalties - The rates under the treaty, by virtue of a most favoured nation clause, may be reduced.
24	Dividends - The 0% rate applies to dividends derived from direct participations of at least 10% and a minimum holding period of 2 years is required.
26	Dividends - The 5% 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.
27	Dividends - The 10% rate applies if the recipient company owns directly at least 51% of the capital in the distributing company.
28	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.
29	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.

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

Starting from fiscal year 2016, tax assessments must be served 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 7 years if no return was filed (e.g., 31 December 2024 in relation to fiscal year 2016).

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, and dividend paid to non-resident companies.
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

ITALY

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No.	Category	Sub-Category	Description of Request
16	Tax Due Diligence	Income tax	Tax returns (IRES)
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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KOREA

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 and a partnership (*"johap"*). They are not considered a separate entity 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. 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 KRW 50 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 increase for employees or business investment. Additional corporate income tax applies at 22% of the relevant corporation's "unappropriated earnings." Unappropriated earnings, in turn, is 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 KRW 300 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 2020, 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 KRW 200 million	11%
KRW 200 million – KRW 20 billion	22%
KRW 20 billion – KRW 300 billion	24.2%
More than KRW 300 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 46.2% (please refer to the table below).

Tax Bracket	Tax Rates (including local income surtax)
Up to KRW 12 million	6.6%
KRW 12 million – KRW 46 million	16.5%
KRW 46 million – KRW 88 million	26.4%
KRW 88 million – KRW 150 million	38.5%
KRW 150 million – KRW 300 million	41.8%
KRW 300 million – KRW 500 million	44%
More than KRW500 million	46.2%

(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 it or continue to use the K-GAAP.

In general, the tax treatment of an event or item follows the 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 has 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 are rather limited and mostly confined to select disaster-hit areas; these measures include 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.

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 for maintaining 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 denying treaty benefits (capital gains tax exemption for private equity funds' transfer of Korean shares or reduced tax rates for dividend from Korean subsidiaries) unless a stringent beneficial (substantive) ownership standard is met. Due to the rigorous application and the operation of the archaic domestic rules, many of these precedents resulted in denying treaty benefits not only in reference to the intermediate paper companies, but also in reference to the ultimate investors with substance in their respective residence countries. 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 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 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 its 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 information, interest deduction limitation and expanded permanent establishment definition, and 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) 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. At the present, Korea is taking a cautious approach and is unlikely to adopt any unilateral interim measure until the OECD formally suggests a global, consensus-based solution in or after 2020.

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 (the corporate income tax in the case of a corporate shareholder and the 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 its residence jurisdiction. 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. 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 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 with 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, an 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 an 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 with jurisdiction over it within 3 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 5 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 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 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 (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 (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 (the continuity of business enterprise (COBE) requirement). If at least 50% 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 during 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 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 5 years from the due date of the relevant tax return, and 7 years for taxes involving cross-border transactions. If no tax return was filed with respect to the transaction, the statute is extended to 7 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 takes 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 securities transaction tax (STT) at the rate of 0.25% (0.3% for transfers executed before 3 June 2019) for a transfer of shares via stock exchange, or 0.45% (0.5% for transfers executed before 1 April 2020) 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 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 deemed acquisition tax (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, certain proportion of the DAT could be exempt until 31 December 2021.

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 access 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 stock 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) take 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 take 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 STT). Proper tax indemnity and other security mechanisms should be considered, similar to a stock 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 5 years, and patents over 7 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, favorable 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), the 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 the securities transaction tax (STT) at 0.45% or 0.25% (if transferred through a stock exchange) to the extent the assets consist of shares in another company.

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 (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 be usually 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 qualified in-kind contribution (i.e 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-type 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 5 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 favorable from a tax perspective.

However, in order to claim a treaty, benefit in Korea, a stringent substance requirement needs 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 favorable tax treaty.

c. Debt

i Limitations on Use of Debt and Interest Deductions

Funding through a debt financing provides the advantage of interest deduction. Under Korean tax law, several long-standing 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 push down 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 line of the acquired target (or assets), it could consider various forms of spin-offs. A horizontal spinoff and a vertical spinoff 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 spinoff, 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 spinoff 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 spinoff followed by merger or a vertical spinoff followed by merger. We will discuss features of a horizontal spinoff 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 stock 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 5 years (five-year requirement).
- 100% of the consideration received by the divided company's shareholders in exchange of the spinoff (spinoff consideration) is in the form of shares in the spun-off company (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 spinoff (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 spinoff, 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 spinoff falls (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 spinoff generally could create uncertainties and requires careful planning.

If a horizontal spinoff 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 spinoff the divided company (the seller and the target) is deemed to transfer the spun-off assets to a newly established spinoff company at the fair market value, in exchange for shares in the spinoff 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 spinoff 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 3 years is 15% 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 generally 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 corporation 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 fiscal year-end if both of the following conditions are satisfied:

- The Korean entity has annual sales revenue greater than KRW 100 billion; and
- The Korean entity annually conducts cross-border related party transactions exceeding KRW 50 billion.

Both Master File and Local File must be prepared in or translated into the Korean language. 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 KRW 1 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 €750 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) 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 6 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 KRW 30 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 underreporting 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 0.03% (which is scheduled to be reduced to 0.025%, starting from 1 January 2020) 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-Harbor Rules

A safe harbor 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 (currently, 4.6%)
- 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 US $ based Libor shall apply

According to the tax law amendment in 2020, the Korean TP rules has adopted a simplified approach for low value adding intra-group 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 & 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 intra-group 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 properties (IPs) 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 the corporate income tax are 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 2019, a total of 103 countries are exchanging financial information with Korea under the CRS MCAA, including Hong Kong and Turkey, which recently joined the list.

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. The MLI will enter into force in Korea on 1 September 2020. 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 IX 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) 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 VI, 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)
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)
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
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-tax jurisdictions through intangibles and high-risk transactions	<Considering legislative changes>

Action Plan		BEPS Issues	Current Status
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 to enter into force on 1 September 2020

(Source: http://www.moef.go.kr/nw/nes/detailNesDtaView.do?&bbsId=MOSFBBS_000000000028&menuNo=4010100&searchBbsId1=MOSFBBS_000000000028&listType=1&searchSort=1&pageIndex=1&searchUseYn=0&searchNttId1=MOSF_000000000029020&searchMenu=4010100&searchNttId=MOSF_000000000029020, page 5 (amended)

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 endeavors 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 labor law regime with many pro-labor 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 defense 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
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]
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]
Mauritius[1]	20	14 / 20	20	[27] [28]
Mexico	0 / 15	5 / 15	10	[14] [15]

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
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]
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]

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 USD 100,000.
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 7 years.
24	Interest - 10% rate applies if the term of the loan exceeds 2 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
24	Tax Due Diligence	Value Added Tax	Contracts for purchase of real property and related VAT transaction summary for the last 7 years.

No.	Category	Sub-Category	Description of Request
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

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

Until 2018, the Luxembourg corporate income tax ("CIT") rate was 18% for companies with taxable income in excess of €30,000, 15% for companies with taxable income not exceeding €25,000 and between 15 and 18% for companies with taxable income exceeding €25,000, but not exceeding €30,000.

Since 2019, the CIT rate is 17% for taxable income exceeding €200,000. In addition, the reduced CIT rate of 15% now applies to taxable corporate income not exceeding €175,000. Finally, income exceeding €175,000 without exceeding €200,000 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 even 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 €500 million and 0.05% on the part of the net wealth exceeding €500 million. A minimum NWT of €4,815 applies to companies with financial assets, transferable securities bank deposits and receivables against related parties exceeding both €350,000 and 90% of their total balance sheet. In the case where the company does not meet these requirements, the minimum NWT varies between €535 and €32,100, 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 BEPS (Base Erosion and Profit Shifting) 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

As part of the implementation of the measures taken by the Luxembourg Government to deal with the spread of the Coronavirus, several measures have been introduced for Luxembourg taxpayers, intended to guarantee the continuity of the Luxembourg economy and protect taxpayers experiencing liquidity problems due to Covid-19: cancellation of the quarterly advances of (corporate) income tax and municipal business tax upon request; deadline extensions for the payment of (corporate) income tax, municipal business tax, net wealth tax and VAT upon request; extension of deadlines for filing 2019 and 2020 tax returns (income tax, corporate income tax and municipal business tax), extension of deadlines to contest tax assessments, extensions of deadlines for administrative and judicial proceedings, etc.

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 6-month deadline extension for reporting under the mandatory disclosure regime applicable to tax intermediaries ("DAC6") and a 3-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 3 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 Corona-crisis due to travel restrictions and the requirement of "social distancing", the Luxembourg Government reached an agreement with these 3 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 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 CIT and MBT purposes, but not for 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. In case the tax consolidation is "broken" before the 5-year period has elapsed, the entities forming part of the consolidation will be retroactively taxed on a stand-alone 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 €1.2 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 push down can be considered. Please refer to section 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 case, registration duty applies in the same way as it would in 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 3 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, practical application in both cases differs in several parts (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 case of an 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

To 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. 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 has 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 case of transfers of assets within the meaning of article 2 of EU Directive 2009/133, i.e in case 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 in case of (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.

In case of 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 5 years.

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 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 €1.2 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 3 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 funds (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 CIT and 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, e.g. 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 through 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, capital gains realised upon the sale of participations as well as on liquidation proceeds. Luxembourg has also a large network of double tax treaties (82 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. 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.

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 four 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 and (iv) the limitation to interest deduction provided by the ATAD. In addition, a draft law currently pending before Parliament denies, under certain conditions, the deduction of interest and royalty payments 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 Luxembourg income tax law ("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 €3m. "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:** New legislation will apply from 1 March 2021 which amends the Luxembourg corporate income tax law so as to deny, in Luxembourg, the deduction of certain expenses directed to entities established in blacklisted jurisdictions. It provides that interest and royalties due by Luxembourg corporate taxpayers will no longer be 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.

On 27 December 2016, the Luxembourg Tax Authorities released a circular on the tax treatment of intra-group financing activities which provides guidance on the practical application of the arm's length principle to intra-group financing activities, ensuring consistency with all international transfer pricing standards. The term "intra-group 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 (intra-group financing, bank loans, public issuances, etc.). Under the new 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 new 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 period 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. Capital gains taxation of Luxembourg residents

Capital gains deriving from the sale of shares held by a Luxembourg corporate taxpayer in a subsidiary may benefit from a full CIT and MBT exemption in Luxembourg, 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 €6 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 6 months following the acquisition of the shares. In case of a sale after more than 6 months of a shareholding of 10% or more, the Luxembourg investor benefits from a €50.000 deduction and a taxation of the gain at a reduced rate (½ of the applicable income tax rate).

b. Capital gains taxation of Luxembourg non-residents

Provided no double tax treaty which grants the exclusive taxation right to the country of the non-resident 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 taxable in Luxembourg only if the period between the acquisition and the disposal is less or equal to 6 months.

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 €750.000 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 €1.2 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 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 €750 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 & 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 €250,000. Finally additional reporting obligations apply following the implementation of the 6xth Directive on administrative cooperation ("DAC 6"), 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 intra-group 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) and the subsequent implementation of the anti-hybrid rules of ATAD 2, using hybrid entities will often not be an option.

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 €150,000 and 2% for the tranche exceeding €150,000. Since 2018, the tax credit also applies to acquisitions of software and amounts to 8% for the first tranche of €150,000 and 2% for the tranche exceeding €150,000. 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 General Anti-Abuse Rule (GAAR).

Luxembourg is supportive of the implementation of BEPS recommendations and 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 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 already ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS ("MLI").

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 €20 Mio; (ii) total net turnover of more than EUR 40; (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 general anti-abuse rule ("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.

Finally, specific substance requirements apply to Luxembourg companies performing intra-group financing activities.

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. Since 1 January 2015, the rules regarding the ATC/APA procedure have been formalised. 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 €3,000 and €10,000 will be levied by the Luxembourg Tax A. 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 1-month period. The ATC/APA may be valid for a period of maximum 5 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 advisor 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]
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]

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]

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 EUR 1.2 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 & 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 per cent 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 300,000 US dollars 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 co-operative 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 250 million francs 5 EUR 6,197,338) ; 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 per cent 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 2 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.

Footnotes:	
[O]	Dividends - 0% if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent 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%s 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 2 million Euros 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 100 000 Euros 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 & 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 EUR 1.2 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 capital 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 per cent 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 6 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 1,200,000 euro 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 per cent 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 & Royalties - Under Luxembourg domestic law, there is no withholding tax on interest other than interest on profit-sharing bonds, nor (in principle) on royalties.

Footnotes:	
[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.
[D2]	Dividends: 5% if the beneficial owner is a company which holds directly at least 10 per cent 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 80,000 euro 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.

Footnotes:	
[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.
[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 & 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 12-month period ; 15% if the recipient is the beneficial owner of the dividends.
[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.

Footnotes:	
[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.
[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 United States and that has had, during an uninterrupted period of 2 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 10 million US- dollars, 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 10 millions US-dollars, 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 corporate income tax (“CIT”), municipal business tax (“MBT”), Net Wealth Tax (“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

No.	Category	Sub-Category	Description of Request
18	Tax Due Diligence	Other communication with the Luxembourg tax authorities	Any communication with the Luxembourg tax authorities
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 intra-group activities).

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MALTA

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 fifty shareholders and the company must prohibit invitations to the public to subscribe to 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 'see-through' 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. Individuals may also be subject to a final tax of 15% on part-time employment income and rental income.

Transfer of immovable property is also subject to a final tax which varies between 2% and 8% 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 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 depreciation on certain assets at prescribed rates.

The tax legislation provides for a negative test and a positive test. 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 Directive on Anti-Tax Avoidance, more commonly referred to as ATAD1. 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.

During 2019, the Patent Box Regime was introduced giving Malta a competitive edge with respect to the tax treatment of income from Intellectual Property ("IP") and similar intangible assets.

Due to an economic downturn created by COVID-19, 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.

Malta also transposed Council Directive (EU) 2018/8222 ('DAC 6') 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.

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. 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 & 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 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 Inland Revenue Department 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, but the stepped-up amount may qualify for depreciation or amortisation.

As from 2018, it is also possible to have a group for VAT purposes. 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 just above in section b. It is important that the reorganisation or share transfers do not result in 'value shifting'.

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 €2 on every €100 of the market value, with the rate being €5 on every €100 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 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 General Accounting Principles for Small and Medium Enterprises ("GAPSME"). Consolidated accounts qualifying for 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 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 but taking the company's profits for the last five years and other adjustments.

4. ASSET ACQUISITION

a. General Comments

The transfer of assets is done 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 tradenames and other intellectual property may 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. These are immovable property, securities, business, goodwill, business permits, copyright, patents, trademarks, tradenames 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.

d. Tax Free Reorganisations

As indicated above, the transfer of assets within a group is exempt.

Roll-over 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 hotel and offices), 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

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.

No other transfer taxes apply.

h. Asset Purchase Advantages

Assets such as industrial buildings (including a hotel and offices) as well as plant and machinery, and 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.

Also, business assets are done 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.

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

SPV's 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, a special purpose vehicle ("SPV") usually a limited liability company may be used to 'protect' or ring-fence the asset in question.

b. Domestic Acquisition Vehicle

Not applicable.

c. Foreign Acquisition Vehicle

Not applicable.

d. Partnerships and joint ventures

Partnerships and joint ventures are not considered as separate legal entities but are 'see through' 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, it makes no difference whether the equity acquiror is a strategic investor or a private equity investor.

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 almost invariably request supporting documentation for incoming funds 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 Notional Interest Deduction ("NID") mentioned earlier on, 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 just above 5%. The maximum deduction cannot exceed 90% of the chargeable income before deducting the NID, however, 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 ratios. 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 €3 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.

iv Debt Pushdown

Since Malta has no thin capitalisation rules or debt-to-equity ratios, 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 push-downs.

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

None.

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 Malta effective tax ("COMET") is reduced 6.25%. The COMET of 6.25% may be reduced even further if the company also claims the NID.

Malta's participation exemption is quite 'generous' and 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 €1,164,000 (or the equivalent in a foreign currency), 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 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.

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 €750,000 and non-trading income exceeds €75,000, 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 AML provisions and 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 Malta 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 €5 on every €100 or part thereof and not €2 on every €100 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 €750 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 UPE. However, there may be cases where a constituent entity (i.e an entity within the MNE group) that is not the UPE 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.

10. TRANSFER PRICING

Malta does not have any transfer pricing legislation or rules, however the tax legislation contains a general anti-avoidance provision which may be used by the tax authorities if a scheme is put in place to reduce tax payable and is considered to be artificial or fictitious. As a rule, the Maltese tax authorities follow the arm's length principle.

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 may be amortised for tax purposes, provided the amortisation period is not less than 3 years and provided the intellectual property 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 intellectual property as well as foreign source capital gains arising from any disposals of intellectual property, 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 Malta 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 Malta 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 whereby a fiscal regime was announced for income arising from patents, similar intellectual property (IP) rights and copyrighted software. The rules additionally provide that small companies may utilise the patent box rules on income from any intellectual property based on an invention that could be patented. A taxpayer qualifying for the Patent Box deduction 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 ring-fencing companies. However, companies may be entitled to claim tax deductions and tax reliefs such as the FRFTC referred to above. Another deduction is the NID, which is calculated as a percentage (6.95% as at 31 December 2018) 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 2/3rds, 5/7ths and 6/7ths 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, such as ATAD1, Malta 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 4th and 7th 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 IFRSs (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 Standards as adopted by the EU in their consolidated financial statements.

Therefore, the accounting considerations of combinations and divestitures will be as provided for in IFRSs 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.

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

Tax legislation provide for tax rulings in the form of Advance Revenue Rulings ("ARRs") which are valid for five years and 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 ninety per cent 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 the Malta tax.

MALTA

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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 regarded entity and tax resident for Mexican tax purposes, whereas Fideicomisos that are engaged in passive income generating activities are treated as pass-through.

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, facilitation 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. Recent administrative guidelines have been 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%.

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 afore mentioned 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 has been introduced which contains several items of domestic and international relevance.

A general anti-avoidance rule ("GAAR") has been introduced 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 have also been introduced as of fiscal year 2020. Tax advisors, 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 in substitution of the tax advisors.

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 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 afore mentioned 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 has also 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 $20,000,000.

Pursuant to BEPS Action 3, the Controlled Foreign Corporation ("CFC") rules have been amended to address OECD recommendations, amending the cases and thresholds in which such regime shall be applicable.

Mexico has introduced passive income deductibility limitations concerning payments made to foreign related parties subject to preferential tax regimes, including scenarios as a result of a 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.

On 12 November 2020, the Federal Executive submitted a Law initiative before the Mexican Congress which, as currently proposed, would render illegal labour outsourcing schemes not justified by their specialised nature. This initiative would drastically affect the operation of Mexican companies, eliminating the possibility of having an "insourcing" or a service company within the same group, even though this had been in due compliance with their tax and social security obligations. Implementing outsourcing schemes that would not qualify as specialised would render the payments made by the contracting party non-deductible and the associated VAT credit would be disallowed, in addition to the imposition of penalties. Furthermore, any unlawful benefit self-determined by the taxpayer would qualify as an aggravating factor in the imposition of penalties and in the determination of tax fraud.

c. 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.

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 acquiror 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. Regarding contributions-in-kind and exchange of shares, 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 resident in a preferential tax regime. Mexico also has some 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 cost 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.

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.

VAT is applicable in a purchase of assets at a general 16% rate.

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.

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 push-down 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 $20,000,000. 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.

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 January 1, 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 no later than December 31 of the following fiscal year the following 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.

- 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 abovementioned 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 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 program. 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, or through the implementation of an APA.

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 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 5% to 35% depending on the goods 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.

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 reserved 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.

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]
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]
Croatia	Non applicable			
Cyprus	Non applicable			
Czech Republic	10	10	10	
Denmark	0 / 15	5 / 15	10	[15] [16]
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	
Hungary	5 / 15	10	10	[23]
India	10	10	10	
Indonesia	10	10	10	
Ireland	5 / 10	5 / 10	10	[24] [25]
Italy	15	10	15	[26]
Japan	Exempt / 5 / 15	10 / 15	10	[27] [28]
Luxembourg	5 / 8 / 15	10	10	[29]
Malaysia	Non applicable			

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
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]
Philippines	5 / 10 / 15	12.5	15	[35]
Poland	5 / 15	10 / 15	10	[36] [37]
Portugal	10	10	10	
Puerto Rico	Non applicable			
Romania	10	15	15	
Russia	10	10	10	
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]
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]
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	Interests - 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	Interests - 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 favored nation clause, reduced rate of 10% applicable to royalties that do not proceed from the use of commmercial 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.
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	Interests - Pursuant to the most favored 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 favored nation clause.
14	Interests - 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.

Footnotes	
16	Interests - Maximum rate of 15%. 5% rate if paid to banks.
17	Interests - 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	Interests - Pursuant to the most favored 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 favored 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	Interests - 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	Interests - Maximum rate of 10%. 5% rate if paid to banks.
26	Interests - Pursuant to the most favored 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	Interests - 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.
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.

Footnotes	
30	Interests - 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	Interests - 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	Interests - 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	Interests - 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	Interests - 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	Interests - 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	Interests - 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.

Footnotes	
45	Interests - 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.
47	Interests - 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	Interests - 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	Interests - 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	Interests - 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.

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.
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 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.

No.	Category	Sub-Category	Description of Request
15	Tax Due Diligence	Federal Taxes	If applicable, copy of the labor 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 util December 31, 2019.
16	Tax Due Diligence	Federal Taxes	If applicable, documentation supporting value added tax withheld in connection with labor subcontracting and similar activities, in terms of section IV of article 1-A of the Value added Tax Law, from January 1, 2020 and onwards.
17	Tax Due Diligence	Foreign Trade	Confirmation of any foreign trade or maquila program 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 Mexica 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, defense 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.

No.	Category	Sub-Category	Description of Request
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.
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 makes multiple options available for 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. BV's are generally subject to company tax.

ii Public limited company ("NV")

A public limited company is a legal entity with its capital divided into shares. Shares of an NV can be listed on a stock exchange. The minimum share capital for an NV is €45,000. NVs are generally subject to company tax.

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 formerly were not as a general rule subject to Dutch dividend withholding tax except for abusive situations. Therefore, cooperatives grew to be popular holding entities in international group structures. As a general rule, cooperatives are now subject to Dutch dividend withholding tax, unless specific exceptions apply (see section 9a.).

iv Partnerships

Under Dutch law, different forms of partnerships may be used. Based on our experience, partnerships are less frequently used for M&A purposes.

b. Taxes, Tax Rates

All legal entities are generally subject to Dutch corporate income tax. Following the 2021 budget, the highest corporate income tax rate will remain 25%. Profits up to €245,000 will be taxed at a rate of 15% in 2021. As of 2022, profits up to €395,000 will be taxed at a rate of 15%. .

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

Common book-to-tax differences include:

- 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. In line with the implementation of the actions under the BEPS Action Plan, the Netherlands ratified the Multilateral Instrument ("MLI") in 2019. The Dutch Senate has adopted the MLI ratification bill, including the motion to opt out of the anti-commissionaire provision, on 5 March 2019. The Netherlands will therefore make a full reservation on article 12 of the MLI.

The MLI entered into effect on 1 January 2020 for taxes withheld at source and for all other taxes in the first taxable period beginning on or after 16 September 2019.

The EU Anti-Tax Avoidance Directive I - including earnings stripping and CFC legislation – ("ATAD I") has been implemented as of 1 January 2019. 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, as this impacts current CV/BV structures, and 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 VIII – b), (ii) conditional withholding taxes (see section 9.c and d.) and (iii) the new ruling practice (see section 12.d.).

Another relevant development for private equity deal structures 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, the extensive Dutch interest deduction limitation rules have been amended, while, a general interest deduction limitation rule, i.e the earnings stripping rule under ATAD I, has been introduced.

Furthermore, the Dutch government has proposed additional amendments in the near future: (i) the potential introduction of a conditional withholding tax on dividends to low tax jurisdictions from 2024 (see section 9.d.), (ii) the introduction of a new group taxation regime (see section 3.b.) and (iii) increased substance requirements (see section 12.b.).

The 2021 Budget introduced new loss deduction rules for participations and permanent establishments. The new regulations are linked to the public discussion on the tax position of Dutch multinationals. The changes will limit the possibilities to claim a loss at the level of the Dutch taxpayer in relation to a participation or permanent establishment.

Finally, the following tax measures have been taken to reduce the economic impact of COVID-19 as of July 2020:

- Corona reserve in FY19 accounts and tax return to offset expected FY20 losses due to COVID-19;
- Upon request postponement of payment of taxes until July 2021, no fines and 0.01% interest on underpaid tax until 1 October 2020;
- Payment arrangement to pay the accrued tax debt in a maximum of 36 equal monthly installments starting 1 October 2021;
- Increase of the work-related cost scheme "WKR" (tax free allowances for employees) from 1,7% to 3% for 2020 and 2021 for the first €400.000 of the wage bill, with a maximum of €12.000;

- Release of the so-called "g-account" (guarantee account) until 1 April 2021 (escrow account solely used for wage tax and VAT payments to the tax authorities);
- Lowering of provisional tax assessments;
- Postponement of payment of energy tax and surcharge for sustainable energy ("ODE") until 1 July 2021;
- Emergency measure for sustained employment to bridge 80% of the wage bill for companies with a(n) (expected) loss in turnover of 30% (20% in the first three months), starting from 1 October 2020 until July 2021 in equal three month periods (NOW 3.0).

3. SHARE ACQUISITIONS

a. 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 shares 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 oldest loss year. 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 decrease its activities substantially in the future. A step-up in asset basis for the amount of hidden reserves (built-in gains) can be claimed if the NOLs will forfeit due to application of these rules. Prior to 2019, NOLs could be carried back one year and carried forward nine years. However, as of 1 January 2019, the carry forward of NOLs is limited to six years while the carry back remains the same.

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 upon its exit.

b. Tax Grouping

Dutch resident corporate taxpayers can form a 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.

Anti-abuse provisions may trigger a tax claw back, however, and should be carefully monitored. In 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 claw-back 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 case of a transfer of a stand-alone 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.

Following recent case law of the European Court of Justice, the Dutch government has adopted a legislative proposal – having retroactive effect – to avoid erosion of the tax base due to the partial fictitious application of the fiscal unity regime. Following the new 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. A final legislative proposal for the introduction of a new group taxation regime is expected in 2021.

c. Tax Free Reorganisations

Dutch law provides several mechanisms ("roll-over 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 carry forward losses, claim a reduction to avoid double taxation or apply the innovation box regime), the reorganisation facility is only applicable under 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 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 claw back 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 b. Tax Grouping above for the effects of reorganisations within a fiscal unity.

d. Transaction costs

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 incurred during the exploratory phase when it is uncertain whether the transaction will take place, or 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 timing and nature of the costs.

The Dutch Supreme Court recently provided more guidance on the deductibility of acquisition 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 extent that cost is deductible.

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 share purchase agreement ("SPA"). Specific provisions with respect to the Collection of State Taxes Act may also be relevant to include in the SPA.

In specific situations a cooperative may be beneficial from a Dutch dividend withholding tax perspective (see section 9.a.).

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 6% (7% from 2021) (or 2% in case of owner-occupied housing) RETT.

g. Share Purchase Advantages

- In a stock purchase, the buyer may benefit from the target company's loss carryforwards, subject to change of ownership rules. If the losses will be 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 stock purchase may present better structuring opportunities to mitigate Dutch RETT.
- 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 stock purchase, the buyer will not obtain assets that can be depreciated or amortised. Shares can in principle not 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. Claw back provisions may be applicable if a company which has been party to intra-fiscal unity transactions exits the fiscal unity. See paragraph III.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%-6% 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.

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 carryforwards (which are not utilised in connection with the sale) of the target company do not carryover to be used by the buyer.
- A Dutch acquiring company may be subject to a limitation on the deduction of interest expense.

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.

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).

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.

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 make an acquisition. The establishment of a BV, for example, can be completed in approximately 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. Debt is however reclassified as equity if the instrument is considered: (i) a loan for which the legal documentation differs from the commercial intention; that is, if it appears that the parties intended to contribute equity, but that the contribution was documented as a loan, (ii) a bottomless pit loan or (iii) a profit participating loan.

Furthermore, the DTA may try to limit the total amount of debt under the arm's length principle, via a loan-to-value test. 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.

Finally, the terms of the loan should also meet the at 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.

The interest deduction limitation rules under Dutch tax law have recently been simplified. As discussed in Section 2. above, the interest deduction limitation rules relating to excessive debt financing and the leveraged acquisition holding regime were abolished in 2019, and the earnings stripping rule was introduced. The earnings stripping rule limits the deductibility of net interest expense in excess of €1 million to 30% of the taxpayer's EBITDA for tax purposes.

For share deals, interest deductions may be denied under application of a specific anti-base-erosion provision. Under this provision an interest deduction is denied in respect of intra-group loans relating to certain tainted transactions, including the acquisition of a subsidiary. Exceptions may apply if both the transaction and 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.

