



26TH ANNUAL
U.S. AND EUROPE
TAX PRACTICE TRENDS
15-17 APRIL 2026 • ROME

M&A Hot Tax Topics

17 April 2026



The Panel



**Co-Chair
Devon Bodoh**
Partner
+1 202 682 7060
Devon.bodoh@weil.com
New York, U.S.A



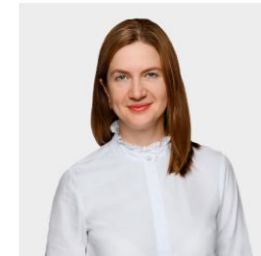
**Co-Chair
Susanne Schreiber**
Partner
+41 58 261 5212
susanne.schreiber@baerkarrer.ch
Zurich, Switzerland



Amie Colwell Breslow
Of Counsel
+1 202 879 3727
abreslow@jonesday.com
Washington DC, U.S.A.



Jisun Choi
Partner
+44 20 7519 7106
jisun.choi@skadden.com
London, UK



Andrea D'Ettore
Senior Associate
+39 02.89013228
a.dettore@frm.it
Milan, Italy



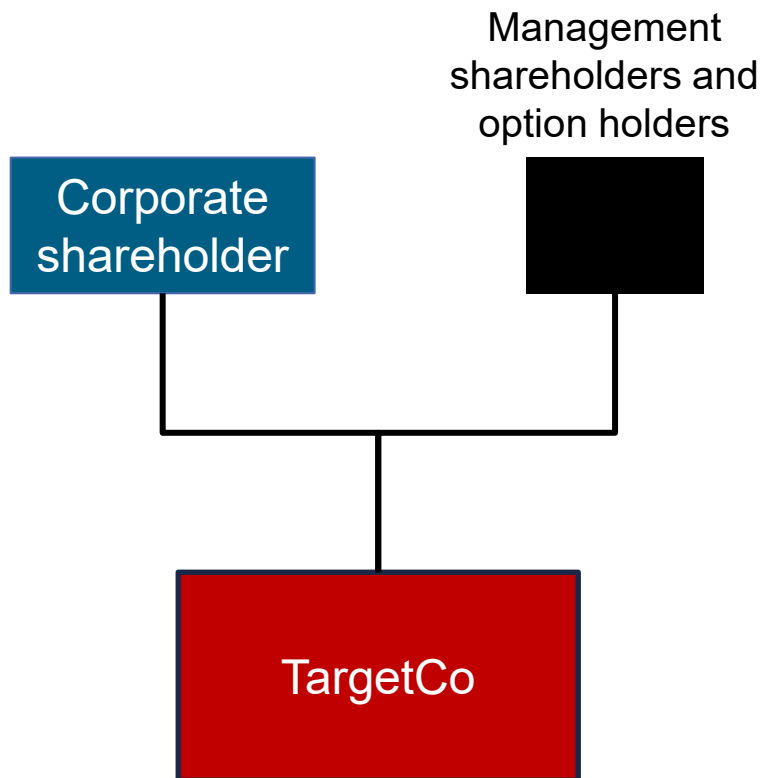
Konstantin Ecker
Senior Associate
+49 69 50 95 89 360
konstantinecker@eversheds-sutherland.com
Frankfurt, Germany

Topics

- Taxation of earn-outs and consideration held back for employees / US Code Section 280G
- Taxation of warranty and indemnity payments
- VAT deductibility of transaction costs
- Pillar 2 and M&A
- Migrations to the US
- Unlocking trapped cash / cash repatriation

Taxation of Earn-outs and Consideration Held Back for employees

Taxation of earn-outs



- All cash consideration to be paid to all equity holders:
 - 50% at closing
 - 25% one year after closing
 - Remaining 25% two years after closing, subject to Target Business reaching various EBITDA thresholds subject to a ratcheting on the amount to be paid*

**Alternative: Ten-year post-closing payment for a biotech business on the satisfaction of a milestone – e.g., passing clinical trial phase.*