The specific anti-base erosion provision (see above) applies only to related party debt. Related party debt that can be linked to an unrelated party debt may not be targeted by this provision if specific requirements are met.

The earnings stripping rule applies to both related and unrelated party debt and similar financing arrangements.

Debt-pushdowns can be created to a certain extent by including the leveraged acquisition company and the target company in a fiscal unity.

c. Hybrid Instruments

Under the implementation of ATAD II in 2020, hybrid mismatches (including hybrid financial instruments) will be 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 related to the acquisition or sale 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. 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.

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

As of 2019, CFC legislation applies in the Netherlands. 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 low-tax (statutory tax rate <9%) and blacklisted jurisdictions. For this purpose, the government has issued 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 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 recent case law of the European Court of Justice (“Danish cases”) however, meeting the “relevant substance” requirements is no longer considered a safe harbor. 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 Dutch Tax Authorities. 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 the 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 PE definition under the OECD Model Convention.

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.

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. The Netherlands introduced a domestic dividend withholding tax exemption. At the same time, the Dutch dividend withholding tax position of cooperatives has been amended.

Dividend withholding tax exemption - general

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;
- the tax treaty between the Netherlands and the state in which the shareholder is tax resident contains an article on dividends (the applicable withholding tax rates are however irrelevant);
- the non-resident shareholder holds an interest of at least 5% in the Dutch taxpayer;
- 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 harbor’ 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 recent 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 harbor. 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 Dutch Tax Authorities. 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, 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 "holding cooperatives" and a "qualifying membership interest" are subject to Dutch dividend withholding tax.

Holding cooperatives are those whose activities usually consist 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 (2021 : 15/25%).

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 harbors 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 harbor.

c. Conditional withholding taxes on interest and royalties

From 1 January 2021, a conditional withholding tax on interest and royalty payments may be applied. The conditional withholding tax will only be due on interest or royalty payments to related entities in low-tax or EU blacklisted jurisdictions (see CFC legislation: section 8.b.), or in cases of abuse. The conditional withholding tax may also apply on payments to hybrid entities, which is particularly relevant for private equity. The withholding tax rate will be 25% in 2021 (in line with the applicable corporate income tax rates at that time).

Also, when the recipient of the interest or a royalty payment is not located in a low-tax or EU backlisted jurisdiction, the conditional withholding tax may still apply due to anti-abuse rules. A structure is considered abusive if meets both the "avoidance or subjective test" and "artificiality or objective test" (as described above).

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 harbors 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-tax or EU blacklisted jurisdiction do not prevent the conditional withholding tax in case the payment is made directly to the low-tax or EU blacklisted jurisdiction.

In relation to low-tax jurisdictions, with whom the Netherlands has concluded a tax treaty (such as Bahrein, Kuwait, Qatar 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.

Note that the interest or royalty payment may be considered non-deductible under e.g. Dutch anti-hybrid rules while also subject to the conditional withholding tax.

d. Conditional withholding tax on dividends

The State Secretary of Finance has announced the introduction of a conditional withholding tax on dividends as of January 2024. The conditional withholding tax on dividends will most likely be levied on dividend payments to related entities in low-tax or EU blacklisted jurisdictions (see also CFC legislation: VIII – b), or in case of abuse.

No draft legislation of the conditional withholding tax on dividends has been published yet, but it is expected that this will be drafted along the lines of the conditional withholding tax on interest and royalties .

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 1/3rd 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. 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 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 €50 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

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 €750 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 €870,000 (2021). Failure to comply may also subject taxpayers to criminal prosecution.

10. TRANSFER PRICING

Under Dutch transfer pricing rules all intra-group 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. 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 €37.5 million and consolidated net group turnover of less than €250 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);
- licenses 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 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, we highly recommend not having hybrid entities in structures that involve the Netherlands.

c. Hybrid Instruments

As hybrid instruments may trigger application of ATAD II regulations or deny application of the Dutch participation exemption regime, we recommend not having 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 typically used by large investors who invest in Dutch real estate. Both regimes are subject to requirements.

Leveraged acquisitions are still possible, also within scope of Dutch tax grouping. The 30% EBITDA rule to be considered.

12. OECD BEPS CONSIDERATIONS

Like other OECD Member States, the Netherlands has committed to the OECD minimum standard concerning treaty abuse. The Dutch State Secretary has announced that the proposed anti-abuse rules will be part of treaty negotiations and no reservations were made with regard to the anti-abuse rules in the MLI. There are ongoing efforts to renegotiate tax treaties with developing countries in order to include an anti-abuse rule.

The MLI entered into effect from 1 January 2020. Furthermore, both treaty partners to a bilateral treaty must ratify the MLI and pass through the transition period before the MLI will apply to a particular treaty.

13. ACCOUNTING CONSIDERATIONS

This section is left intentionally blank.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Under the Dutch dividend withholding tax act, a distribution in repayment of share capital or share premium, among others, is not subject to Dutch dividend withholding tax. The repayment of share premium must be approved in advance by the general meeting of shareholders, and the lower nominal value of the shares must be reflected in amended articles of association of the Dutch entity.

b. 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. 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.

c. 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 intra-group financing or licensing activities.

Financial services companies 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 fulfill 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.

Failure to meet the minimum substance requirements may result in furnishing information on the financial services company to foreign tax authorities;

- The Dutch company incurs annual payroll costs of at least €100,000; and
- The Dutch company has an office space at its disposal for at least 24 months.

iii Substance requirements for foreign shareholders - Domestic dividend withholding tax exemption and non-resident substantial shareholder regime

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 harbor. 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 Dutch Tax Authorities. If the substance requirements are not met, the taxpayer can still prove that the structure is driven by sound business motives.

d. 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 paragraph VI.b for more information on the implementation of the earning stripping rule and paragraph VIII.b for more information on the implementation of the CFC rules under ATAD I. As indicated in paragraph II, ATAD II has been implemented as of 1 January 2020.

e. 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.

Recently, the Dutch Ministry of Finance announced amendments to the international ruling policy. The purpose of the new policy is to limit the ability to obtain a tax ruling in cases of tax avoidance, in cases where the taxpayer has insufficient Dutch nexus, and in transactions with entities in jurisdictions that either are on the EU blacklist or are located in designated low-tax jurisdictions. On 23 April 2019, the Dutch Ministry of Finance informed the Dutch House of Representatives on the status of the proposed amendments and provided further guidance and examples of this new ruling policy. The new policy was published on 28 June 2019 and has become effective from 1 July 2019.

15. 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]
Germany	5 / 10 / 15			[5]
Ghana	5 / 10	0 / 8	8	[5] [10]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
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]
Latvia	5 / 15	0 / 10	5 / 10	[1] [2] [7]
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]
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]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
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]
Russia	5 / 15			[28]
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]
Tajikistan (was Sovjet Union)	15			[23]
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]
United Kingdom	0 / 10 / 15			[5]
United States of America	0 / 5 / 15			[31]
Uzbekistan	5 / 15	10	10	[1] [13]

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
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 2019 tax treaty between Ireland and the Netherlands to replace the 1969 treaty entered into force on 29 February 2020.

** The most-favored nation clause is applicable. South Africa: the most-favored nation clause only applies to treaties concluded after this treaty.

The tax treaties with Malawi, Iraq, Kenya, Liechtenstein, Kosovo and Chile have been signed, but it is not clear when these tax treaties will enter into force.

The new tax treaty with Bulgaria and Poland has been signed, but has not yet entered into force.

The Netherlands has reached official agreement on a tax treaty with Cyprus. The Netherlands and Cyprus are working towards a prompt signature of the tax treaty.

The protocols with Switzerland and Ukraine have been signed but it is not yet clear when they will enter into force.

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 recognized 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 longterm 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 €200,000 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 USD 250,000 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.
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 3 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 €250,000 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 Company Tax Act and the future amendments thereto, a company which is a resident of the Netherlands is not charged to Netherlands company 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). 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 USD 2 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 recognized 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 recognized 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-favored 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-favored 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-favored 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 company 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 USD 1 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 USD 300,000 capital is paid in.
25	Dividends - The rate of 0% applies if the shares in the participation is at least 50% and more than USD 300,000 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 €75,000 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%. 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 Company Tax Act and the future amendments thereto, a company which is a resident of the Netherlands is not charged to Netherlands company 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 Company Tax Act and to the future amendments thereto, a company which is a resident of the Netherlands is not charged to Netherlands company 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 the share in the participation is at least 80%. And: shares representing at least 80% of the voting power in the company paying the dividends prior to October 1st, 1998, is a qualified person (Limitation on benefits), is entitled to benefits under art. 26, paragraph 3, or has received a determination pursuant to paragraph 7 of Article 26. The rate of 5% applies if the shares 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 USD 10 million capital is paid in. The 10% rate applies if the shares in the participation is at least 25%, but less than 50%.

16. 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.

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;
2	Tax Due Diligence	General	A description of the activities of the company;
3	Tax Due Diligence	General	Copies of the stand-alone annual accounts for the relevant years;
4	Tax Due Diligence	Corporate Tax	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;
5	Tax Due Diligence	Corporate Tax	Details of any tax planning schemes undertaken and any known areas of tax exposure;
6	Tax Due Diligence	Corporate Tax	Have any legal mergers or split ups, stock mergers, corporate mergers or similar purchase or sale transaction taken place? Please provide details of the transactions and the tax analysis performed;
7	Tax Due Diligence	Corporate Tax	An overview of the activities performed abroad by the company and to what extent these activities might be considered as a foreign taxable presence (permanent establishment);
8	Tax Due Diligence	Corporate Tax	Copies of important correspondence with tax authorities (rulings, discussions, negotiations, assessments etc.);
9	Tax Due Diligence	Corporate Tax	Confirmation on whether the company concluded a compliance agreement with the Dutch tax authorities on horizontal monitoring (“horizontaal toezicht”);
10	Tax Due Diligence	Corporate Tax	Memos or opinions prepared by the company’s tax advisor or tax advisors on potential tax exposures or tax planning;
11	Tax Due Diligence	Corporate Tax	A description of any withholding tax obligations, and details of any elimination of double taxation applied or any treaty clearances obtained;
12	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;
13	Tax Due Diligence	General	Information on any past or current tax audits;
14	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;
15	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;

NETHERLANDS

No.	Category	Sub-Category	Description of Request
16	Tax Due Diligence	Corporate Tax	Copies of the corporate income tax returns and related correspondence (incl. letters from the tax advisory firm that prepared the tax return with comments on the tax return) for the relevant years;
17	Tax Due Diligence	Corporate Tax	Copies of tax assessments (provisional and final, including additional notifications) for the relevant years;
18	Tax Due Diligence	Corporate Tax	If the assessments were not imposed in line with the returns filed, please provide comments on the deviation;
19	Tax Due Diligence	Corporate Tax	Copies of dividend withholding tax returns and dividend withholding tax declaration forms (domestic dividend withholding tax exemption);
20	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);
21	Tax Due Diligence	Corporate Tax	Confirmation on the open tax years and the due dates for these returns;
22	Tax Due Diligence	Corporate Tax	Information on tax losses and/or exceeding interest expenses (under the earningsstripping rule / article 15b CITA) available for carry forward/back (including a breakdown of the losses and/or exceeding interest expenses per year and information on possible restrictions);
23	Tax Due Diligence	Corporate Tax	Confirmation whether the company incurred losses attributable to a foreign permanent establishment /permanent representative or real estate;
24	Tax Due Diligence	Corporate Tax	Details of risk provisions, if any, including the calculation method applied;
25	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;
26	Tax Due Diligence	Corporate Tax	Details (including a breakdown) of the current tax position and the calculation of the effective tax rate;
27	Tax Due Diligence	Corporate Tax	A specification and calculation of the deferred tax asset/liability (if applicable);
28	Tax Due Diligence	Corporate Tax	Information whether the company uses the Innovation box, WBSO and/or the RDA facility? If so, please provide a copy of the underlying documentation and correspondence with the tax authorities / Agentschap NL;
29	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);
30	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;

No.	Category	Sub-Category	Description of Request
31	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 Samo - Anguilla - Bahama's - Bahrein - Barbados - Belize - Bermuda - British Virgin Islands - Cayman Islands - Fiji - Guam - Guernsey - Isle of Man - Jersey - Kuwait - Oman - Palau - Panama - Quatar - Samoa - Saudi Arabia - Seychelles - Trinidad and Tobago - Turkmenistan - Turks and Caicos Islands - United Arab Emirates - US Virgin Islands - Vanuatu
32	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 recognized between jurisdictions.
33	Tax Due Diligence	Corporate Tax	Please confirm all entities that are subject to US check-the-box elections;
34	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);
35	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.);
36	Tax Due Diligence	Corporate Tax	Description of the transfer pricing mechanism applied to the intercompany transactions;

No.	Category	Sub-Category	Description of Request
37	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;
38	Tax Due Diligence	Corporate Tax	Please provide a copy of internal transfer pricing studies or other documents (including Masterfile / Local File if applicable);
39	Tax Due Diligence	Corporate Tax	Please provide a copy of the Country by Country reporting (if applicable);
40	Tax Due Diligence	Corporate Tax	Confirmation on any discussions with or rulings provided by the tax authorities on the transfer pricing applied;
41	Tax Due Diligence	Wage Tax	Confirmation of the number of employees of the company (in the Netherlands or abroad);
42	Tax Due Diligence	Wage Tax	Confirmation whether a collective labour agreement (CAO) is applicable;
43	Tax Due Diligence	Wage Tax	Please provide a copy of the latest cumulative payroll overview;
44	Tax Due Diligence	Wage Tax	Please provide a copy of the general ledger regarding personnel costs, representation costs and costs of freelancers/temporary employees;
45	Tax Due Diligence	Wage Tax	Confirmation of the social security sector code applied;
46	Tax Due Diligence	Wage Tax	Please provide a copy of the employee handbook (if available) or overview of employee benefits;
47	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;
48	Tax Due Diligence	Wage Tax	Confirmation and copy of the most recent payroll tax return filed;
49	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;
50	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, (iv) taxation of benefit in kind;
51	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;
52	Tax Due Diligence	Wage Tax	Does the company pay fixed cost allowances free of taxes to employees?
53	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;

No.	Category	Sub-Category	Description of Request
54	Tax Due Diligence	Wage Tax	Does the company engage independent contractors/free lancers? 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;
55	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);
56	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;
57	Tax Due Diligence	Wage Tax	Are additional cost reimbursed / benefits provided free of taxes besides the 30% allowance?
58	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.
59	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
60	Tax Due Diligence	VAT	Please provide a copy of the VAT reporting manual, if any;
61	Tax Due Diligence	VAT	Does the company own any VAT licenses (e.g. art. 23 Import VAT deferment, VAT warehouse license or else)?
62	Tax Due Diligence	VAT	Can the VAT returns be reconciled with the annual accounts? Please provide the underlying documentation;
63	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 Euro 5,000 per annum?
64	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;
65	Tax Due Diligence	VAT	Has the companies' VAT accounting system changed significantly in recent years? If so, has the VAT module been reviewed?
66	Tax Due Diligence	VAT	Has the company undergone internal reviews of the VAT position? If so, what was the outcome?
67	Tax Due Diligence	VAT	If any questions arise internally regarding VAT, who are the persons to contact?
68	Tax Due Diligence	VAT	Confirmation whether the company is currently, or has been in the past five years, included in a VAT fiscal unity;

No.	Category	Sub-Category	Description of Request
69	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; 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;
70	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;
71	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;
72	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.;
73	Tax Due Diligence	VAT	Does the company periodically validate the EU VAT-id numbers provided by EU resident customers?
74	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
75	Tax Due Diligence	VAT	Please provide a representative sample set of invoices issued by the company to business customers established outside the Netherlands;
76	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;
77	Tax Due Diligence	VAT	Is the company registered for VAT purposes outside the Netherlands? If so, please explain
78	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?
79	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;
80	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;
81	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?;
82	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;

No.	Category	Sub-Category	Description of Request
83	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;
84	Tax Due Diligence	VAT	Does the company work with a pro rata and/or pre pro rata VAT recovery? If so, please details;
85	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)?;
86	Tax Due Diligence	VAT	Can the company confirm that purchase invoices mention the full name and establishment address of the company?
87	Tax Due Diligence	VAT	Can the company confirm that only Dutch VAT is claimed through the Dutch return?
88	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;
89	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);
90	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;
91	Tax Due Diligence	VAT	Has the company received any subsidy or grants in the last 5 calendar years? If so, please provide details;
92	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?
93	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?
94	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);
95	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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NORWAY

1. INTRODUCTION

a. Forms of Legal Entity

The most common types of legal entities are limited companies, public limited companies and partnerships (partnership with full liability, partnership with apportioned liability, limited partnerships and internal partnerships). Limited companies are taxpayers, while partnerships are tax transparent.

b. Taxes, Tax Rates

Resident companies are taxed in Norway on their worldwide income and capital gains. Non-resident companies are taxed for income derived from Norway. Partnerships are transparent entities for tax purposes, and the taxable income is allocated to the partners and taxed at their hands. Foreign partners in partnerships are considered to have a taxable presence in Norway.

The general corporate tax rate is 22%. Corporate tax rate for financial undertakings is 25%. Financial Activity Tax is a tax based on salary payments in the finance sector, and the tax rate is 5% of gross salaries paid.

Corporate shareholders (shareholders of corporations that are themselves corporations) are exempt from taxation on gains on shares (and equivalent type of income), and the tax rate is 0.66% on dividends. Losses are not deductible. If an entity holds more than 90% of the shares in a distributing company, the tax rate is 0% on dividends. Note that the Norwegian exemption method has several exceptions and special rules for certain situations, e.g. special rules for foreign entities within the EEA and outside the EEA, substance requirements, low tax rules, hybrids, transparent entities, foreign funds etc.

Individual shareholders are taxed with an effective rate of 31.68% on gains and dividends.

Dividends from Norwegian companies distributed to foreign taxpayers are subject to withholding tax of 25%, unless the recipient is an entity comprised by the exemption method within the EEA with substance (0%) or covered by tax treaty. There is no withholding tax on partnership distributions.

In general, different rules apply for accounting purposes and tax purposes. The most common divergences are as follows:

- Depreciation
- Provisions
- Timing (accrual) of income and losses
- Deferred profits or losses on production factors (profit and loss account)
- Exempt income/non-deductible losses (e.g. exemption method, losses on receivables)
- Loss carry forward
- Interest limitation rules

2. RECENT DEVELOPMENTS

a. Interest limitation rules

The interest limitation rules were extended to also include interest on external debt. From 1 January 2019, interest limitation rules also applied to loans between unrelated parties. The threshold amount is MNOK 25 in net interest expenses on Norwegian group level. Where the threshold is exceeded, deductions are limited to 25% of taxable EBITDA per entity. A safety clause is introduced, granting the taxpayer full deductions if the equity ratio in the Norwegian part of the company or group is the same as or higher than the group as a whole (the calculation is based on group accounts).

The interest limitation rules on internal debt still apply to loans between related parties not being part of the same group.

b. Tax residency rules

With effect from 1 January 2019, there were some changes in the tax residency rules. An entity is deemed to be tax resident in Norway if either of the two criteria are met:

- the company is incorporated under Norwegian law
- the company's place of effective management is in Norway

When assessing whether effective management takes place in Norway, both management at board level and daily management should be assessed, as well as other circumstances concerning the organisation and business of the company. Companies treated as tax resident in another country under a tax treaty between Norway and that other country, will not be treated as tax resident in Norway for domestic tax law purposes.

c. Implementation of MLI

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI") entered into force in Norway on 1 November 2019. Several tax treaties are covered by the MLI and have been modified, in order to prevent tax evasion. The MLI implements agreed minimum standards to counter treaty abuse and to improve dispute resolution mechanisms.

The Principal Purpose Test ("PPT") is implemented in the tax treaties as part of the MLI, in accordance with the BEPS Project. The purpose of the PPT is to prevent abuse of treaty benefits. If obtaining a treaty benefit is considered one of the main purposes of an arrangement or a transaction, the taxpayer may be denied such benefit. Granting the taxpayer, the benefit must be in accordance with the object and purpose of the provisions in the tax treaty.

d. Covid-19 Response

In response to the Covid-19 pandemic and its impact on the Norwegian economy, substantial relief packages have been introduced, providing tax relief and securing short-term liquidity for the taxpayers. The measures put in place include delayed payment of corporate income tax, VAT and wealth tax, as well as delayed reporting. Obligations to pay salary to laid-off employees have been reduced from 20 days to 2 days. Further, cash payments have been distributed to companies that are loss-making due to restrictions and lockdowns, and the government is offering guarantee loans to businesses in need.

3. SHARE ACQUISITION

a. General Comments

Most deals in Norway are carried out as share deals. A share deal is not a taxable event for the target company, meaning that there is no taxation of the target company's underlying assets, and as well as no stamp duty. In addition, capital gains on shares are tax exempt for corporate shareholders, and there is no stamp duty on the transfer of shares. Thus, a share deal will not have any (direct) tax consequences.

b. Tax attributes

A special anti-avoidance rule in Article 14-90 of the Norwegian Tax Act applies to tax motivated acquisitions. Tax loss carry-forward (and other tax positions not linked to an asset/liability) at the level of the target company/group may lapse if the main purpose of the acquisition of the shares is to utilise the tax position.

c. Tax Grouping

The Norwegian Tax Act allows tax consolidation between group companies taxable in Norway, provided that the parent company holds more than 90% of the shares and votes in the subsidiary. In case of indirect ownership, each company in the structure must hold more than 90% of the shares and votes in the relevant company's subsidiary. A company that has taxable profit may transfer its taxable profit to another group company to offset against tax losses. Both horizontal and vertical consolidation are accepted provided that the contributor and recipient belong to the same tax group.

Group contribution is also available to and from a Norwegian subsidiary to/from a foreign entity, comparable to a Norwegian limited company, resident within the EEA. The foreign company must be subject to taxation in Norway through a permanent establishment, and the group contribution must be considered as taxable income for the recipient in Norway. Group contributions may also, in some cases, be available from a Norwegian permanent establishment to a Norwegian company if there is a tax treaty in place.

For VAT purposes, it is possible to register a group together, provided that the top company holds at least 85% of the shares in the subsidiaries.

d. Tax Free Reorganisations

There are tax rules that provide for tax neutral reorganisations such as mergers, demergers etc. A cross border merger/demerger may lead to exit taxation if business/assets are exited from Norwegian tax jurisdiction. In addition, anti-avoidance rules could be applicable if the main purpose of the transaction is tax motivated.

Restrictions in the Norwegian Company Law may apply to reorganisations, e.g. if the acquisition debt will be placed in the acquired company through the reorganisation.

e. Purchase Agreement

It is normal to provide tax guarantees and indemnities for specific issues in share deals. In addition, special tax clauses are often included (e.g. for handling of 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.

All shares transfers are reported to the tax authorities through special forms or by the Norwegian Central Securities Depository (NO: "Verdipapirsentralen").

g. "Purchase accounting" applicable to share acquisitions

It is not possible to obtain a step up when acquiring shares.

h. Share Purchase Advantages

A share purchase is not considered a taxable event for the target company. Also, disposals of shares are normally tax exempt for the seller. There are no transfer taxes or stamp duty.

i. Share Purchase Disadvantages

Any existing tax liabilities in the target company will continue to exist.

There is no step up in the basis of the assets for the purchase.

Most acquisition costs for share deals will not be deductible. The nature of the costs must be specifically assessed, and all costs related to the purchase of shares will become non-deductible. Costs related to financing are normally deductible.

4. ASSET ACQUISITION

a. General Comments

An asset deal is a taxable event, which implies that all assets and liabilities of the business that are transferred to the buyer are considered realised for tax purposes. Gains are taxable at a rate of 22%. Losses are deductible. Because an asset deal is a taxable event, a purchase price allocation must be prepared. The allocation will be the basis for the calculation of taxable gain/loss.

Taxation of capital gains related to most assets and goodwill may be deferred through profit and loss account. Tax deduction for losses must be deferred. Normally, gains/losses are booked at a profit and loss account, where 20% shall be booked as income/loss per tax year on a declining balance basis. This only applies with respect to tax and not for accounting purposes, thus, leads to a temporary difference between the tax and the accounts.

Furthermore, a purchase price allocation must be prepared by the buyer. The purchase price allocation will be the basis for tax depreciation. Normally, the tax depreciation will be slower than the seller's deferral of gains.

b. Purchase Price Allocation

Purchase Price Allocation must be carried out based on the value of the purchased assets. Tax authorities generally respect the parties' allocation. An independent valuation may be performed, but it is not a requirement.

c. Tax attributes

It is not possible to transfer tax attributes in an asset acquisition.

d. Tax Free Reorganisations

It is not possible to carry out a tax-free reorganisation in connection with a sale of business/assets.

e. Purchase Agreement

As an asset sale is a taxable event, it is not normal to include regulations for tax. It is, however, normal to have special regulations for VAT, as a transfer of business/assets may have VAT implications for the seller and buyer.

f. Depreciation and Amortisation

Purchased goodwill (e.g. through a direct acquisition of business) may be depreciated at a rate of 20% on a declining balance basis. Certain assets may be non-depreciable, such as client lists, contracts etc.

g. Transfer Taxes, VAT

Transfer of real estate is subject to stamp duty of 2.5% of the purchase price.

Exported goods are generally not subject to VAT in Norway. Also, the purchase and lease of immovable property (except in case of voluntary VAT registration), transactions concerning securities, medical care, banking and educational services, are exempted from VAT. Moreover, transfer of undertakings are exempted from VAT.

h. Asset Purchase Advantages

The purchaser gets to step up the value of the assets.

No tax liabilities are transferred from the seller.

Acquisition costs are usually deductible, however, often through depreciation.

i. Asset Purchase Disadvantages

Asset purchases are fully taxable to the seller, although some gains may be deferred. There is a stamp duty on real estate, which is 2.5% of the purchase price.

5. ACQUISITION VEHICLES

a. General Comments

Private limited companies are normally used as acquisition vehicles.

b. Domestic Acquisition Vehicle

The most common domestic acquisition vehicles are private limited companies (***no***: “aksjeselskap”).

c. Foreign Acquisition Vehicle

Private limited companies (often resident in the Nordics, Luxembourg, the Netherlands, UK and Ireland). Countries where the tax treaty provide a zero withholding tax rate on dividends are generally preferable. When it comes to choosing a foreign acquisition vehicle or a domestic one, it usually depends on where the investors/ultimate parent company is based. Companies solely based in Norway would normally prefer a domestic acquisition vehicle, while foreign buyers often use both a domestic and foreign holding company in combination, typically placing some acquisition debt in the Norway acquisition vehicle.

d. Partnerships and joint ventures

Limited companies and partnerships are typically used. Limited companies are generally used, and it is well-known by investors as it is the most common type of company. It also offers a limited liability, which is generally preferred by the investors.

Partnerships are mostly used when created by the parties' joint business, with joint profits and risk. It may also be used in order to create a tax transparent vehicle. The participants in the partnerships are usually limited liability companies, thus, indirectly limiting the risk for the participants.

e. Strategic vs Private Equity Buyers

Choice of company form and structure depends on the investment and the what the investment requires, as well as the investors' preferences. In both cases, private limited companies are usually the preferred choice of acquisition vehicle, due to gains and dividends being tax exempt under the exemption method. Establishing a Norwegian holding company generally depends on whether it is desirable to put debt in Norway, and whether withholding tax advantages may be obtained.

6. ACQUISITION FINANCING

a. General Comments

Financing is usually obtained through equity or debt. There are no specific timing issues. Funds may be used once available in account.

b. Equity

The most favourable jurisdictions for holding equity are countries within the EEA, as there is a 0% withholding tax on dividends for corporate shareholders if the shareholder has substance (Cadbury Schweppes-case based test). Several double tax treaties also provide for a 0% tax rate for substantial holdings, e.g. Netherlands, UK and the Nordic countries. Dividends distributed to these countries will therefore not be subject to tax in Norway, regardless of the exemption method.

c. Debt

Interest costs are as a starting point fully deductible. Norway has introduced rules limiting interest deductions, which means that debt financing has become less advantageous. See above (Section 2.a.)

There is no withholding tax on interest payments in Norway. The Ministry of Finance has, however, proposed introducing withholding tax on interest and royalties. The proposed withholding tax rate is 15%. The proposed rules are limited to interest on loans between related parties, and royalty payments to related parties in low-tax countries.

Typically, a Norwegian holding company ("BidCo") is used as an acquisition vehicle. Norway applies group contribution rules, implying that the target company can contribute their taxable income to the holding company with tax deduction in order to net the tax loss (resulting from interests) in the holding company. Thus, the tax liability for the group as a whole is reduced.

It should also be possible to carry out a local debt-pushdown when acquiring a group with a Norwegian subsidiary. Allocation of debt between the various jurisdictions in the group is not prohibited by the interest limitation rules and the OECD BEPS project.

d. Hybrid Instruments

Norway does not have any special rules on the classification of hybrid companies and Financing. Hybrids can occur, as foreign companies and financing must be analysed and classified in accordance with Norwegian law and practice. There are both court cases and administrative practice on various hybrid situations.

The exemption method has a special anti-avoidance rule which applies to hybrid instruments, preventing double non-taxation. Dividends are not covered by the exemption method in Norway in the event that they are deductible in the resident country.

e. Other Instruments

Preference shares are usually considered as equity instruments and are typically used for private equity investments.

f. Earn-outs

Earn-outs may be classified as salary and taxed accordingly. When assessing earn-outs several aspects should be considered, e.g. suspensions, lock-ins and non-compete clauses. The reclassification to salary is only applicable where the terms of the earn-out gives reason to treat the payment as compensation for work or services performed by the employee or other.

Earn-outs are generally used in a broad number of transactions where the value of the company is uncertain, and it is reasonable to connect the final purchase price to the company's result over the next years.

7. DIVESTITURES

a. Tax Free

There is no tax on gains for corporate shareholders and no withholding tax on gains on shares, and divestitures are therefore typically carried out as sales of shares. Distributions of paid in capital or liquidation proceeds are not subject to withholding tax. There is withholding tax on dividends, and dividends should be avoided if there are foreign divesting shareholders.

A demerger of a business or an asset, and subsequent sale is possible, enabling tax free sale of shares instead of taxable asset deals, regardless of whether the assets were being held in an SPV to begin with. Such transactions are not subject to the Norwegian GAAR.

Withholding tax does not apply to repayment of loans. A repayment of loan may, however, trigger foreign exchange gains on loans. Under special rules it is possible to defer foreign exchange gains, which will be triggered upon repayment.

b. Taxable

A sale of business or assets is taxable/deductible. Taxable divestitures of assets are not common but are typically used if there is a loss or if the buyer want to avoid historical risk.

A sale of shares from Norwegian tax resident shareholders is taxable, and typically a reorganisation is carried out before a sale in order to avoid (postpone) such tax.

c. Cross-Border

See section 7.a. above.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

Resident companies are subject to taxation in Norway on their worldwide income.

Branches and PEs (of non-resident companies) are subject to taxation in Norway only on their Norwegian-source income.

b. CFC Regime

Foreign corporate entities are normally regarded as separate tax entities under the laws of Norway. Therefore, Norwegian resident shareholders are not taxed on the earnings of the foreign company in which they own shares, unless and until amounts are distributed as dividends or by other means to the shareholders. However, Norway has introduced Controlled Foreign Corporation (CFC) legislation to stop tax evasion through the use of foreign companies in low-tax states (where the rate of taxation is less than two-thirds of the tax burden of a Norwegian resident corporate body in Norway).

The definition “controlled foreign corporation” covers a foreign corporate entity which is controlled by Norwegian taxpayers. The entity is considered as controlled when one or several Norwegian taxpayers directly or indirectly own at least 50% of the share capital or the voting rights in a CFC.

Norwegian shareholders in CFCs are subject to tax on their allocable share of the profits of the controlled corporation, regardless of whether the profits are distributed as dividends, due to CFC regulations. Distributions from a CFC to a corporate shareholder is not taxable if the distribution stems from profits that has been taxed.

The CFC regime does not apply to corporate entities in low-tax countries within the EEA, as long as they fulfil the substance requirements (Cadbury Schweppes based assessment).

c. Foreign branches and partnerships

Foreign branches of Norwegian companies are subject to taxation in Norway, due to the Norwegian company being taxed for its worldwide income (see above in VIII a.). If the tax treaty uses a credit method, which is most common, tax paid in another country will be deducted from the tax liable in Norway. If the tax treaty uses the exemption method, income derived from a foreign source will not be considered tax liable income in Norway. Norwegian domestic law also provides for foreign tax credits for income earned in non-tax treaty countries.

Partnerships are not regarded as separate tax entities and are subject to taxation on a transparency basis. The net taxable income is calculated on a partnership level (based on Norwegian tax rules), as if the partnership was a taxable entity, then allocated to each of the partners and taxed as net taxable income or deductible loss. The assessed net income will be taxed as ordinary income at a rate of 22%, irrespective of whether or not any distribution from the partnership to the partners is made.

Partnerships, limited partnerships and some trusts are regarded as tax transparent, meaning that the partnership/trust will not be treated as a separate legal entity for tax purposes.

d. Cash Repatriation

Foreign-source payments to a Norwegian company may be taxable, depending on the status of the Norwegian company and the source of income. Dividends and gains received from EEA companies comprised by the exemption method is tax free. Dividends and gains derived from countries outside the EEA are covered by the exemption method if the Norwegian shareholder at no point over the 2 years prior to the payment have held 10% or more of the capital or the votes in the foreign company. Dividends and gains received may also be tax free by tax treaty provision, where several tax treaties have a zero-tax rate. Receiving repayment of paid-in capital is tax free. Interest income is taxable for the Norwegian company, with a general rate of 22%. Receiving repayment of a loan is tax free. For low-tax countries, see section 7.b.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

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

There are no special rules for "real-property-rich" entities.

There is a stamp duty of 2.5% of the fair market value of transferred real estate if an asset deal is carried out. There is no stamp duty triggered upon the transfer of shares, even if the main assets of the company are real estate. Therefore, it is normal to organise real estate in (single purpose) companies and to sell shares rather than assets, implying that the seller avoids both capital gains taxation (due to the exemption method) and stamp duty.

Several municipalities have introduced property tax on the value of real estate. In the municipality of Oslo, the property tax is 0.3%. Thus, the element of property tax should also be taken into account.

b. CbC and Other Reporting Regimes

Norway has implemented country-by-country reporting rules, following recommendations from the OECD. Multinational enterprises with ultimate parent entity in Norway and consolidated income of more than NOK 6.5 billion a year, must file a report with information about the activity in all countries they conduct business. The reports may be exchanged with other competent tax administrations across national borders.

Norway has also entered into the CRS and FACTA agreements, concerning automatic exchange of information relating to financial accounts.

10. TRANSFER PRICING

The Arm's Length Principle is included in the Norwegian Taxation Act, and the rules generally follow the OECD Transfer Pricing Guidelines. Transactions between related parties should be in accordance with what two unrelated parties would have agreed upon. If there is a reduction of taxable income due to community of interest, the tax authorities may adjust the transfer pricing to what it would have been when disregarding the community of interest.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

Hybrid entities must be classified based on Norwegian law. Hybrid entities are rarely used.

b. Use of Hybrid Instruments

Hybrid instruments must be classified based on Norwegian law. Hybrid instruments are rarely used.

c. Principal/Limited Risk Distribution or Similar Structures

May be used based on the particular case. Note that a changed Transfer Pricing model may imply a taxable transfer.

d. Intellectual property

May be used based on the particular case. Note that a transfer of intellectual property out of Norway may imply a taxable transfer.

e. Special tax regimes

There are several special tax regimes under Norwegian law.

- Tonnage tax regime
- Petroleum tax regime
- Hydroelectric power tax regime

12. OECD BEPS CONSIDERATIONS

Generally, Norwegian authorities are positive to the implementation of the OECD BEPS actions. With respect to BEPS action Plan 6, the "Principal Purpose Test" ("PPT") has been implemented in Norwegian tax treaties for the avoidance of treaty shopping.

Norway has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI") (action Plan 15). 28 bilateral tax treaties are covered by the MLI. See above for more information on the MLI (Section 2.c.).

13. ACCOUNTING CONSIDERATIONS

Applicable accounting standards are not determinative for the tax considerations in Norway. Accounting follows IFRS, simplified or local GAAP, and accounting considerations vary with the accounting standards.

14. OTHER TAX CONSIDERATIONS

a. Application of Regional Rules

Norway is not an EU member and the EU Directives on tax does not apply.

b. Tax Rulings and Clearances

It is possible to ask the Tax Authorities to give a binding ruling on tax matters, but it may take quite some time to process. Therefore, this is not very common when it comes to transactions. It is not possible to ask for clearance from the Norwegian Tax Authorities.

15. MAJOR NON-TAX CONSIDERATIONS

a. Distributable Reserves

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.

16. APPENDIX I - TAX TREATY RATES

Norway applies withholding tax on dividends, with a standard rate of 25% unless reduced rate by tax treaty. Please see the table below for comparable rates on dividends. There is no withholding tax on interest or royalties.

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Albania	5 / 15	N/A	N/A	[1]
Argentina	10 / 15	N/A	N/A	[2]
Australia	0 / 5/ 15	N/A	N/A	[3]
Austria	5 / 15	N/A	N/A	[1]
Azerbaijan	10 / 15	N/A	N/A	[4]
Bangladesh	10 / 15	N/A	N/A	[5]
Barbados	5 / 15	N/A	N/A	[6]
Belgium	0 / 5/ 15	N/A	N/A	[7]
Benin	20	N/A	N/A	
Bosnia-Herzegovina	15	N/A	N/A	
Brazil	25	N/A	N/A	
Bulgaria	5 / 15	N/A	N/A	[6]
Canada	5 / 15	N/A	N/A	[8]
Chile	5 / 15	N/A	N/A	[1]
China	15	N/A	N/A	
Croatia	15	N/A	N/A	
Cyprus	0 / 15	N/A	N/A	[9]
Czech Republic	0 / 15	N/A	N/A	[9]
Denmark	0 / 15	N/A	N/A	[10]
Egypt	15	N/A	N/A	
Estonia	5 / 15	N/A	N/A	[1]
Faroe Islands	0 / 15	N/A	N/A	[10]
Finland	0 / 15	N/A	N/A	[10]
France	0 / 5 /15	N/A	N/A	[11]

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Republic of the Gambia	5 / 15	N/A	N/A	[1]
Georgia	5 / 10	N/A	N/A	[12]
Germany	0 / 15	N/A	N/A	[13]
Greece	20	N/A	N/A	
Greenland	5 / 15	N/A	N/A	[6]
Hungary	10	N/A	N/A	
Iceland	0 / 15	N/A	N/A	[10]
India	10	N/A	N/A	
Indonesia	15	N/A	N/A	
Ireland	5 / 15	N/A	N/A	[6]
Israel	5 / 15	N/A	N/A	[14]
Italy	15	N/A	N/A	
Ivory Coast	15	N/A	N/A	
Jamaica	15	N/A	N/A	
Japan	5 / 15	N/A	N/A	[15]
Kazakhstan	5 / 15	N/A	N/A	[6]
Republic of Kenya	15 / 25	N/A	N/A	[16]
Latvia	5 / 15	N/A	N/A	[1]
Lithuania	5 / 15	N/A	N/A	[1]
Luxembourg	5 / 15	N/A	N/A	[1]
Macedonia	10 / 15	N/A	N/A	[2]
Malawi	5 / 15	N/A	N/A	[6]
Malaysia	0	N/A	N/A	
Malta	0 / 15	N/A	N/A	[17]
Mexico	0 / 15	N/A	N/A	[13]
Montenegro	15	N/A	N/A	
Morocco	15	N/A	N/A	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Netherlands	0 / 15	N/A	N/A	[12]
Netherlands Antilles	5 / 15	N/A	N/A	[1]
Nepal	5 / 10 / 15	N/A	N/A	[18]
New Zealand	15	N/A	N/A	
Pakistan	15	N/A	N/A	
Philippines	15 / 25	N/A	N/A	[19]
Poland	0 / 15	N/A	N/A	[17]
Portugal	5 / 15	N/A	N/A	[20]
Qatar	5 / 15	N/A	N/A	[6]
Romania	5 / 10	N/A	N/A	[12]
Russia	10	N/A	N/A	
Senegal	16	N/A	N/A	
Serbia	5 / 15	N/A	N/A	[1]
Sierra Leone	0 / 5	N/A	N/A	[21]
Singapore	5 / 15	N/A	N/A	[1]
Slovakia	5 / 15	N/A	N/A	[1]
Slovenia	0 / 15	N/A	N/A	[22]
South Africa	5 / 15	N/A	N/A	[1]
South Korea	15	N/A	N/A	
Spain	10 / 15	N/A	N/A	[2]
Sri Lanka	15	N/A	N/A	
Sweden	0 / 15	N/A	N/A	[10]
Switzerland	0 / 15	N/A	N/A	[10]
Tanzania	20	N/A	N/A	
Thailand	10 / 15	N/A	N/A	[5]
Trinidad & Tobago	10 / 20	N/A	N/A	[23]
Tunisia	20	N/A	N/A	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Turkey	5 / 15	N/A	N/A	[24]
Uganda	10 / 15	N/A	N/A	[2]
Ukraine	5 / 15	N/A	N/A	[1]
UK	0 / 15	N/A	N/A	[10]
USA	15	N/A	N/A	
Venezuela	5 / 10	N/A	N/A	[12]
Vietnam	5 / 10 / 15	N/A	N/A	[25]
Zambia	5 / 15	N/A	N/A	[1]
Zimbabwe	15 / 20	N/A	N/A	[26]

Footnotes:	
1	Dividends - 5% tax rate to companies directly holding a capital participation of 25%. Otherwise 15%.
2	Dividends - 10% tax rate to companies directly holding a capital participation of 25% the distributing company. Otherwise 15%.
3	Dividends - 5% tax rate to companies with 10% of the voting rights in the distributing company. 0% tax rate to companies with 80 % of the voting rights for the last 12 months. Otherwise 15%.
4	Dividends - 10% tax rate to companies directly holding a capital participation of 30%, and investments exceeding USD 100 000. Otherwise 15%.
5	Dividends - 10% tax rate to companies directly holding a capital participation of 10%. Otherwise 15%.
6	Dividends - 5% tax rate to companies directly holding a capital participation of 10%. Otherwise 15%.
7	Dividends - 0% tax rate to companies directly holding a capital participation of 10 % for the last 12 months. 5% tax rate if the beneficial owner is a pension fund. Otherwise 15%.
8	Dividends - 5% tax rate to companies with 10% of the voting rights in the distributing company. Otherwise 15%.
9	Dividends - 0% tax rate to companies with 10% of the voting rights in the distributing company. Otherwise 15%.
10	Dividends - 0% tax rate to companies directly holding a capital participation of 10%. Otherwise 15%.
11	Dividends - 0% tax rate to companies directly holding a capital participation of 25%, 5% tax rate to companies directly holding a capital participation of 10%. Otherwise 15%.
12	Dividends - 5% tax rate to companies directly holding a capital participation of 10%. Otherwise 10%.
13	Dividends - 0% tax rate to companies directly holding a capital participation of 25%. Otherwise 15%.
14	Dividends - 5% tax rate to companies with 50% of the voting rights. Otherwise 15%.
15	Dividends - 5% tax rate to companies with 25% of the voting rights. Otherwise 15%.
16	Dividends - 15% tax rate to companies with 25% of the voting rights. Otherwise 25%.
17	Dividends - 0% tax rate to companies directly holding a capital participation of 10% owned for the last 24 months. Otherwise 15%.
18	Dividends - 5% tax rate to companies directly holding a capital participation of 25%, 10% tax rate to companies directly holding a capital participation of 10%. Otherwise 15%.
19	Dividends - 15% tax rate to companies directly holding a capital participation of 10%. Otherwise 25%.

Footnotes:	
20	Dividends - 5% tax rate to companies directly holding a capital participation of 10% owned for the last 12 months, or since the distributing company was established. Otherwise 15%.
21	Dividends - 0% tax rate to companies with 50% of the voting rights. Otherwise 5%.
22	Dividends - 0% tax rate to companies directly holding a capital participation of 15%. Otherwise 15%.
23	Dividends - 10% tax rate to companies with 25% of the voting rights. Otherwise 20%.
24	Dividends - 5% tax rate to companies directly holding a capital participation of 20% if the dividends are exempt from taxation in the other state. Otherwise 15%.
25	Dividends - 5% tax rate to companies directly holding a capital participation of 70%, 10% tax rate to companies directly holding a capital participation of 25%. Otherwise 15%.
26	Dividends - 15% tax rate to companies directly holding a capital participation of 25%. Otherwise 20%.

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1. INTRODUCTION

a. Forms of Legal Entity

Corporations in Poland can be formed as either a limited liability company or a 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 PLN 5,000. The company is a Corporate Income Tax ("CIT") and 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 PLN 100,000. The company is a CIT and VAT payer.

In general, there are no substantial tax differences between limited liability company and joint stock company. The general legal differences are presented below.

	Limited liability company	Joint-stock company
Share capital	5 000 PLN	100 000 PLN
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)
Supervisory board	Optional (in principle)	Obligatory
Reserve capital do cover potential loss	Optional	Obligatory (up to 1/3 of the registered stock capital)
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
Possible to register via website	Yes	No

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 are no minimum capital requirement. The general partnership is tax transparent for income tax purposes (the partners are income taxpayers) but it is 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. As from 2021 limited partnerships are now CIT payers and VAT payers. Previously the limited partnership itself was a VAT payer and 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 PLN 50,000. Limited joint-stock partnership has an active partner and a shareholder (provider of capital) who is a passive partner. The general partner has unlimited liability for the partnership's obligations while the shareholder is not liable for its obligations. Limited joint-stock partnership is subject to CIT and VAT.

b. Taxes, Tax Rates

Corporate Income Tax ("CIT")

The standard CIT rate in Poland is 19% flat rate. The CIT rate for taxpayers whose revenues do not exceed 1.2m 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 upon restructurings). The 19% rate applies both to operating and passive income, however with respect to passive income 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 PLN 85,528 – 17% (minus tax reducing amount)
- taxable base higher than PLN 85,528 – tax is 14 539.76 + 32% of the surplus over 85 528 (minus tax reducing amount)
- 19% - e.g. for capital gains, dividends, CFC income, derivatives.

VAT

The VAT rates are as follows:

- 23% - standard VAT rate
- 8% - reduced VAT rate applicable to e.g. to supply of certain foodstuffs, medical products, restaurant and hotel services
- 5% - reduced VAT rate applicable to e.g. supply of certain foodstuffs (e.g. bread, dairy products, meats), certain kinds of printed books
- 0% - applicable to export of goods and EU intra-community supply of goods and e.g. international transport (under certain conditions)

- **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 e.g. increase of share capital, loans
  - 1% - applicable to e.g. purchase of property rights including purchase of shares
  - 2% - applicable to e.g. purchase of real estate, movables
  - In general, CLAT should be collected and paid by the acquiror, however if the civil law transaction is being made the form of notarial deed, CLAT should be collected by the notary (still, charged from 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. Changes in the principles for 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 to the benefit of a foreign entity are subject to 19% / 20% WHT. However, if certain conditions are met the payment could benefit from the WHT exemption, preferential rate or could be out of scope of WHT on the basis of EU Directives or Double Tax Treaties. Such obligation 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).

Under new regulations, for payments below PLN 2,000,000 (in a given year to a given taxpayer), there is additional documentation / internal procedures needed to benefit from the exemption/lower WHT rates. For payments over PLN 2,000,000, the tax remitter will be obliged to collect WHT on the surplus of over PLN 2,000,000 under the domestic 19% / 20% rate. The taxpayer / tax remitter (in certain cases) will be allowed to claim for WHT overpayment. The refund procedure can take up to 6 months and would require the taxpayer to provide substantial documentation. The new law provides for two exceptions: (i) the tax remitter's board member gives representations on meeting the WHT conditions (under the fiscal penal code) (ii) the taxpayer obtains an opinion from the tax authority on the application of the WHT exemption (only for payments subject to EU Directives) which is valid for 36 months. For payments above PLN 2,000,000 the regulations are suspended until 31 December 2020.

b. Exit tax:

Introduction of tax for 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 has 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.

c. Introduction of Mandatory Disclosure Rules:

From 1 January 2019 Mandatory Disclosure Rules ("MDR") came into force to the Polish tax system. MDR imposes 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 as an activity or set of activities that meet the following conditions:

- **a general hallmark** (e.g. 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 meet the main benefit test**; or
- **a specific hallmark** (e.g. the same income / asset benefits from the methods of avoiding double taxation in more than one country, transfer of hard-to-value intangibles, non-transparent ownership structure or beneficial owner hard/impossible to be identified, intra-group 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); or
- **other specific hallmark** (e.g. Polish income tax remitter would be obliged to collect WHT exceeding PLN 5,000,000 if the lower tax rate / WHT exemption would 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 that the entity expects to achieve from certain action.

d. Innovation Box:

New regulations introduced 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.

e. Notional Interest Deduction:

New regulations allow for deduction for tax purposes of "virtual interest" on profits allocated to share premium / reserved capital and additional payments (cash injections) provided to the company up to PLN 250,000 per year (up to 3 years).

f. COVID-19 measures : Introduction of the "Anti-crisis Shield"

Due to the COVID-19 crisis, on 31.03.2020 an act referred to as "Anti-crisis Shield" was published in the official Journal of Poland. Most of provisions provided by the act already entered into force as of 31.03.2020.

The "Anti-Crisis Shield" was then updated through new amending laws i.e on 16.04.2020 amendment to "Anti-crisis Shield" was published, providing some additional solutions for business (so called "Anti-crisis Shield 2.0"), "Anti-crisis Shield 3.0" published on 15.05.2020, "Anti-crisis Shield 4.0" published on 23.06.2020

The whole aid package ("Anti-crisis shield" Act, as well related acts and resolutions) address 5 main pillars including different areas of the economy. The value of the package is estimated at PLN 212 billion (€ 47.3 billion), i.e almost 10% of the Polish GDP (c.a. PLN 60bln 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, up to 80%).

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:

- Deferral of yearly CIT for 2019 until 31.05.2020 – tax return plus payment of tax (standard term: 31.03.2020).
- Payment of yearly PIT for 2019 and submission of PIT return for 2019 until 31.05.2020 (instead of 31.04.2020) will not be subject to penalty interest or penalised under fiscal penal code.
- Postponement until 20.08.2020 PIT advances for March 2020 until 20.10.2020 PIT advances for April 2020, until 20.12.2020 – PIT advances for May 2020, due on salaries and social security payments for remitters who suffered negative economic consequences in connection with the COVID-19 outbreak.
- Unconditional exemption of payment of the so-called minimum tax (special tax on commercial real estate) due for 1 March – 31 December 2020.
- Application of the new WHT regime, imposing automatic collection of the 19% or 20% WHT on certain payments (passive and certain services) – unless relevant board members statement is signed or security opinion – obtained is suspended until 31.12.2020
- Potential tax exemptions from the real estate tax to entrepreneurs whose financial liquidity has worsened due to COVID-19 – to be introduced by local governments.

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- On request:
  - exemption from 100% social security contributions for 3 months starting 1.03.2020 for self-employed if their revenues were lower than c.a 15 k PLN, as well for companies that declared up to 9 persons as subject to social security contributions,
  - exemption from 100% social security contributions for 2 months starting 1.04.2020 for self-employed if their revenues were higher than c.a 15 k PLN, but their tax income was lower than 7 k PLN,
  - exemption from 50% of social security contributions for 3 months starting 1.03.2020 for companies that declared up to 10-49 persons as subject to social security contributions.
- No prolongation fee (currently 4%) for applications for postponement / splitting into installments of tax payments or tax arrears or postponement / splitting into installments of liabilities resulting from social security contributions due for the period starting 01.01.2020.
- If certain conditions are met possibility to make a one-off deduction of 2020 tax loss, up to PLN 5,000,000 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 expanses aimed at countering COVID-19 effects.
- SAF-T_VAT: postponement to 1 October 2020.
- Retail sales tax: suspension to 31 December 2020.
- New VAT rates matrix: postponement to 1 July 2020.
- Possibility to treat as tax deductible contractual penalties if they result from the obstacles caused by the COVID-19.
- Postponement of the obligation to notify the actual ultimate beneficial owner to the UBO register for 3 months.
- Suspension of the deadlines for domestic DAC-6 reporting running from March 31 up to 30-days after cancellation of the epidemic state. Deadlines for reporting of the cross-border arrangements will start to run as of 30 June 2020.
- The deadline for submitting transfer pricing information (TPR-C and TPR-P forms) as well as the statement on preparation of local transfer pricing documentation for FY2019 is extended until - in general - 31.12.2020. The deadline for preparing the Master file documentation also extended by three months.
- Extension of the deadline for submitting detailed TP from (TP-R) to 30 September 2020 as well as local and master file (till 31.12.2020)- for selected entities with so called shorten tax year.
- For Tax Capital Groups: condition of lack of tax arrears as well as to maintain 2% profitability ratio are considered fulfilled if the Tax Capital Group’s condition worsened due to COVID-19 for the tax year commenced before 1.01.2020 and finished after 31.12.2019 or that commenced after 31.12.2019 but before 1.01.2021.
- Extension for 3 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 Commercial Companies Code enabling the possibility of making decisions by board of directors and supervisory board in remote mode.
- Postponement of deadline for preparation and approval of financial statement / consolidated financial statement by 3 months (or 2 months for entities subject to supervision of Polish Financial Supervisory).
- During the state of epidemic and 2 months after, for WHT purposes: (i) 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) possibility to use the certificate of residency of the foreign tax payer for 2019 (statement of the ta payer that the data provided in the certificate remain unchanged is required) (iii) 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 €10,000,000 in any of the two financial years preceding the notification.

g. COVID-19: Social (employees') measures

- The "Anti-Crisis Shield" provides for three possible paths to obtain additional financing for employees' salaries. Co-financing program is dedicated for enterprises with qualified decrease in turnover.
  - co-financing under so-called downtime. Maximum co-financing: c.a 280 EUR+ social security contributions / per FTE,
  - co-financing of employees' salaries under so called "40:40:20" system – reduced working time. Maximum co-financing: up to c.a. 440EUR+ Social security contributions / per FTE,
  - subsidies from the Poviate Governor (Starosta). Maximum co-financing depends on the percentage of turnover dropdown.
- Further conditions to use any of those paths apply. Financing /subsidy can be granted for 3 months.
- There is also an option to obtain a co-financing for the employees that were not covered by the economic downtime or reduced working time.
- Extension of temporary residence permits for foreigners on the territory of the Republic of Poland.

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 group transactions.

For clarity, please note that the tax consequences of a deal will be different for the sale of the shares in a corporation and the sale of a partnership interest.

b. Tax Attributes

In general, a tax loss may be fully carried forward for 5 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 PLN 5,000,000 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.

c. Tax Grouping

Polish CIT Law allows a group consisting of at least two capital companies with capital relationships to be viewed as a single CIT payer i.e so-called Tax Capital Group ("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, subsidiaries do not hold any shares in the share capital of other entities within the group 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.

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.

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 comprises 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.

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 defense file indicating the business justification of the reorganisation should be prepared and archived in case on potential future tax audit.

e. Purchase Agreement

The common structure for the acquisitions in Poland was purchase of the company by the SPV with the subsequent debt push down. Due to changes in the Polish CIT Law in 2018 denying interest deductibility on the debt pushdown, such structure currently is not recommended from a tax perspective.

Poland follows EU and international standards.

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 SPA is concluded in Poland.

CLAT should be paid by the purchaser and 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 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.

i. Share Purchase Disadvantages

Cost of assets' valuation and identification of undisclosed assets, 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, the transactions may be structured as (i) a going concern deal or (ii) an asset deal. Such transactions are conducted in particular in real estate industry.

Going concern (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 CIT purposes and for RET purposes.

c. Tax Attributes

In going concern transactions, there is a possibility to separate 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 7 day deadline to issue such 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 2.d. above

e. Purchase Agreement

Purchase agreement should specify the form of the acquisition, i.e whether it is the asset deal or the going concern deal.

Price for particular assets (category of assets) should be presented in the purchase agreement for proper application of CLAT rates (in case of 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 case of the 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 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 asset).

Transactions involving assets are generally subject to VAT (standard rate – 23%). As long as the buyer runs VAT-able 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 case of 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 tax treatment (VAT and CLAT) of 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 purchase of the companies by SPVs where subsequently the debt push down was conducted. Due to the changes in the Polish CIT Law in 2018 denying interest on the debt push down to be a tax cost, such structures are not currently recommended from 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 the adverse tax consequences may arise (e.g. with respect to WHT treatment).

d. Partnerships and joint ventures

Partnerships (except for limited joint-stock partnerships and since 2021 also limited partnerships) 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, JV's may be corporate (establishing the company) and contractual (concluding the civil law agreement). For corporate JV both corporate entities and partnerships may be used.

Contractual JV's can be affected through conclusion of civil law agreements (e.g. co-operation agreements). Contractual JV's 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

Strategic buyers (usually companies in particular in similar industry as the target company) invest mainly for strategic purposes e.g. in order to gain future access to a key new technology or product (not for financial return only). They usually seek long term investments.

A private equity investment is an injection of funds by specialised investors into private companies with the aim of achieving high rates of return. The investments are usually limited in time.

6. ACQUISITION FINANCING

a. General Comments

For intra group loans generally there should be no administrative burdens. For tax treatment refer to point c below.

b. Equity

The most common jurisdictions for holding equity are 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) and Luxembourg (in particular due to flexibility of Luxembourg regulations).

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

Based on the CIT being in force from 1 January 2018, interest is tax deductible up to PLN 3,000,000 or 30% tax EBITDA whichever is higher (according to the tax authorities interpretation) or interest is tax deductible up to PLN 3,000,000 and 30% tax EBITDA for values exceeding PLN 3,000,000 (according to administrative courts). Restrictions also apply to the third-party loans and bank financing.