Taxation of earn-outs

	UK	Italy	US	Netherlands	Germany <small>*Assuming that exclusions are applicable (see p. 12)</small>
Corporate shareholder					
Year 1	Full 25% included in computation of chargeable gains subject to corporation tax at the time of closing, which may be exempted under substantial shareholding exemption (SSE)	<ul style="list-style-type: none"> Full 25% deferred purchase price included in computation of the capital gain subject to corporate income tax at the time of closing Capital gain may be 95% exempt under the participation exemption regime. In this case, effective tax rate: 1.2% 	<p>Installment Sale Method (§453) Applies by default when payments received over multiple years Seller may elect out — useful if tax rates expected to rise</p> <p>Fixed Consideration (Closing + Year 1) Taxed as received based on Gross Profit Ratio (GPR) = $\frac{\text{Gross Profit}}{\text{Contract Price}}$ Capital gains or ordinary income depending on what is sold</p> <p>Contingent Consideration - Is there a maximum selling price? Yes → GPR computed using the maximum; gain recognized faster; loss recognized in final year if earnout falls short No → Basis allocated equally over payment period; each payment is part return of basis, part gain</p> <p>Imputed interest – a portion of the Year 1 payment can be recharacterized as interest income / interest expense (see next slide)</p>	Capital gains subject to corporate income tax at a maximum rate of 25.8%. Qualifying earn-out payments are exempt under the participation exemption (if applicable). The participation exemption generally applies if 5% in the nominal paid-up share capital of a company is held by the corporate shareholder. Deferred considerations without any element of uncertainty as to the number of future payments or the amounts thereof do not qualify as earn-out payments under the participation exemption.	<ul style="list-style-type: none"> Taxation in FY of closing of the SPA; should be considered as deferred payment since amount and timing of the payment are fixed Effective tax rate approx. 1.5%

Taxation of earn-outs

	UK	Italy	US	Netherlands	Germany <small>*Assuming that exclusions are applicable (see p. 12)</small>
Corporate shareholder					
Year 2	<ul style="list-style-type: none"> The fair market value of the right to receive the earn-out consideration (earn-out right) as at closing is included in the computation of chargeable gains subject to corporation tax, which may be exempted under SSE Earn-out right is thereafter treated as a separate asset subject to corporation tax on chargeable gains if the earn-out consideration received in year 2 exceeds the FMV of the earn-out right taxed at closing, with no SSE applicable 	<ul style="list-style-type: none"> Earn-out consideration treated as subsequent purchase price adjustment when the payment is received 95% exemption under the participation exemption regime may be available. In this case, effective tax rate: 1.2% 	<ul style="list-style-type: none"> When received, generally treated as additional purchase price Retain character <p>Interest Imputation (§483 / §1274)</p> <ul style="list-style-type: none"> Applies to deferred payments if stated interest is below the Applicable Federal Rate (AFR) Imputed interest is ordinary income to the seller and deductible by the buyer Effectively re-characterizes a portion of each deferred payment from sale proceeds into interest income 	As above for year 1	<ul style="list-style-type: none"> Treatment as subsequent purchase price with an effective tax rate of approx. 1.5% if earn-out <ol style="list-style-type: none"> payment is agreed in the SPA, and is not paid for activities performed by seller. Tax payable in the year of the receipt of the payment Otherwise, earn-out should be treated as operating income with an effective tax rate of approx. 30%; tax payable in the year of the receipt of the payment
Year 10	As above for Year 2	As above for Year 2	As above for Year 2	As above for year 1	As above for Year 2

Taxation of earn-outs

<p style="text-align: center;">UK</p> <p style="text-align: center;"><i>*Assumes all individuals have entered into valid elections to treat shares as outside the employment restricted securities regime and all options are tax approved</i></p>	<p style="text-align: center;">Italy</p>	<p style="text-align: center;">US</p>	<p style="text-align: center;">Netherlands</p> <p style="text-align: center;"><i>*Assumes no individual will be considered to enjoy income from employment upon realization of earn-out payments</i></p>	<p style="text-align: center;">Germany</p> <p style="text-align: center;"><i>*Assuming that exclusions are applicable (see p. 12) and shareholding of at least 1%</i></p>
---	---	--	---	--