Interest on debt push down is tax non-deductible.

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 is no distinctions between tax treatment of related party debt and unrelated party debt.

iv Debt Pushdown

A typical strategy to push-down a debt is a post-acquisition merger: The Polish SPV draws the debt for the acquisition of the target, buys the target and subsequently merges with it. Another strategy could be an acquisition of assets of the target company financed by debt (e.g. a loan granted by an affiliated company or a third-party bank) or transformation of the target into tax transparent partnership.

From 2018, interest on debt push down is non-tax deductible.

Tax deductibility of interest on acquisition financing in the case of a post-acquisition merger is denied.

A debt-pushdown mechanism could be illustrated with the following example:

- Incorporation of a SPV;
- Provision of debt financing to SPV;
- Acquisition of operating corporation generating income by SPV;
- Merger of SPV and the operating corporation, which before the restriction introduced in 2018 could result in deduction of the loan interest with income of the operating corporation.

Somewhat less frequently used strategies are the establishment of a Tax Capital Group (“TCG”) or consolidation with tax transparent partnerships.

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 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.

e. Other Instruments

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 GAAR, the Polish tax authorities are entitled to re-characterise 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 2.d.

b. Taxable

If the conditions for tax neutrality of the transactions (point III d.) are not met (including lack of business justification), the transactions will be subject to tax.

c. Cross Border

Please refer to point 2.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, 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.

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.

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 – 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. 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 ("DTT") provide for a rule leading to taxation of income realised on alienation of shares in real estate companies in Poland (so called 'real-estate clause' – e.g. DTT with Luxembourg). Also, the Polish CIT Law provides for a domestic real estate clause.

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.

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 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 the according to 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 CbC generally applies to entities operating in groups which:

- prepare consolidated financial statements,
- conduct cross-border operations,
- earned consolidated net turnover for the previous financial year exceeding PLN 3 250,000,000 or 750,000,000.

As a rule, CbC 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 must be done to the tax authorities within 3 months after the group's accounting year end (for which annual consolidated financial statement has been prepared).

10. TRANSFER PRICING

a. Documentation requirements

The current transfer pricing regulations oblige entities to prepare a local file including benchmarking analysis if the value of a controlled transaction exceed the thresholds amounting to PLN 10,000,000 (in respect of tangible assets, financial transactions) or PLN 2,000,000 (in respect of intangible assets, services, use/provision of tangible and intangible assets, attribution of income to a foreign PE and other transactions).

Domestic controlled transactions made between entities that do not incur tax losses are generally exempted from documentation requirements. Moreover, safe harbour regime may be applied with regard to low value-added services and certain loans.

Entities required to prepare local file and belonging to the groups (i) which consolidated revenues exceeded PLN 200,000,000 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 master file prepared by another group entity and English version is allowed.

b. Reporting requirements

Entities obliged to prepare a local transfer pricing documentation or engaged in domestic controlled transactions exempted from documentation requirements, are required to file in an electronic form to the tax authorities a detailed information on transactions with related entities. The scope of required information is quite extensive and includes i.e the results of benchmarking analyses and of controlled transactions. Transfer pricing reporting is aimed to ensure better efficiency of selecting taxpayers for tax controls.

Moreover, entities obliged to prepare local file have to submit a statement that 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.

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

Since 2019 the IP Box concept was introduced.

License of intellectual property should be verified from WHT perspective. Additionally, from 2018, there is limitation of tax costs on licenses purchased from related parties (tax deductibility of such expenses exceeding PLN 3,000,000 is limited to 5% tax EBITDA).

Currently there is no any special adverse tax regime in case of a transfer of intangibles outside of Poland although generally subsequent cost of use of intangibles will be limited – based on the new 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 taxation 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 DTT 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 (regarding e.g. introduction of tax baskets, thin capitalisation, CFC regulations, exit tax).

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;
- combinations under common control defined in Polish Accounting Standards and excluded from the IFRS3 scope.

Time consuming reporting obligations apply for business combinations like audit of the merger plan and obligatory audit of the merged entity annual financial statements.

b. Divestitures

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. There are no specific rules or interpretation on how the place of management should be understood, however there is a growing tendency among the tax authorities to examine the substance of international structures of which Polish entities are a part of. 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 SPV are at the same time management board members of the Polish company, (ii) directors of SPV reside and perform their duties in Poland and their visits in the country of SPV is limited only to sign documents or take resolutions, (iii) there are no specific tasks assigned to these directors, (iv) directors of 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, e-mails, telephone numbers, (vii) the SPV does not have an employees (besides administration). It may be expected that the tax authorities when analysing the residency of the holding companies will take into account also the above conditions.

c. Application of Regional Rules

Poland has implemented EU directives – the Parent-Subsidiary Directive, Interest-Royalties Directive and 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.).

d. Tax Rulings and Clearances

The taxpayers may apply to the tax authority for a binding tax ruling. Tax ruling should be issued by the tax authorities within 3 months.

If the tax ruling is properly applied (in particular it properly reflects reality), the taxpayer should be protected from the obligation to pay tax liability if the tax treatment being 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 be also protected from 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 automatic cancellation of certain individual tax rulings if these concerned determination of the tax consequences of the interpreted event under GAAR rules or assessment of the economic reasons of the event. Moreover, as at the same date taxpayers will not be allowed to apply for the ruling with regard to the above provisions.

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]
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	10	8	8	
Germany	5 / 15	5	5	[2]
Greece	-	10	10	[16]
Hungary	10	10	10	
Iceland	5 / 15	10	10	[3]
India	10	10	15	

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
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	5	5	[12]
Mexico	5 / 15	0 / 5 / 15	10	[18] [26]
Moldova	5 / 15	10	10	[3]
Mongolia	10	10	5	
Montenegro	5 / 15	10	10	[3]
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]

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
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	
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 1.01.2021).
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.a. 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 favored 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 favored 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.
13	Dividends - In order to benefit from the 0% tax rate a minimum share of 25% is required and held for 1 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).

Footnotes:	
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 1.01.2021).
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 2 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).
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.

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

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 on-going 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 advisors, 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.a. merger, transformations, transfer of assets / functions, in-kind contribution, etc.), their tax treatment and the legal documentation.
11	Tax Due Diligence	General	Information on optimization schemes applied by Target and the amount of savings, if any.
12	Tax Due Diligence	Corporate Income Tax ("CIT")	Annual 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 to carry 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.

No.	Category	Sub-Category	Description of Request
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 (art. 15e of the CIT Act).
25	Tax Due Diligence	Corporate Income Tax ("CIT")	Application of thin capitalization / EBITDA-based interest deduction restrictions. Calculation for the purposes of limitation of costs of debt financing (art. 15c of the CIT Act).
26	Tax Due Diligence	Corporate Income Tax ("CIT")	Information on interest paid / capitalized 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.

No.	Category	Sub-Category	Description of Request
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 3 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.
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.

No.	Category	Sub-Category	Description of Request
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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ROMANIA

1. INTRODUCTION

a. Forms of Legal Entity

The 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, not being 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 (so-called "SA"). Generally, a legal entity should have at least 2 participants. Nonetheless, LLCs are allowed to have a sole shareholder. The minimum share capital of a LLC is of approx. EUR 40, while in case of a joint stock company the minimum capital is of approx. EUR 19,000.

Starting 5 July 2020, as a measure aimed at relaxing and encouraging the development of the business environment, the Romanian Company Law was amended so as to eliminate the legal restriction according to which (i) a natural or legal person can be a sole shareholder in only one LLC, and (ii) a LLC with a sole shareholder cannot have as sole shareholder another LLC, made up of a single person.

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 (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 EUR 1 million. The microenterprises may however opt for the CIT system if they meet certain requirements.

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.).

On the other hand, some Romanian legal entities (e.g. not falling in the category of microenterprises) and foreign legal entities that either carry out 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 corporate income tax ("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, save for dividend income which is taxed at a 5% flat rate. Individuals may owe social security contributions for certain types of income, including investment income. Non-resident individuals become also 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 varies according to the local council's categorisation of the location of land, the type of land use, locality rank, etc.

c. Divergences between 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 adding back of non-deductible expenses and items similar to expenses (though not recorded in the profits and loss account) and deducting 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, starting 1 January 2019 several much-awaited amendments were enacted to the domestic interest limitation rules, such as:

- increase of the fixed tax deductible threshold from EUR 200,000 to EUR 1 million;
- increase of the variable deductible threshold from 10% to 30% of tax-EBIDTA;
- clarify 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. 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.

The Romanian Government was enabled to adopt measures to support economic operators with 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;
- forced executions by garnishment in case of budgetary receivables are either suspended or will not be started, as the case may be;
- social protection measures, such as technical unemployment partially borne by the state;
- bonifications for the payment within the legal deadline of certain taxes;
- state guarantees for financing consisting of investment loans / credit lines for working capital and full subsidisation of the related interest under a state aid / de minimis scheme.

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 or tax credits available at the level of the acquired company prior to the share deal will continue to be available post-acquisition.

c. Tax Grouping

The Romanian legislation provides a specific framework regulating the implementation of tax grouping for VAT purposes. However, fiscal unity is not yet available for CIT purposes though it is expected for the near future. In this respect, it is envisaged that the consolidated CIT result is determined by algebraic sum of the individual tax results of each group member.

Nevertheless, foreign companies carrying out activities in Romania via more than one permanent establishment ("PE") would be able to consolidate all Romanian income and expenses attributable to the PEs at the level of one single PE which is assigned to handle the CIT liabilities.

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 operations 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 VAT-able operation), while asset deals may enjoy VAT neutrality only provided they qualify as a 'transfer of a going concern' 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 ("SPA") to seek buyer's protection against risks which may crystalise in the future from 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 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 7 consecutive years based on FIFO method provided it is a corporate income tax payer (this means that companies subject to microenterprise tax or HoReCa specific tax are not entitled to carry forward tax losses). A similar rule applies in respect of the sponsorship expenses available for tax credit.

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 reevaluate 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 which a share deal involves is the possibility of 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-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 the 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 particular, asset deals ***per se*** may enjoy direct tax neutrality provided they are performed in exchange of shares and VAT neutrality provided they qualify as a 'transfer of a going concern' per the domestic legislation. The aspects presented above in Section 3d. Share acquisition – Tax free reorganisations are equally applicable.

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 VAT scope) and, subject to the fulfilment of certain conditions, may also enjoy direct tax neutrality.

e. Purchase Agreement

When discussing Business Transfer Agreements (BTA), 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 such as 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 based on straight-line method during the 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. Transfer of the ownership right over land and buildings is generally mandatory 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 VAT-able, the applicable VAT rate depends on the nature of assets transferred. It is expected that the standard VAT rate be maintained at 19% during 2020.

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 it is the case under a share deal.

i. Asset Purchase Disadvantages

Generally, in cases where the asset deal does not enjoy VAT neutrality, the input VAT incurred upon acquisition of assets may be asked for reimbursement by the buyer. However, such a procedure may prove to be administrative burdensome and lengthy (as it generally entails a tax audit). In 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 cash-flow effect to the extent it has full VAT deduction right. 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 off-set 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 charged with different local tax rates depending on their destination (residential vs. non-residential). If the buyer is a legal entity, the taxable base for the first 3 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 3 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 owes the building tax for the remaining period of the calendar year in which the asset is sold. The buyer owes building tax starting the following year.

5. ACQUISITION VEHICLES

a. General Comments

To begin with, 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 Romania or 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 gain 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 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. Thus, it is expected that the provisions of the current DTTs concluded by Romania would change to a certain extent in order to address such 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.

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, assuming the SPV is a corporate income tax (CIT) payer, the dividends it receives from a Romanian subsidiary (legal entity) are non-taxable for CIT purposes. Moreover, the gross dividends may also be exempt from the 5% dividend tax applied by the subsidiary 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 for an uninterrupted period of minimum one year at least 10% of the share capital of the subsidiary, the capital gains from selling the shares are not taxable for CIT. Capital losses related to a sale of shares are in general tax-deductible, except for 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 may also be 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 with 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 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.

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 and 16% for all other payments. Nonetheless, qualifying EU tax resident investors may benefit from WHT exemption for dividend, 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 availing of 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, case in which 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. Although no detailed guidance is provided on substance rules at present under Romanian law (but are envisaged for the future, likely during 2020) general anti-abuse rules are available (covering also artificial cross-border transactions) and may be used to requalify a transaction as to reflect its underlying economic substance.

d. Partnerships and joint ventures

Per 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, the Romanian Company Law requires that the level of net assets is at least equal to ½ 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. No detailed guidance is provided on substance rules at present under Romanian law, but new legal rules are expected for the near future. However, general anti-abuse rules are already available (covering also artificial cross-border transactions) and may be used to requalify a transaction as to reflect its 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, exceeding borrowing costs (generally defined as financing expenses less financing income) are deductible for CIT purposes up to a EUR 1,000,000 threshold per year (vs. the previous EUR 200,000 threshold). Exceeding 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, exceeding borrowing costs and tax deductible depreciation are added back). Exceeding borrowing costs which are non-deductible in the reporting period may be carried forward for an unlimited period of time under the same deduction 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 intra-group 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 intra-group, 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 push-down debt 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 the shares acquired of at least 10% are maintained for at least one year. Moreover, there are arguments to avail of tax deduction of interest accrued post-merger within the limits of ATAD interest limitation rules as long as the company carries out economic activity,

d. Hybrid Instruments

Starting 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

As described in more detail in Section 5. above (points b. and c.), tax free divestitures are generally achievable provided the participation exemption conditions are met.

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

Starting 1 January 2018, following the partial implementation by Romania in its domestic tax law of the ATAD provisions, a taxpayer transferring e.g. assets from its Romanian permanent establishment to its head office or 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, is subject to exit tax. Per 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 for 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

Starting 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 EU jurisdiction includes in its 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 1/3 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 activity 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

Per the domestic legislation, cash repatriation from a branch or permanent establishment towards its head-office is not deemed 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 1 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 EUR 750,000,000 or an amount in RON equivalent to EUR 750,000,000 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 considered).

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 (having the consolidated group revenue over EUR 750,000,000 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 intra group 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

Please refer to Section 6. Acquisition Financing point d. above.

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.

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 for the constructions sector – during 1 January 2019 – 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 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. Romania will undertake all steps to obtain approval for the signing, according to Law 590/2003 on Treaties.

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. Taxpayers must prepare transfer pricing documentation by March 25 of the year following the tax year 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 (CbC) reporting 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 starting 1 July 2020 (it should though be noted that Romania opted for a 6-month deferral of the initial reporting deadlines).

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 per 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 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 EUR 10,000 – EUR 20,000 or Advance Individual Tax Rulings (AITR), subject to a fee ranging between the RON equivalent of EUR 3,000 – EUR 5,000, depending on the taxpayer's size (i.e whether 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 3 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 analyses 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]

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
Hong Kong	0 / 3 / 5	0 / 3	3	[18]
Hungary	5 / 15	15	10	[6]
Iceland	5 / 10	3	5	[3]
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]

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
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]
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	10 / 15	10	10	[3]
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	

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
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]
Yugoslavia (applicable in Bosnia and Herzegovina)	5 / 10	7	5	[2] [3]
Zambia	10	10	15	

Footnotes	
1	In 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 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 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 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 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 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 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 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 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 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 its arises from institutions the capital of which is wholly or partially owned by the Government of Romania. In 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 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.

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 case of Thailand, an additional requirement applies i.e the company paying the dividends engages in an industrial undertaking. In 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 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 case of 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 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 case of 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 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 1st of 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 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 case of 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 interests 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 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 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 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 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 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 case of Japan, the 10% rate applies for cultural royalties, while the 15% rate applies for industrial royalties. In 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 case of 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 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 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 case of US, the 10% rate applies to cultural royalties, while the 15% rate applies to industrial royalties. In 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 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

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.
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 reinvoicing 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.

No.	Category	Sub-Category	Description of Request
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.
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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RUSSIA

1. INTRODUCTION

a. Forms of Legal Entity

Generally, foreign investors may carry out business in Russia directly through a branch or the incorporation of a company in Russia. In the latter scenario, a company incorporated in Russia may be fully owned by a foreign company. There are several types of corporate structures available in Russia: limited liability company, joint stock company, partnership, state and municipal entities, production cooperatives. The most commonly used are LLC ("OOO" in Russian) and JSC ("AO" in Russian).

It is also possible to establish a non-commercial company to carry out non-commercial activities. Non-commercial companies are subject to corporate income tax under the general rule, but at the same time funds received by that company as a charity in order to maintain the statutory activities are not taken into account when determining the tax base for the purposes of corporate income tax.

Tax peculiarities of different types of companies depend rather on the tax regime applied than on the corporate structure. For information about special tax regimes, please, see below.

b. Taxes, Tax Rates

The general tax rate for VAT is 20% (as of 1 January 2019, earlier the rate was 18%). Reduced VAT rate of 10% applies to special categories of goods (foodstuffs, children suppliers etc.). Zero VAT rate applies mostly to export transaction. Furthermore, there are transactions which are exempt from VAT.

The general rate of corporate income tax is 20%, and for personal income tax is 13%. The corporate income tax could be partly lowered if such benefits are provided by the regional authorities and legislation (for investment activity under special investment contract, investment activity in special economic zones etc.).

In Russia there is no separate tax established for capital gains. Such gains arisen from the disposal of capital assets are regulated under ordinary corporate or personal income tax rules. Gains from the sale are subject to the 20 % CIT rate, and the 13% personal income tax rate for residents and 30% for non-residents.

Dividend distributions are levied at a withholding tax ("WHT") rate of 15%. Interest and royalties are both subject to a 20% WHT tax charge, unless there are special treatment established by Double Tax Treaty ("DTT").

Social security contribution: The maximum rate for all social contributions is 30%, including pension security contribution–22%; social security contribution – 2.9%; and health care contribution – 5.1 %.

Property tax is imposed on fixed assets and paid at the maximum rate of 2.2 % (the exact rates are established by the regional authorities) of the average net book value of the taxpayer's fixed assets or of the cadastral value (established by local government).

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

Statutory accounting rules and tax rules do have divergences, especially with regard to the recording of the profit. When statutory accounting rules are focused on reporting of every transaction of the entity in order to assess more accurately the financial position of the firm, the aim of tax accounting is the fairest taxation of income.

Tax accounting implies stricter rules of cost recording based on the analysis of economic and business reasons. As a result, many expenses reflected in statutory accounting in full, can be restricted in the tax accounting (e.g. costs on payment of interest under controlled transactions, economically unjustified costs or expenses which were not aimed at gaining profit for the company).

Also, there could be different rules of recording established by law in statutory and tax accounting with regard to the same processes (e.g. different methods of amortisation/depreciation, methods of revenue recognition etc.).

2. RECENT DEVELOPMENTS

Russian tax legislation and court practice has been developed regarding the tax consequences of M&A structures. The structures including debt push-down from a tax perspective were regarded by competent authorities as a strategy aimed exclusively at tax avoidance. The negative aspects in court practice have also arisen in respect of debt financing, since in some cases interest were reclassified into dividends by analysing the substance of the debt transaction even if formal thin capitalisation rules were not applicable. Rules regarding the capital gains on shares in companies with significant real estate assets were modified.

The VAT rate has been increased from 18% to 20%.

3. SHARE ACQUISITION

a. General Comments

In share deals the purchaser achieves not only the participation in the equity, but also a control over the company, and consequently the credit liabilities as well as tax liabilities are “inherited” by the buyer. Capital gains on share deals are subject to Russian CIT at the rate of 20% for both types of seller (i.e the Russian company of the foreign company PE, unless an exemption is applicable). The taxable base from sale of shares is calculated as the difference between the sale price under the transaction and the acquisition historical costs incurred (acquisition price plus additional expenses as legal/finance consulting services).

Since transactions on the sale of shares are not subject to Russian VAT, in some cases, the tax authorities try to requalify share deals into sales of assets, and charge VAT on such sale. In court practice, there are many cases when the assets were contributed to the equity capital of the legal entity, which was created shortly before the deal of sale of 100% share in that company. Tax authorities qualified such transactions artificial with the only aim of VAT avoidance. The courts support them, however, only when there is a clear evidence that the real intention of the parties was to sell the assets and not the shares (the courts take into account the time of creation of the company just before the sale of shares; absence of business activity of the newly incorporated legal entity etc.).

b. Tax Attributes

Generally, there are no specific restrictions in the tax legislation with respect to the share deals. Apart from tax matters, there also could be other restrictions on appliance of share deal, e.g. corporate restrictions (restrain on sale of shares to the third parties or other restrictions specified in the Chapter of the entity), anti-monopoly restrictions etc.

c. Tax Grouping

In Russia the legislation provides an opportunity to create a consolidated taxpayer group ("CTG"). CTG is a formation based on a consolidation agreement for at least two years. Creation of such group is subject to registration with the tax authorities. A CTG is available only for big holdings since the minimum limits on consolidated revenues/ paid taxes/ assets are sufficiently high (not less than RUB 100 bn/ 10 bn/ 300 bn respectively). Members of the CTG are the legal entities holding, directly or indirectly, at least 90% in each of the other group member. CTG could be used only for calculating, paying and filing in reporting forms for corporate income tax with the consolidated tax rate of 20% (other taxes are paid independently by each of the group member). Members of the CTG cannot be in the process of liquidation or bankruptcy. Non-Russian companies cannot be members of the group.

d. Tax Free Reorganisation

The process of reorganisation is tax-neutral in Russia, no additional tax arises during this process. The tax rights and liabilities of the organised company are not affected by the reorganisation. The tax authorities may not charge penalties to the surviving company that were not presented to the company that ceased to exist.

e. Purchase Agreement

Warranty and indemnity clauses are generally included in SPAs while structuring the M&A deals in Russia. However, in Russian legislation this protection mechanism was introduced only by the amendments made to the Civil Code in 2015. Before the amendments entered into force, in large M&A deals, parties typically preferred to choose English law to govern M&A transactions. Since the Russian law permitted the inclusion of warranties and indemnities in SPAs, such mechanism of protection has become very popular in M&A deals under Russian law. The court practice is also very positive regarding the application of these provisions.

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

No transfer taxes on share transfers exist except for capital gains taxation. Transfer of shares is also VAT exempt.

g. "Purchase accounting" applicable to share acquisitions

For the purposes of the statutory accounting, the acquisition of shares in other companies are treated as financial investments. For this reason, the acquisition of shares is recorded in the statutory accounts at their initial value (purchase price plus other acquisition costs). In certain situations, the initial value of financial investments can be changed (e.g. in case the market price of the financial investment can be determined).

h. Share Purchase Advantages

- Share deals are VAT exempt;
- Participation exemption for corporate income tax is applicable;
- No depreciation rules for goodwill are established; and
- If there are tax losses accrued by the target company prior to the acquisition they can be used to reduce the taxable base after the share deal.

i. Share Purchase Disadvantages

- Acquisition costs for the share deal could reduce the tax base, but only at the moment of the disposal of shares and not at the moment of the acquisition. For this reason, the following costs can be recorded: the acquisition price of those shares and the amount of expenses associated with the acquisition.
- Credit and tax negative history, which “follow” the target company in the share acquisition.

4. ASSET ACQUISITION

a. General Comments

In an asset deal the purchaser acquires certain assets in the company, as a result only assets and risks related to them are transferred and not the risks related to the company itself. Capital gains on the sale of assets are taxable at the general CIT rate of 20%. For asset deal the tax base is equal to the difference between the sale price and their net book value (after amortisation costs).

b. Purchase Price Allocation

In Russia the application of the mechanism of purchase price allocation is only required by IFRS, consequently, the purchase price allocation can be reflected only in financial reports prepared in accordance with international standards (“IFRS”). Russian legislation (statutory accounting rules or the tax rules) does not contain any rules or requirements with respect to the purchase price allocation. According to Russian rules, in asset deals, the cost of the asset is determined as a purchase price under the agreement and correspondent acquisition costs. This value is used by the buyer for the purposes of tax depreciation and amortisation.

Under the general tax rules, goodwill is not regarded as intangible and it cannot be subject to amortisation or be treated as deductible for tax purposes. However, special rules are applied in case an enterprise is sold as a property complex.

Under these special rules, the value of the assets, which constitute the property complex, is determined based on the company’s balance sheet during the transfer process. Thus, no price allocation can be made in the tax accounting. With respect to goodwill, according to Russian tax rules when the entity is acquired as a property complex, the difference between the purchase price of an enterprise and the value of its net assets is recognised as an expense/income of a buyer. The positive difference can be deducted in equal parts over five years. Any negative difference is recognised as an income in the month when the transfer of assets is registered.

c. Tax Attributes

A foreign organisation (foreign structure without forming a legal entity) which has a real estate in Russia (taxable for the property tax purposes), along with the tax return for property tax has to disclose information about participants of this foreign organisation, including the disclosure of indirect of physical person or public company if the share of their direct and or indirect participation exceeds 5%.

d. Tax Free Reorganisation

Acquisition of asset is not subject to corporate income tax, since the capital gain is taxable only at the moment of the disposal of asset.

Asset deals are subject to VAT, unless the exemption is applied (e.g. sale of land plots).

e. Purchase Agreement

General civil rules are applied to the asset purchase agreement. According to Russian rules the transfer of ownership must be subject to official registration in the competent authority, for this reason the purchase agreement should be submitted to the authority.

f. Depreciation and Amortisation

According to the Russian tax legislation goodwill is not qualified as an intangible asset. For tax purposes only the following assets could be regarded as intangibles: 1) patents on inventions/ industrial samples/ working models/ selective achievements; 2) know-how; 3) trademark/ tradename/ company name; 4) copyrights on computer programs or databases/ topologies of integrated microcircuits/ audiovisual works. Such assets in order to be recognised as intangibles must generate income for the company and be justified by necessary documents. An Intangible asset is subject to amortisation only if its initial value is not less than RUB 100,000 (approx. USD 1,600) and the period of use is more than 12 months. Amortisation of assets is deductible for profits tax purposes in Russia. Amortisation rates depend on the assets' useful life. Goodwill is recognised in statutory accounting as the difference between the purchase price of an enterprise as a property complex and the net book value of its assets. The amortisation of goodwill is calculated only in statutory accounting.

g. Transfer Taxes, VAT

An asset deal is generally subject to VAT at the rate of 20%. The sale of land plots is always exempt from VAT. No other transfer taxes are established.

h. Asset Purchase Advantages

- Purchase cost reduces the tax base for corporate income tax in the form of depreciation;
- No historical tax liabilities are inherited (exempt for special cases, which are described in clause i.)

i. Asset Purchase Disadvantages

- Asset deals are VAT taxable transaction.
- In some cases the registration procedure is more complicated for assets deals than for a share deals.

In general, historical tax liabilities are not transferred to the company, purchasing the assets. But, in some situations tax authorities could attach tax liabilities to the buyer. In court practice there are many cases, when the company sells all assets to the related company in order to avoid paying great tax arrears as compared to budget, once the tax authorities have made their control assessments.

This tax avoidance "scheme" is constantly monitored by authorities and successfully challenged in courts. The related company would be liable for all historical tax arrears.

The revaluation of the assets could be done. In case the decision for revaluation is made, It is also important to be aware that in the future such fixed assets should be revalued on a regular basis, but not more often than once a year (at the end of the reporting period).

The revaluation of fixed assets has an impact on the amount of property tax: an increase in the market value of fixed assets leads to an increase of the tax base for the purpose of property tax.

5. ACQUISITION VEHICLE

a. General Comments

According to the Russian corporate and tax legislation there are no restrictions regarding creation of acquisition vehicles and the form of such vehicles. All corporate forms presented below are available in Russia.

b. Domestic Acquisition Vehicle

Domestic acquisition vehicle could be created as a local holding company for M&A transactions. There are some benefits established for the domestic companies with regard to the taxation of dividends. The exemption from taxation of dividends applies to dividends received by Russian companies which holds on the date on which entitlement to the dividends is determined at least 50% shares (or depositary receipts) in the equity capital of the company paying dividends within the period of 365 days. The 0% rate applies if the company paying dividends on the date of the distribution of dividends was not regarded as an offshore company.

A participation exemption from taxation for corporate tax purposes is applicable for the sale of shares in Russian entities. It is available if the taxpayer held shares for 5 years prior to the date of sale and shares were acquired after 1 January 2011. Exemption is also applicable for the shares in Russian joint stock companies, if the shares are not listed if the shares are referred to the high-tech/innovation sector of economy or for the shares if less than 50% of the assets of a company directly or indirectly consist of real estate.

Since 1 January 2019 in Russia new rules regarding the international holding companies have come into force. According to these rules, the international holding companies are foreign companies redomiciled to the Russian legislation and incorporated on the territory of the special administrative regions in Russia. International holding companies have corporate income tax benefits in Russia. The law establishes a list or requirements for the holding companies (sufficient amount of investments in Russia etc.). Participation exemption is also applicable for international holding companies: the exemption applies to dividends received by international holding companies which holds on the date on which entitlement to the dividends is determined at least 15% shares in the equity capital of the company paying dividends within the period of 365 days.

c. Foreign Acquisition Vehicle

Sale of shares between two foreign companies is exempt from taxation, unless there are shares in a “real property-rich” companies (if more than 50% of the assets of a target company directly or indirectly consist of immovable property located in Russia). So, from this point of view the foreign holding company is preferable.

Income received by the foreign company from Russian subsidiaries in the form of dividends/interest/royalties are taxed under the tax rates of 15%, 20%, 20% respectively.

Dividends received from the participation in the international holding companies are taxed at the rate of 5% at source in Russia.

The tax rate could be reduced if the special clauses of DTT are applied. With respect to the taxation of income transferred it should be noted, that the tax authority could apply the concept of the beneficial owner and additionally assess the tax on income paid.

d. Partnerships and Joint Ventures

Foreign investors also can apply the corporate structures of partnerships and joint ventures. However, in some cases, tax benefits established are not applicable for partnerships or joint ventures, e.g. benefits provided by several DTT concluded.

e. Strategic vs Private Equity Buyers

This section is left intentionally blank.

6. ACQUISITION FINANCING

a. General Comments

Nowadays there are no administrative or other restriction for investing in Russia. There are many opportunities for foreign investors to do business in Russia, especially from the tax point of view. There are lots of special economic zones/territories with the beneficial taxation regime for investors (0% rate for corporate, property, land taxes). In other regions, where there are no special economic zones, the tax benefits for corporate income tax could still be granted by local administration based on special investment contracts or local legislation.

However, there are some limits for the activity of foreign investors to participate in companies, which has a strategic value to Russia ("strategic companies") in several economic sectors, such as extraction of mineral resources, military related activities, use of nuclear and radiation-emitting materials etc.

However, limitations have been established in the participation of Russian companies for US & EU residents by US and EU economic sanctions; sanctions are applicable for certain Russian holdings, special economic sectors etc.

b. Equity

According to Russian law, equity financing is exempt from taxation. Contributions to equity could be made in the form of money/ tangible or intangibles assets/ securities etc. Under general rules a contribution to equity capital is not regarded as a sale of goods or services. Neither such contribution could be regarded as a donation of asset, since the equity-financing is accompanied by a transfer of a company's share to the contributor of assets provided. As a result, the contribution itself is exempt from VAT, whilst the contributing entity has to restore VAT on the book value of the assets. Such VAT may be deducted by the subsidiary in which these assets are contributed. Such contribution for the receiving company cannot be regarded as an income for the CIT purposes; for the contributor the amount of the contribution will not reduce the tax base.

Tax exemption for equity-financing is applied only if the contributor acts as an investor expecting to gain a profit in the future (for example, in the form of dividends) and does not use this type of financing only to avoid taxes. Otherwise the tax authority will challenge the tax exemption and requalify the transaction.

Also, a contribution to the assets of the company can be realized from the corporate point of view (e.g. to increase the net assets of the company without increasing of the equity capital). According to the Russian tax law such contribution is not subject to corporate income tax.

c. Debt

i Limitations on use of debt

From a legal point of view there are not any restrictions on using debt financing. Limitations on use of debt could be related with the financial position of the entity and relationship with the creditors.

ii Limitations on interest deductions

Deductibility of interest expense is limited by thin capitalisation rules in Russia. Thin capitalisation rules are applied to interest on loans granted/secured by a foreign company (legal entities, individuals) holding directly/ indirectly more than 25% of the debtor capital or more than 50% in each next company in the chain; or by the company (foreign or Russian) considered as an affiliated to the said foreign company (co-called loans from the "sister" companies). Interest expenses are deductible provided the amount of debt does not exceed the debt/ equity 3:1 ratio (12,5:1 for banks and leasing companies). "Excess" amounts of interest are deemed to be dividends which are not deductible from the tax base and are subject to WHT at the rate of 15% (lower rates could be applied under the DTT).

In recent times the court practice has been developed on this matter. Despite the fact that under the law only fixed-ratio approach is established the tax authorities have started challenging the deductibility of interest even if the formal criteria is not met–courts support such approach and treat the debt as capital investments or equity financing if the real intention of the parties is to avoid taxes by disguising the distribution of profit through artificial debt transactions.

However, in a recent tax case (issued in 2020) the Supreme Court declared another approach for the interpretation of the thin capitalisation rules, according to which the compliance with the formal criteria is not enough for the application of the thin capitalisation rules. Based on the position of the Supreme Court, thin capitalisation rules should be applied in cases, when the actual tax avoidance takes place and not in every case, when the formal criteria is met. This approach is new in the Russian court practice, although at this moment there is no clear understanding of how it will be implemented in practice and interpreted by other courts in the future.

iii Debt Pushdown

Under general corporate and tax rules "debt-pushdown" strategies are not directly prohibited, so companies are allowed to reorganise their assets in every possible legal manner. However, the real court practice on this matter has been developed since recently two cases on "debt-pushdowns" have been regarded in courts. Both cases ended unsuccessfully for the taxpayers, so nowadays the application of "debt-pushdowns" from a tax perspective, cannot be implemented with certainty.

Under the "debt-pushdown" strategy the acquisition of a target company is financed by debt provided from the foreign parent company. After the acquisition the buyer and the target company merge, so the interest accrued by the buyer are deducted from the target company income for profit tax purposes. Courts determine such kind of M&A transactions as artificial and economically "unjustified", since they cause additional expenses to arise for the target company, which were not associated with profit generating activities. As a result, the deductibility of the entire amount of interest was refused and "excess" interest paid to the foreign company were requalified into dividends.

The worst case scenario could be if the court does not recognise not only the deductibility of interest, but also the entire debt transaction, which could cause the requalification of the entire amount of interest and the amount of loan paid to the foreign company into dividends. The situations described took place in recent cases, so there is a strong possibility that in the near future the tax authority will challenge the use of such structures.

d. Hybrid Instrument

Nowadays there are not any court cases or legislation regarding hybrid instruments. In practice, they also are not frequently used in transactions. But even without special rules regarding hybrid instrument, the tax authority could challenge the deduction of interest based on the GAAR and requalified the payments into the distribution of profit and consequently levied them as dividends.

e. Other Instrument

This section is left intentionally blank.

f. Earn-out

No court practice has been regarded on this matter. Additionally, there are no restrictions in the corporate legislation to perform the deal in such a manner. But it should be clear from the details of the deal, that earn-out payments are the payment under the share deal, they constitute the “purchase price” and they are not the payments of different nature (services fee and etc.). Since in Russia the share deals are taxed at the moment of the disposal and the tax base calculated as difference between the sale price and acquisition costs, the tax authority may refuse to recognise the earn-outs payments as such costs.

7. DIVESTITURES

a. Tax Free

According to Russian tax rules certain transactions can be treated as tax free:

- Sale of shares/assets, in case the financial result of the transaction (the difference between the sale price and historical acquisition costs/net book value) is negative or equal to zero. In that case, no profit has been earned as a result of the sale, thus, no tax on capital gain will arise. In addition, capital losses can be deductible for corporate tax purposes.
- Sale of shares in Russian entities where the participation exemption is applicable, as noted in the section above, 5.b. Domestic Acquisition Vehicles. It is available if the taxpayer held shares for 5 years prior to the date of sale and shares were acquired after 1 January 2011. Exemption is also applicable for the shares in Russian joint stock companies, if the shares are not listed if the shares are referred to the high-tech/innovation sector of economy or for the shares if less than 50% of the assets of a company directly or indirectly consist of real estate (for more information regarding the participation exemption, please see Section 5.b.).
- Certain transactions can be only VAT-exempt (sale of land plots, sale of shares).

b. Taxable

Where there is a sale of shares or assets and the sale price exceeds the historical acquisition costs/net book value, the gain will be subject to corporate income tax. In general transactions, which cannot meet the tax exemption requirements are subject to tax.

c. Cross Border

Sales of shares which comply with the participation exemption are tax free. Sale of shares between two foreign companies is also tax free unless they are shares in a “real property-rich” company.

Sale of shares or assets are taxed as capital gains. In case the sale price is less than the acquisition costs (for share deal) or net book value (for asset deal) the gain will be subject to tax.

The sale of immovable property located in the territory of Russian Federation and sale of shares in “property-rich” companies (when more than 50% of the assets of a company directly or indirectly consist of real estate) are subject to withholding tax in Russia where the income is received by a foreign company from Russian sources.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

Russian companies are taxed according to worldwide tax principles on their worldwide income. As a general rule Russia applies a credit tax system. As a double taxation relief Russia applies a credit method both domestically and under double tax treaties.

b. CFC Regime

CFC rules state that a foreign company may constitute a CFC if an individual or legal entity owns (directly and/or indirectly) more than 25% of a foreign organisation and/or an individual or legal entity owns (directly and/or indirectly) more than 10% of a foreign organisation and if the combined participation of all Russian tax residents in the organisation is greater than 50%. If the Russian owner does not receive dividends from the controlled foreign company, they should recognise the portion of the profit of such legal entity as a taxable income in Russia.

Control over a foreign entity could be performed by the possibility to influence on decisions made by such a foreign organisation with regard to the distribution of profits (income) after taxation.

According to the Ministry of Finance of Russia, it is necessary to take into account any particular relations that can influence on decisions on the distribution of profits after tax, regardless of the participation share of such a person in the organisation. There is a list of certain cases when the income of the CFC is not taxed in Russia; for instance, if the CFC is an operational company.

Since 1 January 2019 the list of companies which could be qualified as controlling companies of CFC has become narrower. According to new rules the following companies are not regarded as controlling companies: if the participation in a foreign company is made through direct or indirect participation in one or several Russian public companies, and if the participation in a foreign company is made through direct or indirect participation in one or several foreign public companies, whose shares are traded on stock exchanges in OECD countries.

c. Foreign branches and partnership

This section is left intentionally blank.

d. Cash Repatriation

According to Russian tax rules the dividends paid from Russian subsidiaries to foreign parent companies are subject to withholding tax in Russia at the rate of 15%, unless the beneficial tax rates are applicable under the relevant double tax treaty (“DTT”). Income received by the foreign shareholder as a result of a distribution of profit or property (in case of withdrawal from the company or liquidation of the company) is also subject to withholding tax in Russia, in case such income exceeds the initial contribution made to the equity capital (the share value paid).

Cash repatriation can also be done in the form of interest/royalties, which are subject to 20% withholding tax in Russia (relevant DTT can provide an exemption from WHT or lower tax rates).

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATION

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

In 2015 an important amendment was introduced regarding the tax consequences of sale of shares by foreign entities in companies with significant real estate assets located in Russia. According to this amendment capital gains is arisen for the foreign company from the sale of shares if more than 50 percent of the assets of a target company directly or indirectly consist of immovable property located in Russia. As a result, since 2015 the "indirect" sale of Russian immovable property without taxation has been restricted.

Nowadays this amendment is applicable only if the buyer of the target company is a Russian resident. The sale of shares in a target company (even with significant real estate assets) between two foreign companies is still tax-exempt. But we cannot exclude the possibility that in the near future the legislation on this matter will develop.

b. CbC and Other Reporting Regimes

In 2017, new rules regarding the three-tiered approach to international group documentation were implemented. The requirements are mandatory from FY 2017 onwards.

These rules are applied if the revenue of the multinational enterprises group ("MNE group") for the previous fiscal year was at least RUB 50 billion (approximately EUR 717 million) if the parent company is the resident of Russia (or the applicable amount established in country of residence of the parent company).

The three-tiered documentation consists of the following documents:

- Notification of the participation in a MNE Group
- Master and Local file
- CbCR

Notification of the participation must be filed by all Russian taxpayers belonging to the multinational group. In some cases, one member of the group (generally the parent company or an authorised member) can present the notification on behalf of other members–Russian tax residents. The official form of this notification is specified by the FTS.

Master file and Local file are presented by a Russian taxpayer belonging to a multinational group at request of the competent tax authority. No specific forms for these documents are established in law.

The Tax Code describes the content of such a Master file as the economic substance of each transaction, the price applied and the transfer pricing method used, the structure of participation within the MNE Group including the description of the market where this MNE Group carries out its main business activity (in the form of schemes), business activity of the MNE Group, intangible assets, financial activity and other information (description of advanced pricing agreements concluded, consolidated financial reports, etc.).

The local file should provide information with regard to specific controlled intercompany transactions taking place between a local country affiliate (in Russia) and an associated enterprise(s) in foreign country(-ies).

There are special guidelines issued by the tax authorities which describe in more detail the contents of the transfer pricing documentation.

CbCR rules become effective in 2018 and are applicable to the FY 2017. Voluntarily taxpayers can provide CbCR for FY 2016.

CbCR must contain information relating to the allocation of income, the taxes paid, and indicators of economic activity (e.g. the number of people employed, amount of tangible assets). The report also requires information about other members of the MNE group, including the tax jurisdiction of incorporation, tax jurisdiction of residence and the main business activities carried out by these members.

Based on the law, the CbCR should be filed electronically within 12 months after the end of the relevant period according in the form established by the competent authority.

Under general rules, the report is presented by the parent company or by an authorised member of the group, if they are Russian tax residents. Alternatively, the CbCR could be presented by a member of the group (Russian taxpayer) at request of the competent tax authority. CbCR should be prepared in the Russian language, but in some cases (e.g. if the parent company is not a Russian tax resident) the report is allowed to be prepared in a foreign language.

10. TRANSFER PRICING

There are no general transfer pricing guidelines. The Ministry of Finance and the FTS have issued a significant number of clarifying letters regarding transfer pricing issues on particular matters. However, such clarifications are binding on lower level tax authorities, and not necessarily on taxpayers. Despite the fact that the transfer pricing law has been operating for 6 years, there are still difficulties in appreciating the consequences and risks of the rules. During 2017, the FTS issued several letters clarifying the current transfer pricing legislation; however, many of the rules have still not been clarified by the tax authorities. The first tax audits on transfer pricing matters started in 2014, and there is no information about the number of tax audits that were conducted by the FTS by 2019.

Russia is not a member of the OECD and does not endorse the OECD Transfer Pricing Guidelines. However, the current transfer pricing rules are based on the OECD Transfer Pricing Guidelines, so the Guidelines may be a useful source of non-binding commentaries.

In addition, the Russian fiscal authorities have issued several clarifications, in which they comment on tax implications in Russia with reference to the Commentary on the OECD Model Tax Convention. These clarifications are particularly relevant because most Russian tax treaties are based on the OECD Model Tax Convention.

Arm's length principle. The transfer pricing rules allow the FTS to make transfer pricing adjustments based on the arm's length principle by means of imposing arm's length prices. In general, the price of a transaction is considered to be the market price until the opposite is proven by the FTS.

With regard to the transfer pricing rules, the FTS controls:

– transactions between Russian related parties, if

- the sum total of transactions is more than RUB 1 billion per calendar year, provided that at least one of the following requirements is met:
- one of the related parties is an extracting company;
- one of the related parties benefits from some special tax treatment (unified tax on imputed income, unified agricultural tax or tax treatment of a resident of a Russian special economic zone, or a participant of a regional investment project), but the other does not;
- one or both of the related parties is not a corporate income taxpayer or applies a 0% corporate income tax rate to its income; or

- at least one of the related parties is a corporate research center referred to in the Law on the “Skolkovo” Innovation Centre which applies an exemption from the obligations of a payer of VAT;
- at least one of the parties applies investment deduction for income tax purposes during tax period (investment tax deduction is applicable for special categories of fixed assets and allows taxpayer to reduce the amount of tax within special limit established).

– the following cross-border transactions, if the sum total of transactions is more than RUB 60 million per calendar year:

- foreign trade transactions involving commodities traded on a global exchange market;
- transactions between entities, if one of the entities is a resident or is registered in countries (territories) mentioned in the “black list” of the Russian Ministry of Finance (offshore territories which can be used unlawfully to optimise a party’s tax position);
- transactions, where an unrelated intermediate entity is used which does not perform any functions, bear any risks nor hold any assets;
- transactions between foreign and Russian related parties, which are subject to FTS control irrespective of the volume of the transactions.

A number of transactions, in spite of the fact that they satisfy the conditions for control, are not subject to control. The list of such transactions is directly established in the RTC. Thus, since 1 January 2017, transactions granting interest-free loans between Russian related parties are not subject to control. Transactions between members of a tax grouping (Consolidated Taxpayer Group in Russia) are exempt from the transfer pricing control (except for transactions a subject of which is exacting operations).

The following are recognised as related parties for the purposes of the transfer pricing rules:

- organisations where one organisation directly and/or indirectly has a participation interest in another organisation and the share of such participation comprises over 25%;
- a natural person and an organisation where such natural person directly and/or indirectly have a participation interest in such organisation and the share of that participation comprises over 25%;
- organisations where one and the same person directly and/or indirectly has a participation interest in such organisations and the share of that participation in each organisation comprises over 25%;
- an organisation (including a natural person jointly with his relatives) possessing powers to appoint (elect) the single-member executive body of that organisation (i.e the Chief Executive Officer), or to appoint (elect) not less than 50% of that organisation’s collegiate executive body or board of directors (supervisory council);
- organisations whose sole-member executive bodies or not less than 50% of whose collegiate executive body or board of directors (supervisory council) are appointed or elected by a decision of one and the same group of persons (of a natural person jointly with his relatives);
- organisations, in which over 50% of the collegiate executive body or board of directors (supervisory council) is comprised of one and the same group of natural persons jointly with their relatives;
- an organisation and a natural person which exercises the powers of the organisation’s sole-member executive body;

- organisations, in which the powers of the sole-member executive body are exercised by one and the same person;
- organisations and/or natural persons where the direct participation interest of every person in every subsequent organisation comprises over 50%;
- natural persons where one natural person is subordinate to another natural person by virtue of his official position;
- a natural person, his spouse, parents (including adoptive parents), children (including those adopted), full and half brothers and sisters, his guardian (trustee) and ward.

Courts can recognise parties as related based on other facts and circumstances, if relationships between them have an influence on conditions and economic results of business activities and transactions made.

Prescribed methods. The transfer pricing law provides the following methods for determining the market price:

- comparable uncontrolled price (CUP) method;
- resale price method;
- cost-plus method;
- transactional net margin method, and
- transactional profit split method.

Priority of methods: Under the transfer pricing law, the first transfer pricing method that must be applied is the CUP method. In cases where it is not possible to apply the CUP method (e.g. where comparison is not possible) and also when it is impossible to determine the appropriate prices because of the absence or the inaccessibility of information sources to determine a market price, the other methods are applicable.

For resale activities the resale method has priority.

Comparable data. The transfer pricing rules provide that any sources may be used, including unofficial sources (for example, information from independent appraisers, a specialised database, ratings and information from the print media, etc.).

Foreign comparables (margins received by the foreign organisation) may be used for Russian transfer pricing purposes if there is no information about the margin levels of similar Russian organisations. Generally, information on comparables and market prices from foreign sources may also be used for Russian transfer pricing purposes.

Foreign comparability data is adjusted (for example, figures from the financial reports of foreign companies must be given in a form comparable to reporting data under Russian legislation).

Use of ranges. The Tax Code establishes the rule for calculating the transfer pricing range. If the price actually applied in the transaction is within such a range, it is applied for tax purposes and recognised as valid. If the actual price is lower than the minimum price of the range, the mini-mum price of the range is applicable. If the actual price of the transaction is higher than the maximum price of the range, the maximum price of the range is applicable for tax purposes. The minimum or maximum values in the range are applicable for tax purposes only if such application does not lead to a reduction of the sum of the tax due, compared with the tax actually paid on such transaction, or an increase in the sum of a loss. Recently, the Ministry of Finance proposed to apply for tax purposes a price calculated as the median in the range for cases in which companies do not make a self-adjustment, so this will impose more serious charges for taxpayers.

Disclosure/documentation requirements–Tax return disclosures: The legislation does not require any transfer pricing disclosure in the tax returns.

Taxpayers should inform the FTS by special notification about every transaction that is subject to control.

11. POST-ACQUISITION INTEGRATION CONSIDERATION

a. Use of Hybrid Entities

This section is left intentionally blank.

b. Use of Hybrid Instruments

Russian tax or civil legislation does not contain any rules regarding the hybrid instruments. Nor has the application of hybrids been regarded and/or analysed in Russian court practice.

c. Principal/Limited Risk Distribution or Similar Structure

This section is left intentionally blank.

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

In some cases, adverse tax consequences could emerge if ownership of intangibles is transferred out of the country within one holding to the parent/sister company without any compensation to the initial owner, especially if the expenses incurred by the initial owner associated with this intangible were significant. Such transactions could be treated as artificial and aimed at disguising the distribution of assets within holding at non-market prices and at creation unjustified expenses for the initial owner. However, the consequences could be different depending on conditions of the transaction and the compliance of the compensation with the market value of this intangible.

e. Special tax regimes

Different special tax regimes exist in Russia.

There are simplified tax regimes for small and medium taxpayers (with the limitation of asserts, personnel, annual revenue).

There are special taxation regimes for investors in several regions. Depends on the region the tax benefits could be different (from reduction of corporate income tax to 0% for corporate income tax and other taxes).

12. OECD BEPS CONSIDERATIONS

Russia is not a member of the OECD, so OECD tax reports are not obligatory for Russia. However, lots of rules were drafted based on the OECD BEPS reports as a source of non-binding commentaries. Russia has already implemented in national legislation many instruments from OECD Action list, including CFC rules, residency criteria, the definition of beneficial ownership with regards to double tax treaties, transfer pricing, CbCR rules, thin capitalisation rules, and VAT on digital services provided by foreign companies, MAP and APA procedures.

Russia has joined the international exchange of tax and financial information under the common reporting standards.

13. ACCOUNTING CONSIDERATIONS

a. Combination

In case of a merger of entities the following general steps should be carried out:

- inventory of assets and liabilities, preparation of the draft merger agreement;
- adoption of the decision of the general meeting of participants/shareholders of each of the companies;
- notification of the beginning of the reorganization procedure to the registering body; creditors etc.;
- interaction with the tax authorities: reconciliation of settlements;
- preparation of final tax and statutory accounting reports; and
- registration of a new merged company.

The newly formed company becomes the legal successor of all tax and credit liabilities of all reorganized entities.

The acquisition of shares/assets is recorded in the statutory accounts at their initial value (purchase price plus other acquisition costs). For tax accounting in asset deals the initial value will be used for amortisation purposes. With respect to the share deal, no tax consequences will arise for the buyer, since the acquisition costs are accounted for only at the moment of the disposal.

In an asset deal the transfer of ownership of an asset must be registered with the competent authority, otherwise the transfer of ownership will be not be regarded as realised.

In a share deal the transfer of the shares should be subject to notary confirmation.

b. Divestiture

In case of a sale of assets/shares the capital gain should be calculated. For this reason the sale price and the historical acquisition cost should be reflected in the tax account (or the net book value for assets, which are subject to amortization). Based on this the company, which sells shares/assets, determines the tax, which should be paid on capital gains (unless the exemption is applicable). Also, the VAT should be calculated in an asset deal and be paid to the authorities, if applicable.

In statutory accounting the general records of the disposal should be reflected.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Capital can be repaid free of tax in the case of liquidation and payments as a result of the withdrawal from the company, provided they do not exceed the initial contribution. Since 1 January 2018, if the amount of that payment exceeds the initial contribution, they are taxed in Russia (at source) as dividends.

According to the new rules, funds received by the shareholder from the company or partnership (on non-repayable basis) are not taxed in Russia, provided that it does not exceed the initial contribution to the property of the paying party. The recipient company or partnership is also obliged to keep documents confirming the amount of the respective contributions to the property made. Such income is not subject to Russian WHT.

b. Substance Requirements for Recipient

Tax authorities pay close attention to the matters of economic justification and the real purpose of transactions, and their context. In court practice the concept of “unjustified tax benefits” has already been used for many years (nowadays it is also incorporated into legislation), according to which taxpayers must record transactions according to its substance. Rules are applied in order to minimise the tax avoidance and determine the main purposes or transactions. This concept is a general rule and could be applied for debt financing (in order to reclassify interest into dividends) within holdings or for M&A reorganisation purposes and etc.

Tax authorities apply beneficial ownership rules by rejecting the appliance of lower beneficial rates under the DDT to transactions with “conduit” companies. For this reason, the tax authority examines the substance of the foreign recipients. The concept of “beneficial ownership” has already been developed and is applied broadly by tax authorities to any kind of passive income transferred abroad in order to prevent the tax treaty abuse.

Anti-avoidance clauses have already been implemented in some DDTs by additional Protocols.

c. Application of Regional Rules

Russian tax rules are applied. With regard to the questions related to the international tax law and international transaction DTT are applied. Also, Russian courts rely on the position of the OECD expressed in OECD documents (especially, Model tax convention and commentaries to it).

d. Tax Rulings and Clearances

This section is left intentionally blank.

15. MAJOR NON-TAX CONSIDERATIONS

This section left intentionally blank.

16. APPENDIX I – TAX TREATY RATES

Jurisdiction	Dividend %	Interest %	Royalties %	Footnote Reference
Argentina	10 / 15	15	15	[B]
Australia	5 / 15	10	10	[A]
Azerbaijan	10	10	10	[C]
Austria	5 / 15	0	0	[H], [C]
Albania	10	10	10	[C]
Algeria	5 / 15	15	15	[E]
Armenia	5 / 10	10	0	[F]
Belgium	10	10	0	[C]
Belarus	15	10	10	[C]
Botswana	5 / 10	10	10	[F]
Brazil	10 / 15	15	15	[D2]
Bulgaria	15	15	15	
Cuba	5 / 15	10	5	[E]
Canada	10 / 15	10	10	[H], [C]
Chile	5 / 10	15	5 / 10	[I], [F]
China	5 / 10	0	6	[G]
Croatia	5 / 10	10	10	[C], [J]
Cyprus	5 / 15	5 / 15	0	[K], [C2]
Czech Republic	10	0	10	[C]
Denmark	10	0	0	
Egypt	10	15	15	
Ecuador	5 / 10	10	10 / 15	[L], [M]
Finland	5 / 12	0	0	[C], [N]
France	5 / 10 / 15	0	0	[O]
Germany	5 / 15	0	0	[P], [C]
Great Britain	10	0	0	[Q], [C]
Greece	5 / 10	7	7	[R]

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Jurisdiction	Dividend %	Interest %	Royalties %	Footnote Reference
Hungary	10	0	0	[C]
The Hon Kong SAR (China)	5 / 10	0	3	[S], [C]
India	10	10	10	[Q]
Indonesia	15	15	15	[C]
Ireland	10	0	0	[Q], [C]
Island	5 / 15	0	0	[J], [C]
Italy	5 / 10	10	0	[T]
Israel	10	10	10	
Iran	5 / 10	7.5	5	[F]
Japan	5 / 10	0 / 10	0	[U], [V]
Kazakhstan	10	10	10	[C]
Kyrgyzstan	10	0 / 10	10	[W]
Kuwait	5	0	10	[Z]
Luxembourg	5 / 15	5 / 15	0	[K], [C2]
Lithuania	5 / 10	10	5 / 10	[D], [I]
Latvia	5 / 10	5 / 10	5	[Z], [A1]
Lebanon	10	5	5	[C]
Malaysia	15	0 / 15	10 / 5	[B1], [C1]
Mali	10 / 15	0 / 15	0	[W], [D1]
Morocco	5 / 10	10	10	[E1]
Macedonia	10	10	10	
Malta	5 / 15	5 / 15	5	[K], [C2]
Mongolia	10	0 / 10	-	[F1]
Moldova	10	0	10	
Mexico	10	0, / 10	10	[G1]
Netherlands	5 / 15	0	0	[H1], [C]
Norway	10	0 / 10	0	[I1]
North Korea	10	0	0	
Namibia	5 / 10	0 / 10	5	[W], [J]

Jurisdiction	Dividend %	Interest %	Royalties %	Footnote Reference
New Zealand	15	10	10	
Philippines	15	0 / 15	15	[W]
Poland	10	0 / 10	10	[W]
Portugal	15	0 / 10	10	[J1]
Qatar	5	0 / 5	0	[W]
Romania	15	0 / 15	10	[K1]
Saudi Arabia	0 / 5	0 / 5	10	[X], [J1]
Serbia/Montenegro	5 / 15	10	10	[J]
Singapore	5 / 10	0	5	[S], [C]
Slovakia	10	0	10	[C]
Slovenia	10	10	10	[C]
South Africa	10 / 15	10	0	[O1]
South Korea	5 / 10	0	5	[P1]
Spain	5 / 10 / 15	0 / 5	5	[A2], [B2]
Sweden	5 / 15	0	0	[Q1]
Switzerland	5 / 15	0	0	[Z1]
Sri Lanka	10 / 15	0 / 10	10	[B], [W]
Syria	15	0 / 10	4,5 / 13,5 / 18	[R1]
Turkey	10	0 / 10	10	[S1]
Tajikistan	5 / 10	0 / 10	-	[F], [C], [N1]
Thailand	15	0 / 10	15	[T1]
Turkmenistan	10	5	5	
Ukraine	5 / 15	0 / 10	10	[U1], [V1]
UK	10	0	0	[C]
USA	5 / 10	0	0	[M1]
Uzbekistan	10	0 / 10	0	[N1]
United Arab Emirates	0	0	-	
Venezuela	10 / 15	5 / 10	15	[X1]
Vietnam	10 / 15	10	15	[W1]

Footnotes:	
[A]	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the recipient company owns directly at least 10% of the capital of the company paying the dividends; if the company paying the dividends is a resident of Russia and the dividends are exempt from WHT in Australia; if the recipient company has invested a minimum of 700,000 Australian Dollars or an equivalent amount in Russian Roubles in the capital of the company paying the dividends.
[B]	Dividends - Maximum rate of 15%. Reduced rate of 10% applies if the recipient company owns directly at least 25% of the capital of the company paying the dividends.
[C]	Royalties, Interest - The rate applies to royalties/dividends If the recipient of the income is the beneficial owner
[D]	Dividends - Reduced rate of 5% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends and the participation exceeds 100,000 USD or an equivalent amount in any other currency; Otherwise, the rate is maximum.
[E]	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company (other than a partnership) which owns directly at least 25% of the capital of the company paying the dividends.
[F]	Dividends - Maximum rate of 10%. Reduced rate of 5% applies if the recipient company owns directly at least 25% of the capital of the company paying the dividends.
[G]	Dividends - Maximum rate of 10%. 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 and has invested a minimum of 80,000 Euros or an equivalent amount in any other currency in the capital of the company paying the dividends.
[H]	Dividends - Maximum rate of 15%. The 10% rate applies to dividends paid to a company that holds at least 10% of the voting stock of the distributing company (or 10% of shares of the equity capital).
[I]	Royalties - The 5% rate applies 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%.
[J]	Dividends - The 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 and the participation exceeds 100,000 USD or an equivalent amount in any other currency;
[K]	Dividends - Maximum rate of 15%. Reduced rate of 5% if the beneficial owner is 1) a pension/insurance fund or 2) a company, whose shares are listed on a registered stock exchange, provided that at least 15% of the voting shares are in free float and the company directly holds at least 15% of the capital of the company, paying dividends, within a period of 365 days or 3) a Government/ government bodies or 4) a Central Bank.
[L]	Dividends - Maximum rate of 10%. The 5% rate applies to dividends paid to a company that holds at least 25% of the voting stock of the distributing company (or 10% of shares of the equity capital).
[M]	Royalties - The 10% rate applies 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 15%.
[N]	Dividends - Maximum rate of 12%. Reduced rate of 5% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 30% of the capital of the company paying the dividends and has invested a minimum of 100,000 USD or an equivalent amount in national currency in the capital of the company paying the dividends.

Footnotes:	
[O]	Dividends - The 5% rate applies (i) if the beneficial owner is a company which made the investment into a company paying the dividends, irrespective of the form or the nature of such investments, of a cumulative amount of not less than 500,000 French francs or an equivalent amount in any other currency, provided that the value of each investment is estimated on the date the investment is made; (ii) if that beneficial owner is a company which shall be taxed by profits tax according to the regime of common law provided by the laws of a Contracting state of which it is a resident, and which is exempted from that tax in respect of such dividends; 10% of the gross amount of dividends provided that either the conditions of (i)(a) or (ii)(a) are met; otherwise the rate is 15%.
[P]	Dividends - Maximum tax rate for dividends is 15%. Reduced rate of 5% applies if the beneficial owner is a company, which holds directly at least 10% of the capital of the company paying the dividends and this holding amounts to at least 80,000 EURO or the same value in Roubles.
[Q]	Dividends - The rate of 10% applies the recipient is the beneficial owner of the dividends and subject to tax in respect of the dividends.
[R]	Dividends - Maximum rate of 10%. Reduced rate of 5% applies if the beneficial owner is a company (other than a partnership) which owns directly at least 25% of the capital of the company paying the dividends.
[S]	Dividends - Maximum rate of 10%. Reduced rate of 5% applies if the beneficial owner is a company (other than a partnership) which owns directly at least 15% of the capital of the company paying the dividends.
[T]	Dividends - Maximum rate of 10%. Reduced rate of 5% if the beneficial owner is a company, which holds directly at least 10% of the capital of the company paying the dividends and the participation exceeds 100,000 USD or an equivalent amount in any other currency;
[U]	Dividends - Maximum rate of 10%. The 5% rate applies to dividends paid to a company that holds at least 15% of the voting stock of the distributing company for the period of 365 days ending on the date on which entitlement to the dividends is determined.
[V]	Interest - The rate of 10% applies 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 distribution or similar payment made by the debtor or a related person,or any other interest similar to such interest arising in a Contracting State, may be taxed in that Contracting State according to the laws of that Contracting State, but if the beneficial owner of the interest is a resident of the other Contracting State.
[W]	Interest - The rate of 0% applies, if the beneficial owner of the income is the Central bank of the Contracting State/ government authority or other state financial office, which are agreed by both Contracting States.
[X]	Dividends- The rate of 0% applies, if the beneficial owner of the income is the Central bank of the Contracting State/ government authority or other state financial office, which are agreed by both Contracting States.
[Y]	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 and has invested a minimum of 80,000 USD or an equivalent amount in national currency in the capital of the company paying the dividends.
[Z]	Dividends - Maximum rate of 10%. The 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 and the participation exceeds 75,000 USD or an equivalent amount in any other currency;
[A1]	Interest - Maximum rate is 10%. The rate of 0% applies to all types of loans provided by the bank or other financial office of the one Contracting State to the bank other financial office of the other Contracting State.

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Footnotes:	
[B1]	Royalties - The rate of 10% applies to payments for the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or any copyright of scientific work, or 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 payments for the use of, or the right to use, cinematographic films, or tapes for radio or television broadcasting, any copyright of literary or artistic work.
[C1]	Interest - The reduced 0% rate applies to interest paid: to the Government of that other State; to the Central Bank of that other State; or in respect of a loan provided, guaranteed or insured by the Government of that other State which may be agreed upon between the competent authorities of the Contracting States. Otherwise, the rate of 15% applies.
[D1]	Dividends - Maximum rate of 15%. Reduced rate of 10% if the beneficial owner is a company which has directly invested a minimum of 1.000.000 French Fran in the capital of the company paying the dividends.
[E1]	Dividends - Maximum rate of 10%. Reduced rate of 5% if the beneficial owner is a company the participation of which in the capital of the company paying the dividends exceeds 500.000 USD.
[F1]	Interest - The reduced 0% rate applies to interest arising in Russia and paid to the Government of Mongolia or to the Central Bank or the Bank of Trade and Development of Mongolia; or applies to interest arising in Mongolia and paid to the Government of Russia or to the Central Bank of Russia. Otherwise, the rate of 10% applies.
[G1]	Interest - The reduced 0% rate applies to interest paid: to the Government of that other State; to the Central Bank of that other State; or in respect of a loan provided, guaranteed or insured by Banco de Mexico, S.N.C., Banco Nacional de Comercio Exterior, S.N.C., Nacional Financiera, S.N.C. или Banco Nacional de Obras y Servicios Publicos, S.N.C. (for Mexico) or Vnesheconombank (for Russia) . Otherwise, the rate of 10% applies.
[H1]	Dividends - Maximum rate of 15%. The 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 and the participation exceeds 75,000 EURO or an equivalent amount in any other currency;
[I1]	Interest - The reduced rate 0% applies if the interest is beneficially owned by a Contracting State, a regional or local authority thereof or by an instrumentality of that State which is not subject to tax therein; or the interest is beneficially owned by the Central Bank of Norway, the Norwegian Guarantee Institute for Export Credits, A/S Eksportfinans; the Central Bank of Russia, Foreign Trade Bank of Russia; or any other institution similar to the above-mentioned institutions, as may be agreed from time to time between the competent authorities of the Contracting States; or the interest is paid by a purchaser to a seller in connection with a commercial credit resulting from deferred payments for goods, merchandise, equipment or services.
[J1]	Interest - The reduced 0% rate applies to interest under loan provided by the Government of one State, by the Central Bank of one State or by other local political authority. Or the interest is received by Government of one State, by the Central Bank of one State or by other local political authority.
[K1]	Interest - The reduced rate of 0% applies to interest arising in: (a) Romania and paid to the Government of the Russian Federation or to its Central Bank or to the Bank for Foreign Trade; or arising in (b) the Russian Federation and paid to the Government of Romania or to its National Bank or to the Foreign Commercial Bank or to the Eximbank.
[L1]	Interest - The reduced rate of 0% applies to interest of the beneficial owner is: (a) Romania and paid to the Government of the Russian Federation or to its Central Bank or to the Bank for Foreign Trade; or arising in (b) the Russian Federation and paid to the Government of Romania or to its National Bank or to the Foreign Commercial Bank or to the Eximbank.

Footnotes:	
[M1]	Dividends - Maximum rate of 10%. The 5% rate applies to dividends paid to a company that holds at least 10% of the voting stock of the distributing company (or 10% of shares of the equity capital).
[N1]	Interest - The reduced rate 0% applies if the interest is beneficially owned by a Contracting State, a regional or local authority thereof or by an instrumentality ; or the interest is beneficially owned by the Central Bank or by any other institution similar to the above-mentioned institutions, as may be agreed from time to time between the competent authorities of the Contracting States; or the interest is paid by a purchaser to a seller in connection with a commercial credit resulting from deferred payments for goods, merchandise, equipment or services.
[O1]	Dividends - Maximum rate of 15%. Reduced rate of 10% applies if the beneficial owner is a company which holds directly at least 30% of the capital of the company paying the dividends and has invested a minimum of 100,000 USD or an equivalent amount in national currency in the capital of the company paying the dividends.
[P1]	Dividends - Maximum rate of 10%. Reduced rate of 5% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 30% of the capital of the company paying the dividends and has invested a minimum of 100,000 USD or an equivalent amount in national currency in the capital of the company paying the dividends.
[Q1]	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company (other than a partnership) which holds directly 100% of the capital of the company paying the dividends; or in the case of a joint venture not less than 30% of the capital of such joint venture; and in either case the foreign capital invested exceeds 100,000 USD or an equivalent amount in the national currencies of the Contracting States at the moment of the actual distribution of the dividends.
[R1]	Royalties - The rate of 18% applies to payments for the use of, or the right to use any patent, trade mark, design or model, plan, secret formula or process, or any computer software, or for the use of information concerning industrial, commercial or scientific experience. The rate of 4,5% applies to payments for the use of, or the right to use any copyright of literary or artistic work. The rate of 13,5% applies to payments for the use of, or the right to use any copyright of literary or artistic work.
[S1]	Interest - The reduced 0% rate applies to interest arising in Russia and paid to the Government of Turkey or to the Central Bank or Turkey; or applies to interest arising in Turkey and paid to the Government of Russia or to the Central Bank of Russia. Otherwise, the rate of 10% applies.
[T1]	Interest - The 10% rate applies to interest received in Russia by bank or in Thailand by financial authority. The reduced 0% rate applies to interest received by the Government of one State, by the Central Bank of one State or by other local political authority.
[U1]	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the company which has invested a minimum of 50,000 USD or an equivalent amount in national currency in the capital of the company paying the dividends.
[V1]	Interest - The reduced rate of 0% applies to interest arising in: (a) Russia and paid to the Government of Ukraine or to its Central Bank, local authority; or arising in (b) Ukraine and paid to the Government of Russia or to its National Bank, local authority.
[W1]	Dividends - Maximum rate of 15%. Reduced rate of 10% applies if the beneficial owner is a company has invested a minimum of 10,000,000 USD or an equivalent amount in national currency in the capital of the company paying the dividends.
[X1]	Dividends - Reduced rate of 10% applies 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 participation exceeds 100,000 USD or an equivalent amount in any other currency; Otherwise, the rate is maximum.
[Y1]	Interest - The maximum tax rate 10%. The reduced rate of 5% applies to banks.

Footnotes:	
[Z1]	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company which holds directly at least 20% of the capital of the company and it has directly invested a minimum of 200.000 Swiss Franc in the capital of the company paying the dividends.
[A2]	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the (i) the beneficial owner is a company (other than a partnership) which has invested at least 100,000 EURO or the equivalent amount in any other currency in the capital of the company paying the dividends; and (ii) those dividends are exempt from tax in the other Contracting State; Reduced rate of 10% applies if the only one of the conditions (i) or (ii) above is met.
[B2]	Interest - The maximum tax rate 5%. The reduced rate of 0% applies if the interest is beneficially owned by a Contracting State, a political subdivision or a local authority thereof; or (b) the interest is paid on a long-term loan (7 or more years) granted by a bank or other credit institution, which is a resident of a Contracting State.
[C2]	Interest - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is 1) a pension/insurance fund or 2) a company, whose shares are listed on a registered stock exchange, provided that at least 15% of the voting shares are in free float and the company directly holds at least 15% of the capital of the company, paying interest, within a period of 365 days or 3) a Government/ government bodies or 4) a Central Bank. Reduced rate of 5% is also applied to interest on corporate/state/euro bonds that are listed on a registered stock exchange.
[D2]	Dividends - Maximum rate of 15%. Reduced rate of 10% applies if the beneficial owner is a company which directly holds 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	Analysis of the tax status of the entity, the applicable tax regime, description of the branches/ separate subdivisions of the entity.
2	Tax Due Diligence	General	A review of recent tax audits, tax audit results, tax disputes and tax court cases for all taxes (corporate income tax, payroll taxes, property and land taxes, excise, VAT, and any other taxes).
3	Tax Due Diligence	General	A description of any significant legal events (e.g. major deals) for the last 3 years.
4	Tax Due Diligence	General	A current organization chart, which includes all entities (subsidiaries and shareholders) by full legal name, jurisdiction, current tax residence, entity type, ownership percentages.
5	Tax Due Diligence	General	Copies of the all tax returns for the last three years, copies of the all amended tax returns submitted to the tax authorities.
6	Tax Due Diligence	General	Copies off all tax calculation of the amounts of income paid to foreign organizations and taxes withheld for the last three years, amendment tax calculations.
7	Tax Due Diligence	General	Copies of all documentation on intercompany transactions, including the notification on the controlled transaction submitted to the tax authorities, transfer pricing documentation for the last tree years, CbC reporting.
8	Tax Due Diligence	General	Information about the tax losses, including the information and document confirmation of its formation.
9	Tax Due Diligence	General	Copies of statutory accounting documents (balance sheet, P&L) and the audit report if applicable.
10	Tax Due Diligence	General	Copies of documents, which could confirm the application for VAT deductions and the deductibility of expenses for corporate income tax for the last three years.
11	Tax Due Diligence	General	A description of the Company's accounting policy, which includes the general principles chosen by the Company for the purposes of statutory and tax accounting.
12	Tax Due Diligence	General	Detailed information regarding the assets of the company and the place where they are located.
13	Tax Due Diligence	General	Copies of the documents, which confirm the application of the beneficial tax rate under the DTT, in case the cross-boarder transactions take place.
14	Tax Due Diligence	General	Managerial accounting documentation and information regarding the possible tax reserves (in order to correct the tax duties and submit the amended tax returns)
15	Tax Due Diligence	General	Information about all cross-boarder transactions for the last three years, documents related to these transactions
16	Tax Due Diligence	General	Information about the dividend policy

No.	Category	Sub-Category	Description of Request
17	Tax Due Diligence	General	A description of company's intangibles assets (intellectual property) and the contracts concluded with respect to these intangibles
18	Tax Due Diligence	General	Information of the Company's outstanding debt obligations (including debt to related parties), including information of any differences between the accrual and payment of interest and calculation of interest deductions
19	Tax Due Diligence	General	Information about the main Company's contractors, copies of formation documents provided by these contractors as a confirmation of its legal status

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SOUTH AFRICA

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 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%; and
- partnerships are typically treated on a flow-through basis for tax purposes.

ii Dividend tax

Dividend 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, immoveable 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 Africa 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 tax 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 tax 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 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 R14,872 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 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.

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 capital gain tax to be incurred as a result of a subsequent disposal.

The 2020 Budget Review document ("2020 BR") published by National Treasury on 26 February 2020 highlights a number of proposed amendments which may be relevant when considering an M&A deal. In this respect, the utilisation of assessed losses and the limitation of interest deductibility during a year of assessment may be of importance. In addition to the afore mentioned proposals, the 2020 BR indicates that the current exchange control regime will be subject to an overhaul within the next 12 months. This has already commenced with the abolishment of the so-called "loop structure" prohibition in January of this year.

However, due to the current national state of disaster and the Covid-19 pandemic, the specific manner and timing in which the remaining proposals may be carried out has yet to be determined.

In response to the Covid-19 pandemic and its impact on the local economy, a Draft Disaster Management Tax Relief Act was promulgated with an effective date of 1 April 2020, containing various short-term tax relief measures aimed at providing cash-flow relief, including increases to existing employment tax incentives, part deferrals on employees tax and provisional tax payments as well as carbon and certain excise taxes, VAT exemptions on the import of essential goods, as well as extensions of certain time periods relevant to tax audits and/or disputes.

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 roll-over provisions), each with specific requirements which must be met by the parties to the transactions before they will be applicable. Some of these provisions only may 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 advisors 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.

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.

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 CGT purposes, which would, where such base cost is high, result in lower capital gains tax 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 immoveable 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, intragroup 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 1 to 8 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.

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-based transfer pricing provisions.

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.

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 gain 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 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 typical 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 immoveable property or shares deriving significant value from certain types of immoveable 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 intra-group "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 capital gains tax 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 in 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 capital gains tax 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 Co-operation ("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 South African Reserve Bank (“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 intellectual property) without prior FinSurv approval.

Further, the 2020 BR indicates a substantial overhaul of the current exchange control framework will take place over the next 12 months.

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. During the next 12 months, it is proposed that the current system will 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 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	10	[2]
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] [11]
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 / 15	5 / 10	10	[4] [10]
Greece	5 / 15	8	5 / 7	[1] [15]
Grenada	20	15	15	
Hong Kong	5 / 10	0 / 10	5	[4] [16]
Hungary	5 / 15	0	0	[1]
India	10	10	10	

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	20	10	0	[1]
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]

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	20	15	15	
Singapore	5 / 10	7.5	5	[4]
Slovac Republic	5 / 15	0	10	[1]
Spain	5 / 10	5	5	[4]
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	20	0	0	
Zimbabwe	5 / 10	15	0	[1]

Footnotes:	
1	Dividends–The reduced rate is applicable if, *inter alia*, the beneficial owner is a company which holds at least 25 per cent 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 per cent 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 per cent 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 per cent of the capital of the company paying the dividends where that company is a resident of SA. 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 per cent 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 per cent 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 per cent 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 100 000 U.S. dollars 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 per cent 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 per cent 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 per cent of the company paying the dividends. The rate of 15 per cent 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 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 any information concerning industrial, commercial or scientific experience (but not including any such information provided in connection with a rental or franchise agreement).

Footnotes:	
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.
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.

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 value-added tax 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.
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).

No.	Category	Sub-Category	Description of Request
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.

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SPAIN

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 €3,000, while the minimum capital of an S.A. is €60,000. 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, the write-downs of fixed assets (including the participation in other entities) or the losses arising from intra-group transfers of fixed assets.

2. RECENT DEVELOPMENTS

The most recent changes to the 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.

Based on a preliminary draft bill published at the beginning of 2019, there has been an intent by the authorities to limit the Spanish participation exemption on capital gains and dividends, changes have now come into force and the Spanish participation exemption regime has been modified. The new rules apply for fiscal years starting as from 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 €20 million. The Spanish participation exemption will no longer apply to a participation whose acquisition cost is at least €20 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.

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 labor 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.

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.

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 (ie tax losses)can be carried forward with no time limit (the carryback is not permitted). However, the amount of NOLs offsettable 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).

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.

c. Tax Grouping

Spanish companies can form a group and apply a special tax unit regime for CIT purposes. 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 case, 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 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 standard multi-national ones that should be considered to protect against tax exposures specific to the jurisdiction.

Notwithstanding the above, there are two aspects to bear 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 4 tax periods opened to a tax audit is required. Exceptionally, in Spain, the right of the Spanish Tax Authorities to audit NOLS and tax credits which have been off-set or are carried forward prescribes in 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 is 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 willing to off-set with the exhibition of the tax return and accounting records. 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 limitations term. As discussed above, the statute of limitations period has been extended (i.e the term ceased to be computed) during the period of time in which the state of alarm 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 advantages of the stock 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.

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 shall be 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 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.

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 not 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 delete and put full stop after 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 it 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 not 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 such regime is that these entities are treated as look-through vehicles and 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 whatever 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 not restrictions to bring funds into the country. Certain foreign investment should be communicated to the Spanish authorities. A Spanish company can be incorporated in 2 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 5 years and (ii) a reserve is created for the amount of the reduction, duly separated and restricted (as non-distributable) over the 5-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 2 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 to push-down the indebtedness related 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 restriction is laid down in cases of acquisitions of holdings in other entities if, thereafter, the acquired entity is included in the tax group of the acquiror or is merged with the acquiror, 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 4 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 8 years (until the debt reaches 30% of the acquisition price).

d. Hybrid Instruments

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 rules aimed at tackling hybrid instruments, as follows:

- An anti-abuse rule regarding hybrid instruments which limits the deductibility of expenses with related companies which, as a result of a different tax classification at the level thereof, do not generate income or generate exempt income or income subject to a tax rate of less than 10%.
- A limitation to the access to the participation exemption regime of 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 shall 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. 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 €20 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 rule and the said regime applies, at least, to 15% of their income.

Until the amendments which take 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.

Taxable gains obtained by non-residents are taxed at a flat 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, 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.

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 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. 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 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, 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. 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 on 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 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 taxed 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 not 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 in case that it was 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 fulfill 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 not implemented EU Directive "ATAD 2" yet.

b. Use of Hybrid Instruments

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 rules aimed at tackling hybrid instruments, as follows:

- An anti-abuse rule regarding hybrid instruments which limits the deductibility of expenses with related companies which, as a result of a different tax classification at the level thereof, do not generate income or generate exempt income or income subject to a tax rate of less than 10%.
- A limitation to the access to the participation exemption regime of 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).

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 structure must follow Spanish transfer pricing rules.

The Spanish tax authorities have issued numerous ruling analysing restructurings of the activities of a Spanish company 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)

e. Special tax regimes

Spanish companies with non-resident investors which invest in foreign vehicles can apply the ETVE regime (Entidad de Tenencia de Valores). 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 said capital gain can be assigned to accumulated reserves or to foreign subsidiaries which can benefit from the Spanish participation exemption.

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 after its entry into force.

13. ACCOUNTING CONSIDERATIONS

a. Combinations

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). 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 to 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. However, there are certain rules that would foreseeably need to be modified to fully align them with the said Directive:

- implement new rules on hybrid entities (ATAD 2); and
- Spanish GAAR, exit tax and CFC rules already exist (and are generally in line with ATAD) but minor adjustments may be needed as well.

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, 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.

Finally, we would note that the Spanish Government published a Project of law ("Proyecto de Ley contra el fraude fiscal") whose objective is to adapt those rules to ATAD. The Project is under discussion in the Parliament.

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 in 6 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 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]			Interests [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]
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]
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]
Dominican Republic	10	0	75	0 / 10	10	[86]
Ecuador	15	15	-	0 / 5 / 10	5 / 10	[37] [17]

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Jurisdiction	Dividends [1]			Interests [2]	Royalties [3]	Footnote
	General	Matrix- Subsidiary				
	(%)	(%)	Min. Part. %	(%)	(%)	
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]
Luxembourg	15	10	25	0 / 10	10	
Malaysia	5	0	5	0 / 10	5 / 7	[67] [68]

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Jurisdiction	Dividends [1]			Interests [2]	Royalties [3]	Footnote
	General	Matrix- Subsidiary				
	(%)	(%)	Min. Part. %	(%)	(%)	
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]
South Africa	15	5	25	0 / 5	5	[98]

Jurisdiction	Dividends [1]			Interests [2]	Royalties [3]	Footnote
	General	Matrix- Subsidiary				
	(%)	(%)	Min. Part. %	(%)	(%)	
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	
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
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

Footnotes	
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
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

Footnotes	
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
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.

Footnotes	
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.
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

Footnotes	
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.
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.

Footnotes	
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.
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.

Footnotes	
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.
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. Witholding tax for dividents 5% or 0% when beneficial owner holds 10% of participations or pension plan. Witholding 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).

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
Personal Income Tax/ Nonresident Income Tax	Tax payment documents in relation to the self-assessment returns for withholdings made from payments to nonresident 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 nonresident 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 centers 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
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.)

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SWEDEN

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 tax rate is currently 21.4% and will be reduced to 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 e.g. a 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 2022. 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.

The major measures are:

- A possibility to delay payments of withheld wage tax, social security contributions and VAT which is reported monthly or quarterly. A decision for respite from making payments may granted for one year but not beyond 12 November 2021 (final date). Respite for VAT which is reported yearly may be granted up to 12 January 2022 (final date). The respite may be renewed after the final dates.
- A possibility to receive cash support of up to 75% of salary costs (up to a salary of SEK 44.000/month/employee) for employees who reduce their work time. Available for work time reductions from December 2020 until March 2021 and then from April through June the reduction is limited to 50% of the salary.
- Employers partial reimbursement for their costs for sick pay until the end of February 2021.
- Companies whose businesses have been shut down due to governmental decisions can receive full reimbursement for their fixed costs.

- A possibility to receive cash aid for a part of loss of revenue in the period 1 February through December 2020 in the event of the insolvency of non-related customers.
- A possibility for landlords to receive compensation for the period of January through March 2021 for 50% of rent-reductions granted to tenants (businesses in certain vulnerable sectors) with a cap of 25% of the total original rent.

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 two limitations in relation to the losses, namely:

- the amount of losses carried forward that will survive ("the amount limitation"), and
- the right to deduct losses carried forward against group contributions from companies within the acquiring group.

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.

An important qualification requirement for group ***contributions*** is that the group holds more than 90 per cent of the shares during the entire financial year. Furthermore, the receiving company must be liable for tax in Sweden, or at least the income to which that income 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.

d. Tax Free Reorganisations

There are several methods for tax free reorganizations, e.g. share for share exchange, transfer of business or line of business, mergers and de-mergers. 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 be transferred from the Seller to the Buyer where there are transfers of shares. According to market practice tax warranties, tax indemnities, or 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 only applies if e.g. incorrect or insufficient information ha 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 subjected to the Swedish participation exemption, provided the shares are held by another Swedish limited liability company 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 motived by 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 restructuring processes

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, 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 both gains 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 company and are not transferred with the assets. If the company holding the assets (or group company) has tax losses carried forward, a gain following the transfer of assets may be utilised against the tax losses.

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 booked as goodwill for the acquiror.

c. Tax Attributes

Classification of assets (fixed assets, current assets etc.) is 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 FMV within a group (if requirements for group contribution are met) or if the assets constitute a business or 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.

e. Purchase Agreement

Assets may be transferred below fair market value (usually correlates to the book value) if the asset qualifies and if the entire business or specific business line is transferred. An advanced tax ruling can be received from the Swedish Board of Advanced Tax Rulings. Special terms relating to an tax advanced 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 goodwill are the same as those for machinery and equipment.

The two main depreciation methods are the declining-balance method, where a maximum depreciation allowance of 30 per cent of the aggregated book value is allowed, and the straight-line method, where assets are depreciated by 20 per cent 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.

Buildings are depreciated straight-line by approximately two per cent to five per cent 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 transfer of business as a going concern may apply which has the effect that no VAT is due at all on the assets sold even if the assets would have been subject to VAT if sold separately.

Real property is subject to stamp duty, which varies depending on the type of Buyer (4.25% for legal persons).

h. Asset Purchase Advantages

Asset purchases results 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 the 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, 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 not complicated (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.

Net interest expenses are deductible up to 30% of taxable EBITDA (*de minimis* rule of mSEK 5 of net interest deductions, calculated on a Swedish group level). In addition, interest to related parties is as a main rule non-deductible unless certain exceptions apply.

d. Hybrid Instruments and Entities

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.

e. Earn-outs

Depending on the specific context, an earn-out may be subject to salary taxation for sellers (e.g. if active sellers given 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 an uniform taxation of capital incomes, meaning that capital gains (incl. dividend distributions) are normally taxed with the same taxed rates for the same kind of subjects. In relation to shares etc. a divestiture may be tax exempted under the participation rule.

Shares qualifying as capital assets in both Swedish and equivalent non-Swedish limited liability companies are subjected to the Swedish participation exemption, provided the shares are held by another Swedish limited liability company 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 motived by 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 restructuring processes.

Sweden does only impose WHT on cross-border dividends. However, there are several exemptions 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 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. dividends distributions, capital gains, upstream loans. Only dividend distributions are subject to WHT. Dividends are normally tax exempt for corporate shareholders under the participation exemption.

Upstream loans are subject to both EBITDA and updated targeted interest limitation (came into force 1 January 2019), which may limit the deductible interest costs. The EBITDA interest limitation limits deductions of interest to 30% of a company's EBITDA calculated for special tax purposes. The targeted rules applies to all intragroup interest bearing debt and limits deductions e.g. were 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 CbCr rules are based on the OECD standards and EU directives. The main rule is that if the ultimate parent company of the group is resident in Sweden, the company must submit a country-by-country report ("CbCr") for the entire group. The CbCr is mandatory for groups with annual consolidated revenue of SEK 7 billion or more when the ultimate parent entity is resident in Sweden and annual consolidated revenue of EUR 750 million or more when the ultimate parent entity is a non-resident. The threshold applies regardless of the length of the fiscal year. The report must be submitted to the Swedish Tax Agency no later than 12 months from the end of the ultimate parent company's financial year, regardless of which company in the group that submits the report.

However, there are deviations from the main rule, i.e. where other Swedish companies may be obligated submit a CbCr to the Swedish Tax Agency. For instance, if the group's parent company is not obliged to submit a CbCr in its resident state, or this other state does not have a valid agreement with Sweden on automatic information exchange or if the Swedish Tax Agency has notified the Swedish company that there will be no CbCr exchange with the state where the parent company is resident. In cases where the ultimate parent entity is resident in a state without CbCr legislation and does not submit a voluntary report that is included in the information exchange with the Swedish Tax Agency, then the Swedish companies may be required to submit a CbCr in Sweden. If the Swedish Tax Agency does not receive any CbCr from the Group's foreign parent company (e.g. for reason mentioned above), every Swedish company in the Group can be obliged to submit CbCr. If certain conditions are met, and the Group has appointed a deputy foreign company or Swedish parent company, other Swedish companies are not required to submit a CbCr in accordance with the regulations. If there are several Swedish companies subject to reporting, the Group may appoint one of them to submit the report on behalf of the other Swedish companies.

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. 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 PE in Sweden. Notification that a Swedish company is required to report or which foreign company in the group is required to report must be submitted to the Swedish Tax Agency before the end of the reported financial year. If the report and notification is not submitted to the Swedish Tax Agency within the time limit, sanctions and fines may apply until submission.

In Sweden, there is an obligation to prepare transfer pricing documentation consisting of a Master file and a Local file. The Swedish rules are adapted to the OECD standards in Chapter V of the 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 SEK 450 million or a balance sheet total not exceeding SEK 400 million. The exemption is calculated 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 also an exception for so-called insignificant transactions in the Local file. What is considered to be insignificant is assessed on the basis of the company's size and the business as a whole. Transactions below SEK 5,000,000 are always considered insignificant. However, the exceptions generally do not apply to 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 transfer pricing documentation is required to be prepared in Swedish, Danish, Norwegian or English and shall be submitted to the Swedish Tax Agency upon request. There is no statutory deadline between the request and the submitting, it depends on the individual situation. The documentation must be kept for seven years. There are no specific transfer pricing penalties, however, general penalties apply. Transfer pricing documentation can however affect whether incorrect information has been deemed too 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 that the party receiving the higher result is not taxable in Sweden. The Swedish Tax Agency 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 comments in connection with post-acquisition integration specific to the regime in Sweden. For example, Sweden does not have any specific hybrid entities, instruments for consideration. However, 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. Furthermore, cross-border dividend distributions are taxable for Swedish entities, regardless of the participation exemption, if the distributing entity is able to deduct the distribution as an interest expense in its jurisdiction of residency.

The rules apply to a variety of situations and an assessment is required on a case-by-case basis.

12. OECD BEPS CONSIDERATIONS

Several BEPS Action Points have been implemented in Swedish tax law. 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 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 require certain substance at the level of recipient (although level and definition of substance not clear due to lack of case law).

c. Application of Regional Rules

Sweden is part of the UE 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 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	0	5	[1]
Argentina	10 / 15	0 / 12.5	3 / 5 / 10 / 15	[2]
Armenia	0 / 5 / 15	5	5	[3]
Australia	15	0	10	
Austria	0 / 5 / 10	0	0 / 10	[4] [5]
Azerbaijan	5 / 15	0	5 / 10	[6] [7]
Bangladesh	10 / 15	0	10	[8]
Barbados	5 / 15	0	0 / 5	[9]
Belarus	0 / 5 / 10	0	3 / 5 / 10	[10] [11]
Belgium	0 / 5 / 15	0	0	[12]
Bolivia	0 / 15	0	15	[13] [14]
Bosnia and Herzegovina	5 / 15	0	0	[15]
Botswana	15	15	15	
Brazil	15 / 25	15 / 25	15 / 25	[16] [17] [18]
Bulgaria	0 / 10	0	0 / 5	[19]
Canada	5 / 15	0 / 10	0 / 10	[20] [21] [22]
Chile	5 / 10	4 / 5 / 10	2 / 10	[23] [24] [25]
China	5 / 10	10	10	[26]
Croatia	5 / 15	0	0	[27]
Cyprus	0 / 5 / 15	10	0	[28]
Czech Republic	0 / 10	0	0 / 5	[29] [30]
Denmark	0 / 15	0	0	[31]
Egypt	5 / 20	15	14	[32]
Estonia	0 / 5 / 15	0 / 10	0	[33] [34]

Jurisdiction	Dividends %	Interest* %	Royalties** %	Footnote Reference
Faroe Islands	0 / 15	0	0	[35]
Finland	0 / 15	0	0	[36]
France	0 / 15	0	0	[37]
Gambia	0 / 5 / 15	5 / 15	5 / 12.5	[38]
Georgia	0 / 10	0	0	[39]
Germany	0 / 15	0	0	[40]
Greece	0	0 / 10	0 / 5	
Hungary	0 / 5 / 15	0	0	[41]
Iceland	0 / 15	0	0	[42]
India	10	10	10	
Indonesia	10 / 15	10	10 / 15	[43]
Ireland	0 / 5 / 15	0	0	[44]
Israel	5 / 15	25	0	[45]
Italy	0 / 10 / 15	0 / 15	0 / 5	[46]
Jamaica	10 / 22.5	12.5	10	[47]
Japan	0 / 10	0	0	[48]
Kazakhstan	5 / 15	10	10 / 15 / 20	[49]
Kenya	15 / 25	15	20	[50]
Korea, Republic of	10 / 15	10 / 15	10 / 15	[51] [52] [53]
Latvia	0 / 5 / 15	0 / 10	0 / 5 / 10	[54] [55] [56]
Lithuania	0 / 5 / 15	0 / 10	0 / 5 / 10	[57] [58] [59]
Luxembourg	0 / 15	0	0	[60]
Macedonia	0 / 15	10	0	[61]
Malaysia	0 / 15	0 / 10	8	[62]
Malta	0 / 15	0	0	[63]
Mauritius	0 / 15	0	0	[64]

Jurisdiction	Dividends %	Interest* %	Royalties** %	Footnote Reference
Mexico	0 / 5 / 15	10 / 15	10	[65]
Montenegro	5 / 15	0	0	[66]
Namibia	0 / 5 / 15	0 / 10	5 / 15	[67]
Netherlands	0 / 15	0	0	[68]
New Zealand	15	10	10	
Nigeria	7.5 / 10	7.5	7.5	[69]
Norway	0 / 15	0	0	[70]
Pakistan	15 / 30	15	10	[71]
Philippines	10 / 15	10	15	[72]
Poland	0 / 5 / 15	0	0 / 5	[73]
Portugal	0 / 10	0 / 10	0 / 10	[74]
Romania	0 / 10	0 / 10	0 / 10	[75]
Russia	5 / 15	0	0	[76]
Saudi Arabia	5 / 10	0	5 / 7	[77]
Serbia	5 / 15	0	0	[78]
Singapore	10 / 15	10 / 15	0	[79] [80]
Slovakia	0 / 10	0	0 / 5	[81] [82]
Slovenia	0 / 5 / 15	0	0	[83]
South Africa	5 / 15	0	0	[84]
Spain	0 / 10 / 15	0 / 15	0 / 10	[85]
Sri Lanka	15	10	10	
Switzerland	0 / 15	0	0	[86]
Taiwan	10	0 / 10	10	[87]
Tanzania	15 / 25	15	20	[89]
Thailand	15 / 20 / 30	10 / 25	15	[90] [91]
Trinidad and Tobago	10 / 20	10 / 15	0 / 20	[92]

Jurisdiction	Dividends %	Interest* %	Royalties** %	Footnote Reference
Tunisia	15 / 20	12	5 / 15	[93] [94]
Turkey	15 / 20	15	10	[95]
Ukraine	0 / 5 / 10	0 / 10	0 / 10	[96] [97] [98]
United Kingdom	0 / 5	0	0	[99]
United States	0 / 5 / 15	0	0	[100]
Venezuela	5 / 10	10	7 / 10	[101] [102]
Vietnam	5 / 10 / 15	10	5 / 15	[103] [104]
Zambia	5 / 15	10	10	[105]
Zimbabwe	15 / 20	10	10	[106]

* Sweden does not impose any withholding tax (WHT) on interest payments.

** Sweden does not impose any WHT on royalty payments. Royally payments from tangible or intangible assets may constitute a PE in Sweden, regardless of any other business activities. Royalty payments can therefore be liable to 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). Royalty payments are not taxable in Sweden if one of the companies holds 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 participation does not benefit from the legislation. Both the payer and the recipient must be legal entities under the Interest and Royalties Directive (2003/49/EC).

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	Dividends - The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 10% of the paying company's capital.
10	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.
11	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.
12	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).
13	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.
14	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.
15	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.
16	Dividends - The lower rate applies if the recipient is a company (excluding a partnership). The tax treaty between Brazil and Sweden have been renegotiated but is not in force.

Footnotes	
17	Interest - The higher rate applies when the recipient is either a partnership or a physical person. The tax treaty between Brazil and Sweden have been renegotiated but is not in force.
18	Royalty - The higher rate applies for royalty payments for trademarks. The tax treaty between Brazil and Sweden have been renegotiated but is not in force.
19	Dividends - Full exemption from WHT applicable in accordance with the EU Parent Subsidiary Directive (2011/96/EU).
20	Dividends - The lower rate 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.
21	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.
22	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. The reduction of WHT on interest does not apply to any such information provided under a retail or franchise agreement.
23	Dividends - The lower rate applies if a foreign company owns directly or indirectly at least 20% of the voting rights in the paying company.
24	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 tO 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.
25	Royalties - The lower rate applies to royalties on industrial, commercial, or scientific equipment.
26	Dividends - The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.
27	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.
28	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).
29	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).
30	Royalties - The lower rate applies to royalties from copyrights of literary, artistic or scientific work.
31	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).

Footnotes	
32	Dividends - The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.
33	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).
34	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.
35	Dividends - The lower rate applies if a foreign company directly holds a minimum of 10% of the paying company's capital.
36	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).
37	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).
38	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.
39	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.
40	Dividends - The lower rate applies if a foreign company directly holds a minimum of 10% of the paying company's capital, or under the EU Parent Subsidiary Directive (2011/96/EU).
41	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).
42	Dividends - The lower rate applies if a foreign company directly holds a minimum of 10% of the paying company's capital.
43	Dividends - The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.
44	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).
45	Dividends - The lower rate applies if a foreign company owns directly or indirectly at least 50% of the voting rights in the paying company.
46	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).
47	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.
48	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.
49	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.

Footnotes	
50	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.
51	Dividends - The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.
52	Interest - The lower rate applies on interest paid to a bank on a loan made for a period of more than seven years.
53	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.
54	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).
55	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.
56	Royalty - The lower rate applies on royalties for the use of industrial, commercial or scientific equipment.
57	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).
58	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.
59	Royalty - The lower rate applies on royalties for the use of industrial, commercial, or scientific equipment.
60	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).
61	Dividends - The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.
62	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.
63	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).
64	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.
65	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.
66	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.

Footnotes	
67	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.
68	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).
69	Dividends - The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 10% of the paying company's capital.
70	Dividends - The lower rate applies if a foreign company directly holds a minimum of 10% of the paying company's capital.
71	Dividends - The lower rate applies if a foreign company owns directly or indirectly at least 25% of the paying company's capital. Otherwise the domestic rate applies.
72	Dividends - The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.
73	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).
74	Dividends - Full exemption from WHT applicable in accordance with the EU Parent Subsidiary Directive (2011/96/EU).
75	Dividends - Full exemption from WHT applicable in accordance with the EU Parent Subsidiary Directive (2011/96/EU).
76	Dividends - The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 10% of, and has invested at least €80,000 or the equivalent in, the paying company's capital.
77	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.
78	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.
79	Dividends - The lower rate applies if a foreign company is the parent of the paying company according to the domestic participation exemption.
80	Interest - The lower rate applies on interest paid to a financial institution if the payer is engaged in industrial undertakings.
81	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).
82	Royalty - The lower rate applies on royalties from a copyright of literary, artistic or scientific work.
83	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).
84	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.

Footnotes	
85	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).
86	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).
87	Interest - The lower rate applies to interest expenses between banks.
88	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.
89	Dividends - The lower rate applies if a foreign company directly holds a minimum of 25% of the paying company's capital and the paying company is engaged in an industrial undertaking; the 20% rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.
90	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.
91	Interest - The lower rate applies on interest paid to financial institutions and insurance companies.
92	Dividends - The lower rate applies if a foreign company directly holds a minimum of 25% of the paying company's capital.
93	Dividends - The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.
94	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.
95	Dividends - The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.
96	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.
97	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.
98	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.
99	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).
100	Dividends - The lower rate applies if a foreign company owns directly or indirectly at least 10% of the voting rights in the paying company.
101	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	
102	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.
103	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$12m 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.
104	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.
105	Dividends - The lower rate applies if a foreign company (except for partnerships) directly holds a minimum of 25% of the paying company's capital.
106	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 fiscal years without cause. The period of review may extend to six years if e.g. incorrect or insufficient information has been provided in a filed tax return. In case of fraudulent information been 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 intragroup loans or other interest bearing intragroup debt.
3	Tax Due Diligence	General company information	Proforma balance sheet and income statement for the current fiscal year.
4	Tax Due Diligence	General company information	Account summaries (Sw. *kontosammanställningar*) of balance sheets and P&Ls.
5	Tax Due Diligence	General company information	Audit memorandums (Sw. *revisionsrapport*).
6	Tax Due Diligence	General company information	Please state who responsible for [Target's/ the Target Group's] tax affairs in general and who is responsible for filing CIT, VAT and PAYE.
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 or 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 event prior to for the previous two fiscal years and the current fiscal year, if applicable, that might 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 fiscal 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 fiscal 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 fiscal year, if applicable, including tax calculation based on proforma accounts.
15	Tax Due Diligence	Corporate income tax	If available, calculation of deductible interest expenses according to the general interest limitation rule (i.e the EBITDA rule) for the previous two fiscal years and the current fiscal year, if applicable.

No.	Category	Sub-Category	Description of Request
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 (incl. requests, decisions, considerations, audits, advance rulings etc.)
20	Tax Due Diligence	Corporate income tax	Correspondence with auditors or tax advisors 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 contribution (Sw. *koncernbidrag*)
22	Tax Due Diligence	Corporate income tax	Has any external party (e.g. tax advisors) 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 in 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 companies 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).
34	Tax Due Diligence	VAT	The three largest invoices with regards 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).

No.	Category	Sub-Category	Description of Request
36	Tax Due Diligence	VAT	The three largest invoices with regards 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	Have to [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 groups tax burden?
46	Tax Due Diligence	Other	Information on incentive programs for employees, including employees acquisition of financial instruments etc. from the group and shareholders

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SWITZERLAND

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 2021).

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. Tax Reform and old-age pension system ("OASI") financing

On 19 May 2019, Swiss voters accepted the Federal Act on Tax Reform and OASI Financing (TROF Act). The reform at federal level and the implementations at cantonal level entered into force on 1 January 2020. The aim of the proposal is to create an internationally compliant, competitive tax system for companies and to help secure AHV pensions. The key changes can be can be summarised as follows:

- Abolition of tax privileges

  The cantonal tax regimes for holding, mixed, and domiciliary companies have been abolished. At the federal level, the privileged treatment of principal companies and finance branches have also been abolished. Companies that lose their privileged status are given the option, if cantonal practice allows it, to disclose their existing hidden reserves tax-neutrally.

- Patent box system

  A mandatory patent box is introduced at cantonal level. With this patent box, the net profit attributable to patents and comparable rights is 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%. This measure does not apply to the direct federal tax.

- Deductions for research and development

  The deduction for research and development costs incurred domestically may not exceed 150% of the actual costs. It is up to the cantons to decide whether they want to implement this measure. It does not apply to the direct federal tax.

- Deduction for equity financing (notional interest deduction)

  High-tax cantons shall have the option of introducing a deduction for equity financing. A canton is deemed a high-tax canton if the (cantonal and communal) tax rate is at least 13.50%. Which means that only the Canton of Zurich is able to benefit from this rule.

- Cap on tax relief

  Tax relief on profit derived from the three aforementioned privileges is capped at 70% (i.e at least 30% of the taxable profit is liable for taxation). This cap also includes write-downs on the disclosed hidden reserves as well as internally generated add-ed value (goodwill) thanks to earlier taxation as a privileged status company (step-up under old law). This measure is mandatory for the cantons but does not apply to the direct federal tax.

- Adjustments to the capital tax

  The cantons may grant capital tax relief. Such relief relates to the equity capital of a company that is attributable to participations, patents, and loans to group companies.

- Disclosure of hidden reserves when moving the domicile to Switzerland

  Companies that transfer their domicile to Switzerland can disclose hidden reserves as well as internally generated added value tax-neutrally, and subsequently benefit from additional write-downs. This measure applies to the direct federal tax as well as to the cantons.

- Limitation of the capital contribution principle

  The tax reform limits the tax-free re-payments of capital contribution reserves ("KER"), a principle that was introduced in the second round of corporate tax reforms. The new rule makes repayments conditional, in that corporations and cooperatives listed in Switzerland can only make tax-free KER re-payments if they also distribute at least a matching amount of (taxable) dividends from commercially distributable other reserves (applies both federally and at cantonal level). An exception applies to foreign KER, i.e KER accruing after 24 February 2008 in the context of a relocation to Switzerland or a transfer of assets from abroad. This restriction also applies analogously to the issue of bonus shares or increases in nominal value.

- Partial taxation of dividends

  The partial taxation of dividends from qualifying participations (10% or more of the capital) is set at 70% at federal level (before: 60%) and shall amount to at least 50% at cantonal and communal level (before: no lower limit). The cantons are free to opt for a higher limit.

- Adjustments to tax-free capital gains (transposition)

  Under the existing regime, individuals were able to sell participations of maximum 5% to own-controlled capital companies at market value without any tax implications. This threshold is to be abolished, which means that even portfolio securities will now be affected by the transposition restrictions.

b. Coronavirus Aid Relief

In view of the huge economic uncertainties and acute liquidity crisis facing many businesses and individuals as a result of the global spread of COVID-19, the Swiss Federal Council on 20 March 2020 launched a comprehensive package of measures to cushion the financial fallout from the pandemic's extraordinary impact. The package totalled CHF 40 billion and also contains a guarantee program for COVID-19 bridging credit facilities. Due to the considerable demand, on 3 April 2020, the Federal Council decided to expand by another CHF 20 billion up to a total of CHF 40 billion the guarantee program for bridging credit facilities. On 22 April 2020, the Federal Council further decided to use the existing system of guarantees for SMEs to provide support for start-ups. Beginning of May the National Council and the Council of States met for the first time since the escalation of the COVID-19 crisis and since then, the Parliament is again capable of acting. The Parliament widely confirmed the measures decided by the Federal Council.

- Waiver of interest on arrears

The relief measures provided that no interest on arrears would accrue between 1 March 2020 and 31 December 2020 for late payments of the direct federal tax bills due in that period. This applies to individuals as well as legal entities.

As regards the cantonal/communal tax, some cantons decided to temporarily waive any interest on arrears (such as the Canton of Aargau, Bern, Basel-Land, Geneva, Glarus, Graubünden, Jura, Lucerne, Neuchâtel, Nidwalden, Schaffhausen, Schwyz, Solothurn, Ticino, Vaud, Valais and Zug). The Canton of Zurich decided to reduce the interest rate to 0.25%, not to suspend it completely. The period of suspension of interest on arrears varied from canton to canton. It is important to carefully look at how each canton handled this.

Independently of any such measures, it is possible to apply for deferred payment terms or payment by installments for both the direct federal and the cantonal/communal taxes.

The temporary waiver of interest on arrears does not apply to the federal withholding tax and stamp duties. This is very unfortunate given the high rate of interest on arrears (5%) charged for these taxes.

As regards the VAT, customs duties as well as special taxes and steering duties (tobacco, alcohol, beer, vehicle, fuel, and mineral tax), the interest rate on arrears was set at 0% from 20 March 2020 until 31 December 2020. However, taxpayers are still obligated to submit their tax statements within the statutory deadline.

In practice, this means that companies liable for VAT benefit from interest-free bridging loans – provided that they achieve turnover.

On 8 April 2020, the Federal Council decided to temporarily suspend customs duties on imports of important medical goods. This came into force on 10 April 2020 and remained in force until 9 October 2020.

i Cross-border commuters with some neighbouring countries

The state of Secretariat for International Financial Matters ("SIF") reported the conclusion of a new consultation agreement between Switzerland and France on the taxation of cross-border commuters for home office work. This shows in particular that 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 the 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 July 2020, and application was extended.

On 11 June 2020 the State Secretariat for Financial Matters concluded a new consultation agreement between Switzerland and Germany on the taxation of cross-border commuters and the treatment of state support services. The consultation agreement 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's 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 to be qualified as compensation for employment within the meaning of Articles 15 and 15a of the Agreement and are taxed only by Switzerland. Application was also extended.

On 20 June 2020 the State Secretariat for International Financial Matters (SIF) reported the conclusion of a new memorandum of understanding between Switzerland and Italy concerning Covid-19 measures. The provisions of the Memorandum of Understanding shall apply from 24 February 2020 until 30 June 2020 inclusive and ,application was also extended. Exceptionally and provisionally, 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.

ii Deferred payment terms for social security contributions

Since 20 March 2020 companies facing liquidity problems due to the Corona crisis have been able to apply to their compensation fund for a deferral of payment without default interest. In doing so, they must commit themselves to regular installment payments. This possibility of requesting payment in installments of the contributions owed will continue to exist and will be interest-free until 20 September 2020. At its meeting on 29 April 2020, the Federal Council decided that no default interest would be charged in the event of late payment of AHV/IV/EO and ALV contributions during the extraordinary situation. The regulation is limited in time and supplements the already decided measure of interest-free payment deferrals for companies in liquidity bottlenecks. The measure applies applied retroactively from 21 March 2020 to 30 June 2020.

iii 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 has launched a credit guarantee program of CHF 20 billion (which has been increased up to CHF 40 million). Affected businesses get access to fast credit of up to 10% of their sales, but no more than CHF 20 million. The program provides that the banks pay out amounts of up to CHF 0.5 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. The respective implementation ordinance was adopted on 25 March 2020.

iv Expansion and simplification of short-time work

The conditions for the compensation of short-time work have been broadened and applying for it has become easier:

- Compensation for a reduction in work is now also possible for:
  - staff in fixed-term employment and for people working for a temporary placement organisation;
  - people in apprenticeships; and
  - employees who occupy a position comparable to that of an employer.
- The already shortened waiting period for short-time work compensation has been abolished. This means that employers no longer financially contribute to work-loss compensation.
- Employees no longer have to reduce the accrued overtime before they can benefit from short-time work compensation.

On 1 July 2020, the Federal Council extended the maximum period for which short-time working compensation can be paid from twelve to eighteen months. A waiting period of one day also applies. This amendment to the ordinance comes into force on 1 September 2020 and is valid until 31 December 2021.

v Compensation for income loss of self-employed people and employees

The Corona employment compensation for parents who worked and had to look after their children during school closure, for people in quarantine and for self-employed persons is regulated in the “Covid 19 Regulation on Loss of Earnings”. The ordinance is valid for six months until 16 September 2020. After that date the Federal Council has stipulated that no new demands based on this ordinance can be asserted. Applications for benefits must therefore be submitted by 16 September 2020.

Self-employed people who suffer a loss of income because of official measures taken to contain the coronavirus outbreak (e.g. who are in quarantine on doctor’s orders) can get compensation for loss of income if they are not already being compensated or covered by corresponding insurance. The entitlement was generally limited until 16 May 2020. The entitlement of self-employed persons directly or indirectly affected by measures against the corona virus is extended until 16 September 2020. Persons employed by their own company in the event sector who find themselves in a hardship situation can now also claim corona purchase compensation. In doing so, it is taking account of the fact that many companies are not yet able to commence their activities, or not yet fully, even though the measures against the corona pandemic have been completely or partially lifted.

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 7 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 5 years after a tax neutral intra-group 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 2 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 5 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 5 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

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 CHF 10 million according to their latest balance sheet. A new company should not be liable for stamp duty until 6 months after the first balance sheet showing taxable securities of at least CHF 10 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 1 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 VII 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 reorganization, 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 5 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 push-down 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 2 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 CHF 1 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 Thin capitalisation rules

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 2021, the maximum interest on loans between related parties denominated in Swiss francs for trading/ manufacturing entities amounts to 3% for loans up to CHF 1 million respectively 1% for loans above CHF 1 million and for holding/ asset management entities to 2.5% for loans up to CHF 1 million respectively 0.75% for loans above CHF 1 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 CHF 500,000 (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 CHF 5 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.

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 1 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 5 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 gain taxes.

For individuals holding their assets as business assets, a reduction of 40% - 60% is granted on the taxable capital gain for qualifying participations (participation of at least 10% and a holding period of at least 1 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 CHF 1 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 CHF 900 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 will take 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 pox 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 6 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 6 months after the balance closing date.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Additional distributable reserves can be generated with an intra-group 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 2 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]
Canada	15 / 5 / 0	10	0	[1] [2]
Chile	15	10 / 5	0	[1] [2]
China	10 / 5	10	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]
Greece	15 / 5 / 0	7	0	[1] [2] [3]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
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]
Kosova	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]
Morocco	15 / 7	10	0	[1] [2]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
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]
United Arab Emirates	15 / 0	0	0	[1] [2]

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
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 witholding 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 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 2 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 past 5 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 5 years
7	Tax Due Diligence	General	Tax rulings with tax authorities / other documentation of negociations / agreements with tax authorites
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 5 years
11	Tax Due Diligence	General	Any relevant correspondence over the last 5 years with the external tax advisors
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
14	Tax Due Diligence	General	All shareholders since incorporation (incl. changes), share register and beneficial owners
15	Tax Due Diligence	Corporate income tax	Copies of tax return for the last five years

No.	Category	Sub-Category	Description of Request
16	Tax Due Diligence	Corporate income tax	Final and provisional tax assessements 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 Target's activities performed abroad in the past 5 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 5 years
24	Tax Due Diligence	Transfer Pricing	Agreements with group companies and / or related parties
25	Tax Due Diligence	Witholding 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	Witholding tax	Overview of distributions to shareholders in the past 7 years (ordinary and extraordinary dividend, hidden profit distributions, etc.), including decisions of the general assembly regarding dividend distributions
27	Tax Due Diligence	Witholding tax	Confirmations for notification procedure based on Forms 823, 823B or 823C
28	Tax Due Diligence	Witholding tax	Confirmations for capital contribution reserves based on Form 170
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

No.	Category	Sub-Category	Description of Request
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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UNITED KINGDOM

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, unpaid 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: There is no limit to the members' liability. This form of company is rare.
- A public limited company: The members' liability is limited to the amount, if any, unpaid 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 partners carryon business together. The partnership does not have 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.
- Limited Liability Partnership: A partnership where partners are not personally liable for debts and liabilities of the partnership. It has 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 2019/20 and 2020/21 fiscal tax year, is 19%.

From the 2023/24 fiscal year, the rate of Corporation Tax will increase to 25%. Businesses with profits of £50,000 or less, will continue to be taxed at 19%. A tapered rate will also be introduced for profits above £50,000, so that only businesses with profits of £250,000 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 2020/21 UK tax year (figures which remained identical from the 2019/20 UK tax year), the standard personal allowance given, is £12,500 which is the amount of income that you do not have to pay any tax on. With income over £100,000, the personal allowance is tapered down by £1, for every £2 additional over £100,000.

Income between £12,501 and £50,270, is taxed at the basic rate band of 20%. Income between £50,001 and £150,000, is taxed at the higher rate of 40%. Any taxable income that falls over this amount is taxed at 45%.

As announced at Budget 2021, the government will maintain the Personal Allowance at £12,570 and higher rate threshold at £50,270 for 2022/23, 2023/24, 2024/25 and 2025/26. The additional rate threshold is fixed at £150,000. The NICs Upper Earnings Limit and Upper Profits Limit will remain aligned to the higher rate threshold at £50,270 for these years.

- Capital Gains Tax

Capital gains tax realised by individuals is generally taxed at a rate of 20% unless related to residential property, 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 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 that pension contributions, deferred pay and benefits in kind are broadly deductible only when paid, that a deduction is available for the notional cost of certain share awards to employees, and that, where certain acquired intangibles.

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 6 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 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 profit or deficit. Certain statutory adjustments must be made, which include an interest capping limitation.

For traders, 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 loss.

2. RECENT DEVELOPMENTS

The main developments in the UK relevant to M&A transactions are the continued implementation of the BEPS actions into domestic legislation. The UK is generally supportive of the BEPS actions and has already issued legislation. The UK tax authority ("HMRC") has introduced new legislation in the following areas:

Very large companies (broadly with profits exceeding £20m in an accounting period) will have to pay corporation tax by instalments four months earlier for accounting periods commencing on or after 1 April 2019. Corporation tax will be due in months three, six, nine, and twelve.

The most significant proposals, which include announced proposals, those in draft legislation and those subject to consultations include:

- The rate of corporation tax is 19% from April 2020, and will increase to 25% from 1 April 2023.
- The amount of qualifying investment in plant and machinery that benefits from a 100% allowance was £1 million where the expenditure is incurred from 1 January 2019 to 31 December 2020. This 100% allowance is reduced to £200k from 1 January 2021.
- For qualifying expenditure incurred from 1 April 2021 up to and including 31 March 2023, companies can claim in the period of investment:

  i) a first year allowance of 50% on most new plant and machinery investments that ordinarily qualify for 6% special rate writing down allowances.

  ii) a super-deduction providing allowances 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 £1 they invest.
- The rate of capital allowance on special rate expenditure (for instance, integral features) is 6% in 2020/21.
- 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.
- Losses: The government announced a temporary extension to the carry back trade losses of up to £2 million from one to three years for trade losses for a period of two years.

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 United Kingdom already has rules covering each of these areas but has 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 will be brought within the scope of UK tax. This applied to gains accrued on or after April 2019. Targeted exemptions will be introduced for institutional investors, such as pension funds.

New rules from April 2019 to prevent companies and individuals from moving profits offshore (tax avoidance involving profit fragmentation).

UNITED KINGDOM

From April 2020, income that non-resident companies receive from UK property, and gains that arise on the disposal of UK property by non-resident companies, will be chargeable to corporation tax.

From April 2020, a new digital services tax of 2% will apply 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 to annual 'UK' revenues above £25 million from activities relating to search engines, social media platforms and online marketplaces.

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:

i VAT

VAT payments due between 20 March 2020 and 30 June 2020 can be deferred on an optional basis and applies to all UK VAT registrations.

Import VAT & Duty deferrals: HMRC will permit 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 offered above is not sufficient and if the business needs additional time to pay all taxes, HMRC has extended its "Time to Pay" helpline. Businesses can 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, which will be followed by a 12.5% VAT rate for a further six months until 31 March 2022.

ii Postponement of IR35

The reform to the off-payroll working rules in the private sector (commonly known as IR35), which will affect large or medium-sized organisations that engage with contractors through an intermediary, was delayed for one year, from 6 April 2020 until 6 April 2021.

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, has been delayed one year and will come into effect on 1 April 2021.

iv Coronavirus Job Retention Scheme

The CJRS is available to all UK employers to enable them to access support to cover a proportion of employees' salaries, where the employee has been furloughed as a result of this crisis. The scheme first became available in March 2020 and has been extended and updated a number of times since. The current iteration of the CJRS runs from 1 November 2020 until 31 September 2021, and allows employers to claim 80% of eligible furloughed employees' current salary for hours not worked, up to a maximum of £2,500 per month. From July 2021, the amount of support will be tapered down to 70% of wages and then 60% from August.

v Sick pay

Eligible businesses with less than 250 employees may be able to claim a refund of 2 weeks Statutory Sick Pay ('SSP') per employee who has been off sick due to Covid-19.

vi Self-employed individuals

Eligible self-employed individuals, whose trading profits are significantly reduced as a result of Covid, may be able to claim up to 80% or £2,500 a month cash grant, provided all of the relevant criteria are satisfied, including the requirement to have trading profits less than £50,000 per year. This scheme has also been extended a number of times and the current version has been extended to 30 June 2021.

From July the government will introduce a fifth and final grant which will be calculated on a different basis, based on the reduction of turnover in the claimant's busines in the year from April 2020 to April 2021. For a turnover reduction of 30% or more, the grant will remain at 80% of the three months average trading profit (capped at £7,500). For a turnover reduction of less than 30%, the grant will be 30% of the three months' average trading profit (capped at £2,850 in total). Eligibility will now be based on tax returns submitted for the 2019/20 tax year.

vii COVID-19 Corporate Financing Facility

The Bank of England will buy short term debt from large companies. This will support companies which are fundamentally strong, but have been affected by a short-term funding squeeze, enabling them to continue financing their short-term liabilities. It will also support corporate finance markets overall and ease the supply of credit to all firms.

viii Government Grants for businesses

One-off grant of £10,000 (about €11,000) to business that pay little or no business rates; Additional grant of £25,000 (about €27,000) to retail, hospitality and leisure businesses. This measure applies to businesses operating from smaller premises, with a rateable value between £15,000 and £51,000 (about €16,000 to €55,000).

- 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 periodThe reporting requirements under Hallmarks A, B, C and E have been repealed.

ix Coronavirus Business Interruption Loan Scheme

- The Government will provide, through the British Business Bank, free of charge to SMEs an 80% guarantee on each loan for borrowings up to £5 million (about €5.5 million) and for up to 6 years. The government will also make a Business Interruption Payment to cover the first 12 months of interest payments and any lender-levied fees, so smaller businesses will benefit from no upfront costs and lower initial repayments. The government will provide lenders with a guarantee of 80% on each loan (subject to pre-lender cap on claims) to give lenders further confidence in continuing to provide finance to SMEs. The scheme will be delivered through commercial lenders, backed by the government-owned British Business Bank. There are 40 accredited lenders able to offer the scheme, including all the major banks.

x Coronavirus Large Business Interruption Loan Scheme (“CLBILS”)

CLBILS will support large businesses, with an annual turnover of over £45 million, to access loans of up to £25 million. Previously the scheme was intended to exclude companies that have a turnover in excess of £500 million. The scheme is expected to be delivered through commercial lenders. The government will provide lenders with an 80% guarantee on individual loans for businesses that would otherwise be unable to access the finance they need. Facilities backed by a guarantee under CLBILS will be offered at commercial rates of interest.

xi Recovery Loan Scheme

The government are making available loans between £25,001 and £10 million, and asset and invoice finance between £1,000 and £10 million, to help businesses of all sizes through the next stage of recovery.

xii Funding

The government are providing £5 billion for new Restart Grants – a one off cash grant of up to £18,000 for hospitality, accommodation, leisure, personal care and gym businesses in England.

xiii Business Rates

For the fiscal year 202/21, businesses in the retail, hospitality and leisure sectors in England will not have to pay business rates. This relief was extended to 30 June 2020. From July 2021, business rates relief will be reduced from 100% to 66% until March 2022. To be eligible, businesses must have been affected by the third national lockdown. Qualifying companies will be 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 the entire company. This includes all assets and all liabilities including any historical liabilities.

b. Tax Attributes

Trade tax 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.

Trade tax 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 the group’s taxable profits exceed £5m, the amount of annual profit that can be relieved by carried forward trade losses will be limited to 50% of the group’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 5 years, beginning no later than the change in ownership and no earlier than 3 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 allowed to be offset against profits after the change of ownership. Change of ownership restrictions also apply to non-trade tax losses.

Broadly, there is a change in ownership of a company where more than half of its ordinary share capital changes hands.

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 these losses to another member of the group, which can deduct the loss from its total profits, thus reducing the amount of corporation tax payable.

d. Tax Free Reorganisations

UK tax legislation contains provisions that enable a tax-neutral reorganisation, these include:

- The ability to transfer assets of a trade, together with accumulated losses, within a group without a charge to tax.
- The tax neutral transfer of assets within a group under the chargeable gains regime.
- Tax free share-for-share exchanges provided certain conditions are met.
- Group relief provisions for stamp duty and stamp duty land tax.
- Group 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 de-grouping charges that may apply if the company is sold outside the group within a period of 6 years. There are also stamp duty and stamp duty land tax relief claw back provisions that apply for a period of 3 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, which is equivalent to 0.5% duty, which will be rounded up to the nearest £5. Transfers will need to be documented through a stock transfer form, which must be sent to the 'Stamp Office' 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. Stock 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 Entrepreneurs Relief 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.
- No double tax charge – There is a potential double tax charge on an asset sale which can result in the seller being taxed twice, once 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.
- Roll-over 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 an asset sale if the proceeds are reinvested by the seller in certain 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. 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. Stock Purchase Disadvantages

With a stock purchase, the purchaser inherits all the historical liabilities of the company, including tax liabilities.

There is no opportunity to get increased tax basis in the assets acquired within the company.

4. ASSET ACQUISITION

a. General Comments

Generally, assets 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.

e. Purchase Agreement

As there is not a transfer of historical liabilities with an asset acquisition, there is usually significantly less tax content in the purchase agreement

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 exempt from VAT. Otherwise VAT may be charged on the items transferred.

h. Asset Purchase Advantages

- In asset deals, purchasers can choose the assets they want and leave any known or unknown liabilities behind.
- There is also greater scope for immediate and future tax deductions. For example, the acquisition of stock and 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 and, as such, VAT need not 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 and inability to access capital gains tax exemptions available on share transactions.
- Any brought forward 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 and 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

A strategic buyer would usually be more concerned with holding the asset for a long period of time and integrating within its existing group. Therefore, it would be less concerned with designing a structure for efficient capital gains tax exit. Also, a strategic buyer is more likely to have an existing financing structure in place rather than a private equity buyer, who would likely implement for each transaction.

6. ACQUISITION FINANCING

a. General Comments

The UK is a liberal jurisdiction with a well-developed legal and banking system and so a favorable 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. Therefore, 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 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 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) group ratio based on the actual net third party interest to EBITDA ratio for the worldwide group. There is £2million de-minimus limit. 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 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 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.

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 re-classified as employment income.

7. DIVESTITURES

a. Tax Free

There is a substantial shareholding exemption (“SSE”) from CGT where shares are disposed of by a company in certain circumstancesGenerally for the SSE to apply:

- The parent of the disposing entity would need to hold 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 but the tax falls under its corporation tax liability.

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.

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.

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.

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.

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 £50,000 or less (or £500,000 or less where non-trading income is no more than £50,000) 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.

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 €750m.

Entities falling within CbC 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 small and medium-sized enterprises (SME). 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. 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 will 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 will also be affected.

Other structures affected will include those where financial instruments have been entered 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

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 your company profits must be from exploiting patented inventions that are owned and on which qualifying development has taken place. If your company is a member of a group, it may qualify if another company in the group has undertaken the qualifying development.

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

This section is left intentionally blank.

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 benefit's' ("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 values 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, substance considerations have been less relevant than for other jurisdictions. In respect of 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. However, now 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 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 between them.

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.

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	

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]

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

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 & purchase agreements
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.

No.	Category	Sub-Category	Description of Request
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
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

No.	Category	Sub-Category	Description of Request
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.
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.

No.	Category	Sub-Category	Description of Request
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.
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 Small and Medium sized Enterprises (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.

No.	Category	Sub-Category	Description of Request
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 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 for 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.
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.
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).
45	Tax Due Diligence	VAT	Details of any partial exemption 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 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.
51	Tax Due Diligence	VAT	Details of the process for obtaining and retaining evidence to support zero rating of exports and dispatches.

No.	Category	Sub-Category	Description of Request
52	Tax Due Diligence	VAT	Details of how dispatches are 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 cash-flows.
54	Tax Due Diligence	VAT	Details of any special VAT accounting schemes used, e.g. cash accounting, retail schemes, second margin scheme, etc.
55	Tax Due Diligence	VAT	Details of any land options to tax in place currently or revoked during the past four years. 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.
56	Tax Due Diligence	VAT	Has the business taken any VAT advice with regard to Brexit planning and how it will potentially affect the business? Please provide details of any steps taken in this regard.
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 MTD.
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.
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?

No.	Category	Sub-Category	Description of Request
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 £30k 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 operates 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.
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.

No.	Category	Sub-Category	Description of Request
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 £1 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.
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

No.	Category	Sub-Category	Description of Request
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.
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.

FOR MORE INFORMATION CONTACT:

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USA

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 caselaw) 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 rights (so-called "C Corporations"), and their distributions of profits are generally taxable to their shareholders. 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 distinctions exist 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 of 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 or "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 limited liability company 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") that is arguably stronger than that of a corporation. 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 gains 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 modeling:

- 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;
- 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);
- Social contribution taxes based on employee wages;
- Excise taxes on specific items (e.g. fuel, certain vehicles, air transportation, fishing/hunting equipment, alcohol, and tobacco) and
- Import duties on specific goods.

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-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 70% chance of success.
- US corporations that receive dividends from US corporations outside of 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").

2. RECENT DEVELOPMENTS

a. The Tax Cuts and Jobs Act ("TCJA")

Developments in U.S. tax law affecting international corporate transactions during 2018 were focused around the implementation of the wide-reaching changes to the Internal Revenue Code enacted at the end of 2017, in what is commonly known as the Tax Cuts and Jobs Act ("TCJA"). The TCJA substantially revised the U.S. tax treatment of cross-border income and transactions. Many of the changes were fundamental departures from the letter and spirit of prior law. The TCJA introduced many new concepts and principles, and in many respects, those were not self-explanatory. As a result, the tax community waited impatiently for the release of proposed regulations by the Internal Revenue Service that would provide guidance on the application of the new rules. Since enactment of the TCJA, the IRS has accomplished the task of proposing or adopting regulations under nearly all the provisions of the TCJA affecting international tax. Here are the principal topics addressed by those regulations.

i Transition tax

As part of the transition to a new system of worldwide taxation, the TCJA imposed a one-time 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 payable over an 8-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.

ii 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.

iii Global Intangible Low-Taxed Income ("GILTI")

GILTI is a new category of income taxed to the U.S. 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 U.S. 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 U.S. shareholder under GILTI becomes previously taxed income that can be distributed without further U.S. tax.

iv Foreign Derived Intangible Income ("FDII")

FDII is a regime that provides for a reduced rate of tax on income derived by U.S. 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.

v Participation Exemption

As a companion to the GILTI provisions, Congress provided U.S. 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.

vi Section 163(j) – Interest Expense Limitation

Section 163(j) limits the deduction for business interest expense to 30% of a figure that approximates EBITDA calculated under income tax principles (adjusted taxable income – ATI – or "tax EBITDA"). Prior law imposed a limit only on interest paid to related foreign persons and set the ceiling on deductions equal to 50% of a slightly different ATI figure. The new limitation applies to all business interest, regardless of the lender. In the case of a corporate taxpayer, all interest is business interest. After 2021, the definition of ATI will shrink significantly to "tax EBIT." If and when this limitation becomes effective, it will significantly restrict the benefits of leveraged acquisition structures. Neither the 2018 version nor the 2022 version includes any exceptions or protections for interest on pre-existing debt. As a result, financing of current transactions must take into account the EBIT limitation that comes into effect in 2022 for planning and modeling purposes.

vii Hybrid Rules

Hybrid rules operate to disallow deductions for payments of interest or royalties to related parties in "hybrid transactions" or transactions involving "hybrid entities". A hybrid transaction is one in which the related recipient does not include the payment in income or is entitled to a deduction for the payment under the law of its state of residence. A hybrid entity is one that is fiscally transparent under the law of either its country of residence or of the United States, but not both. This provision affects highly structured inbound base eroding transactions, which are also affected by the enhanced limitation on interest deductions, and by the BEPS rules.

viii Foreign Tax Credits

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.

ix 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 untaxed 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.

x 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.

xi Capital Allowances

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, 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, once the interest limitation to 30% of EBIT comes into effect.

xii Net Operating Losses

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. 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 ("NOLs"), relaxation of the limitation on interest deductions, and accelerating refunds for AMT credits, among others.

i NOL Carrybacks and Excess Business Losses

With respect to NOLs, the CARES Act made two substantial changes for taxable years beginning after 31 December 2017, and before 1 January 2021:

- Any NOL deduction taken in those years is not subject to the 80% of taxable income limitation imposed by TCJA as discussed above, and
- Taxpayers can carry back NOLs arising in those taxable years to the five preceding taxable years (although they can forgo the entire carryback period).

The CARES Act also provides that an NOL carryback cannot be used to offset the toll charge imposed under Section 965(a), and the taxpayer can choose to exclude the year or years in which it reported the Section 965(a) toll charge from the carryback period, without having to forgo the carryback altogether. However, excluding those years does not extend the carryback period. Additionally, the CARES Act includes a technical correction to the effective date of the TCJA provisions, so that an NOL that was generated in a fiscal year that began before 31 December 2017 and ended after 31 December 2017 can be carried back two years under pre-TCJA rules.

It should be noted that, while the CARES Act makes it possible to carry an NOL back five years from 2018, 2019, or 2020, there may be practical limitations on the taxpayer's ability to benefit from such a carryback. For example, if the company was acquired during the five-year carryback period, the transaction documents must be reviewed to determine whether the company is contractually prohibited from carrying back an NOL to the pre-acquisition period, or must share the benefit of the carryback with its former owners.

The CARES Act also relaxed the rules governing excess business losses of noncorporate taxpayers for taxable years beginning after 31 December 2017 but before 31 December 2020 so that pass-through entities and sole proprietors may offset losses incurred in a trade or business against nonbusiness income without limitation.

ii AMT Refundable Credits

The CARES Act provides that the taxpayer's remaining AMT minimum tax credit balance is refundable in full in 2018 or 2019.

iii Modification to Interest Expense Limitation

As discussed above, in the TCJA, Congress limited a taxpayer's ability to deduct business interest expense to the sum of: (1) the taxpayer's business interest income, (2) 30% of the taxpayer's adjusted taxable income ("ATI") and (3) floor plan financing interest (section 163(j) limitation). The CARES Act modifies the section 163(j) limitation for taxpayers other than partnerships as follows:

- For taxable years beginning in 2019 or 2020, the section 163(j) limitation will be equal to 50% rather than 30% of ATI, unless a taxpayer elects to apply the 30% limitation; and
- For taxable years beginning in 2020, a taxpayer can generally elect to base the section 163(j) limitation on its 2019 ATI (prorated if the 2020 taxable year is a short taxable year) rather than its 2020 ATI.

For partnerships, the CARES Act provides:

- For 2019, partners that were allocated excess business interest expense from a partnership (business interest expense that exceeded the partnership's section 163(j) limitation) can elect to deduct 50% of that amount in 2020 without any limitation, and
- For 2020, similar to other taxpayers, a partnership can elect to use its 2019 ATI (prorated if the 2020 taxable year is a short taxable year) in place of its actual 2020 ATI.

iv Depreciation of Qualified Improvement Property ("QIP")

As a result of a drafting error in the TCJA, certain improvements to nonresidential real estate were subject to unfavorable depreciation rules. The CARES Act corrects this so that the intended favorable depreciation treatment is allowed, retroactive to 2018.

v 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 $10,000 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

c. State Taxation (*Wayfair*)

The United States is composed of 50 separate states, as well as the federal district (District of Columbia). Each of those entities 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, United States 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 United States, 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.

3. SHARE ACQUISITION

Given the elective system of tax treatment, 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 be treated as a "share acquisition" for tax purposes. 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 stock ownership, complex US rules limit the post-acquisition use of US tax net operating loss, US tax credit carryforwards, and US interest expense carryforwards.

- 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 "long-term tax-exempt rate" (1% or less as of mid-2020). 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.

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 increase by its US taxable income and decrease 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.

c. Tax Free Reorganisations:

- Entities taxed as corporations in the US are often able to achieve a combination or separation without creating 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 tax-free manners require careful compliance with complex rules, tax-free separations (spin-offs, split offs, and split-ups) tend to be more difficult to achieve than combinations.
- The readjustment of a single corporation's capital structure (corporate 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 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 (together with 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 338(h)(10) or 336(e)) election;

- Sometimes (usually because an existing owner wants to retain some equity) the purchase of an S Corporation cannot qualify for a 338(h)(10) or 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 into an LLC, and sell interests in the LLC to the buyer (the so-called "S Corporation F Reorganisation").

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 (this is known as a 338(g) election);

- If the target of a 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; in most cases, this different analysis does not create a worse tax consequences for the seller than an outright sale of stock, especially if the seller is not US-based or owned by a US company.
- US-owned buyers almost always prefer a 338(g) transaction for a foreign corporation because the 338(g) 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 in this regard, and, because the individual owners would be entitled to tax refunds in such a case, buyers may also seek intervening rights to receive such tax refunds as partial security for that 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 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 modeling is important to measure the benefit of the step-up in an asset sale to the buyer and the additional cost, if any, of an asset sale to the seller. If additional seller cost is present, the seller will often ask to be held whole.
- A buyer of interests in a partnership (or entity treated as a partnership for tax purposes) or disregarded entity (or a contributor to the capital of such an 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 >50% 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 which 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 canceled and converted into rights to receive cash. For tax purposes, the merger company is usually ignored entirely due to its intentionally transient existence.
- 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 nondeductible 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 will be required also to use the accrual method of accounting post-acquisition which will 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 will be borne economically by the buyer. Similarly, 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 period. The net working capital provisions in a purchase agreement generally should make adjustments that shift the resulting tax consequence to the seller in both of 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 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 being 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 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 the company’s assets (and has been for the previous 5 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 (“FASB ASC 805”), a company must undertake business combination accounting (so-called “purchase accounting”) whenever an entity acquires direct or indirect control (>50%). Purchase accounting effectively resets all of the assets and liabilities of the company (and all of its subsidiaries that report their financials 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 (deferred items, etc.) on its balance sheet. Purchasers should consider carefully the potential implications of purchase accounting to fair value (and tax) with respect to possible post-acquisition reorganisations or other transactions.

f. Share Purchase Advantages

Can avoid consent requirements with respect to transfers of contracts, licenses, permits, etc. However, buyers should review contracts and licenses to ensure they do not contain “change in control” consent rights.

Simplicity of execution; avoids necessity of transferring title to property owned by the company and potentially paying taxes on the transfers.

Can 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

- Target’s tax basis in its assets remain unchanged.
- 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 approach 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 an asset acquisition. While income tax liabilities generally remain behind with a seller in an asset sale, to the extent there are significant tax attributes, it may be beneficial, and indeed preferred, for a seller to structure a transaction as an asset sale if the gain from such a transaction may be completely shielded from income tax.

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% – gain recognised by selling shareholders may be limited to the amount of non-stock consideration received, and 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 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 seek 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 purchase price to intangible assets so as to maximise their capital gains, whereas buyers are incentivised to allocate purchase price to tangible assets which permit 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 another period of time, the parties to negotiate in good faith to resolve their differences, and then an independent firm 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 control 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 three years.

Under the TCJA (as discussed above), 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 after 27 September 2017. 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 to 80%, 60%, 40% and 20% annually from 2023 to 2026. MACRS should apply to the remaining depreciable basis.

Pursuant to section 179, dealing with software and tangible property, taxpayers may elect to treat as a current deduction the acquired cost of such assets used in the active conduct of a trade or business. Under the TCJA, the total deduction available under section 179 is generally 1 million USD. 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 2.5 million USD.

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 U.S. 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 a U.S. business by a foreign person, gain is ordinarily treated as effectively connected income subject to U.S. 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 U.S. 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.

The liabilities of a Target entity are not acquired as part of an asset purchase, unless otherwise agreed to in the purchase agreement. 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 favorable 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 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 making 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

Flow-Through Entities

- Limited Liability Company

  The ability of a domestic limited liability company 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 of 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 is usually not so limited) 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 less clear or different than 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 only encounter S Corporations when an 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.

- 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, US corporations are 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 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 such 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 organise a new US corporation for that purpose and cause the target to join the acquisition corporation in consolidation. 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 wish to 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 common 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. Although joint ventures can provide significant commercial advantages and flexibility, these arrangements should be carefully understood and negotiated by all parties along with a tax advisor 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. 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 US$10,000 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 Program) 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" law) any financial interest in or signature authority over accounts outside of the US (>$10,000 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 absence of one or more of the following factors can cause federal authorities to argue that debt is equity for federal tax purposes and, thus, prevent 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 potential 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 is 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 will be deferred (and may be disallowed) to the extent the yield exceeds the "applicable federal rate" plus five percent.
- Interest on debt issued by a corporation to acquire stock in another corporation's stock or at least 2/3 of the value of its assets may be nondeductible 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 (see BEAT tax, above).
- 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 target into the acquisition subsidiary, 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. Nontaxable aquisitions 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 nontaxable 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 favorable 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 nonrecognition 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 of 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 5-year period ending on the date of the distribution.
- The transaction must not be used principally as a device for the (nontaxable) 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 business 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 nontaxable 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 advisor. 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) by a taxpayer, minus a deemed 10% 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 "United States shareholders," either by voting power or by value. A United States 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 on its "Subpart F income" and on certain deemed distributions resulting from investments of CFC earnings in United States property. Subpart F income included 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.

The tax reform act 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, 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 no longer subject to tax in the hands of corporate US shareholders.

c. Foreign branches and partnerships

The United States 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 (foreign derived intangible income) 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 underlying earnings of the foreign corporation.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

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

The United States taxes all real property gains recognised by foreign persons. A United States real property interest (USRPI) includes any interest in real property located in the United States, 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 United States 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 United States. 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 $850,000,000.

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. If the corporation files its return electronically, the forms must also be filed electronically.

10. TRANSFER PRICING

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. A few examples that cause transfer pricing risks are listed as follows:

- Significant intangibles – are the ownership and resources aligned;
- Functions and risk described in intercompany agreements is different from the practice that the company carries out;

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 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

a. Introduction

- 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 PMI planning techniques 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 base erosion and anti-abuse tax (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.

b. Use of Hybrid Entities

- The great flexibility afforded by the U.S. "check-the-box" rules remains a useful planning technique, 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.

c. 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.
- 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 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 license 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 that were 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 United States did not sign the 2015 BEPS Multilateral Instrument, and has preferred to adopt unilateral measures addressing base erosion and profit shifting. 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 above under Recent Developments.

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 U.S. tax purposes, in a nontaxable 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 spin-off 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 have to 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 have to 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 additional distribution in excess of basis is taxed as capital gain.

b. Substance Requirements

Companies formed within the United States are per se subject to US taxation, regardless of their activity.

Companies seeking application of the US treaty to an entity organised or tax-resident in another jurisdiction should ensure that such 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 lists regularly 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) 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) which 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 in the request and the transaction is carried out as described. A PLR may not be relied on as precedent by other taxpayers or IRS personnel.

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]

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.
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 United States.
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.

Footnotes	
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 United States, 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 United States, 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).
18	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company that holds directly at lest 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 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.

Footnotes	
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 coting 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.
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.

Footnotes	
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.
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 organization, 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 corporations 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.

Footnotes	
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 dividents lacks both permanent establishment in the United States and controls more than 50% of the voting power in the company paying the dividend.
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 publically 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, trademakers, 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 picutre 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.

Footnotes	
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, trademakers, 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 picutre 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 3 factors - 1) the beneficial owner is qualified governmental entity that does not control the personpaying 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 State; or 3) the interest is paid or accrued with respect to a dferred payment for personal property (movable property) or services. If one of the 3 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.
66	Interest - Maximum rate is 10%. 0% rate can apply if the interest is from long-term loans (5 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 equiment.
67	Royalites - 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 othermeans 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.

Footnotes	
74	Royalites - Maximum rate of 15%. If the royalties are derrived from the use of a literary, dramatic, musical, or artisitic 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.
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 October 1st, 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 benecifial owner is a resident of the other Contracting State and the 4.95% rate doesn't 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 exprience.

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, 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.
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	U.S. 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	U.S. Federal Income Tax	“Copy of the Company’s calculations for its interest expense limitations, if any.

No.	Category	Sub-Category	Description of Request
16	Tax Due Diligence	U.S. 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	U.S. 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	U.S. Federal Income Tax	Estimated transaction expenses related to the proposed transaction.
19	Tax Due Diligence	U.S. Federal Income Tax	“A schedule of tax amortisable intangibles and goodwill and the projected run-off.
20	Tax Due Diligence	U.S. Federal Income Tax	“A schedule of tax depreciation run-off for the current year and the next three years.
21	Tax Due Diligence	U.S. 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	U.S. 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	U.S. 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	U.S. Federal Income Tax	“Details of adjustments made pursuant to a change in accounting method under IRC §481.
25	Tax Due Diligence	U.S. Federal Income Tax	“Copies of all estimated tax payments made for the current and preceding tax years.
26	Tax Due Diligence	U.S. Federal Income Tax	“Details of any “reportable transactions” required to be disclosed pursuant to Treas. Reg. §1.6011-4.
27	Tax Due Diligence	U.S. 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-U.S. tax filings in significant jurisdictions (including type of tax and amounts paid by year). Also include a summary of all non-U.S. 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 traveled into by year for the past three years. Alternatively, a brief description of employee travel (e.g., sales solicitation, services, trade shows).

No.	Category	Sub-Category	Description of Request
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.
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.

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GLOBAL M&A TAX TEAM

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Taxand's team of M&A tax specialists combines leading advisors in over 50 countries working together to structure your deals in the most tax effective way. To discover how Taxand can deliver your M&A tax advantage, please contact your nearest Taxand advisor:

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