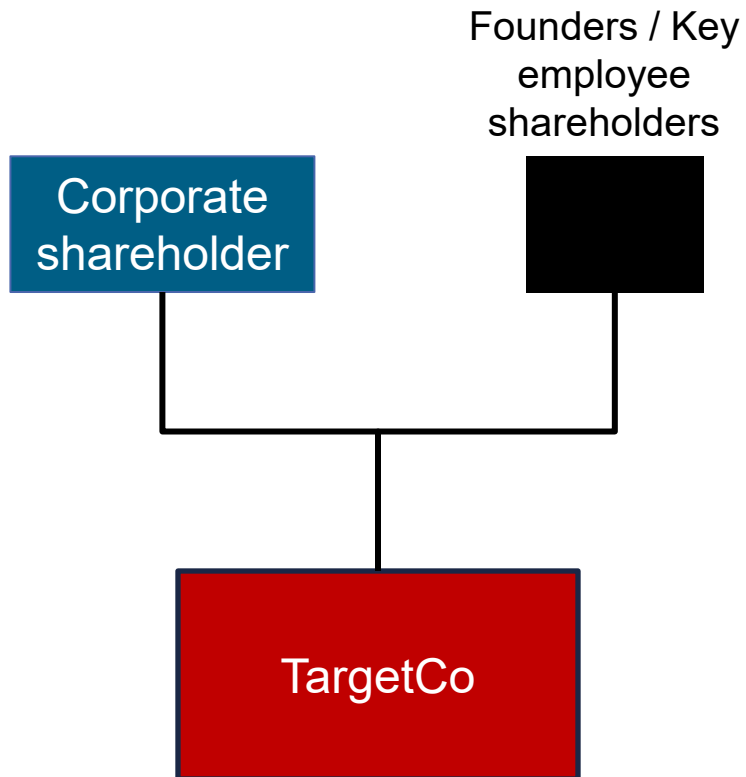
Management individual shareholders and option holders (1/2)

<p>Year 1</p>	<p>Full 25% included in computation of gains subject to capital gains tax (CGT) at the time of closing</p>	<ul style="list-style-type: none"> • Full 25% deferred purchase price taxable when the payment is received <p><u>Ordinary shares</u></p> <ul style="list-style-type: none"> • Any capital gain subject to 26% capital gains tax <p><u>MIP shares with extra-return</u></p> <ul style="list-style-type: none"> • Qualification of the consideration as employment income or financial income on a case-by-case basis. Qualification as financial income is presumed if certain conditions are met • Any capital gain subject to 26% capital gains tax • Employment income subject to income tax at approx. 45% to be withheld by the employer 	<p>Generally, the same as a corporate Seller, but tax rates are higher.</p> <ul style="list-style-type: none"> • Ordinary income currently up to 37% (individual) and 3.8% net investment income tax (NIIT) plus state taxes. • Capital gains (held for more than 1 year) – 20% plus state taxes. • If some or all of the payments are in respect of services, then payroll taxes. 	<ul style="list-style-type: none"> • If the individual holds a substantial interest (i.e. 5% of a class of shares) in TargetCo, the capital gains, including estimated total earn-out amount, are taxable in Box 2 at a maximum rate of 31%. Options held (not being put options) are also considered part of this substantial interest • If the shares or options are considered a “lucrative interest” (e.g. carried interest schemes) or income from business activities (e.g. partnership), earn-out payments are in principle subject to Box 1 taxation at a maximum rate of 49.5%. Alternatively, income from a lucrative interest is taxed in Box 2 (i.e. as substantial interest) if requirements are met 	<ul style="list-style-type: none"> • Taxation in FY of closing of the SPA; should be considered as deferred payment since amount and timing of the payment are fixed • Effective tax rate approx. 27%
---------------	--	---	---	---	--

Taxation of earn-outs

	UK <i>*Assumes all individuals have entered into valid elections to treat shares as outside the employment restricted securities regime and all options are tax approved</i>	Italy	US	Netherlands <i>*Assumes no individual will be considered to enjoy income from employment upon realization of earn-out payments</i>	Germany <i>*Assuming that exclusions are applicable (see p. 12) and shareholding of at least 1%</i>
Management individual shareholders and option holders (2/2)					
Year 2	<ul style="list-style-type: none"> The fair market value of the right to receive the earn-out consideration (earn-out right) as at closing is included in the computation of CGT. Earn-out right is thereafter treated as a separate CGT asset. Any excess paid in year 2 over the FMV of the earn-out right is charged to CGT in year 2. If earn-out paid in year 2 is less than the FMV on which CGT was paid at closing, a refund of CGT may be requested. 	<p>Earn-out consideration treated as subsequent purchase price adjustment when the payment is received</p> <p><u>Ordinary shares</u></p> <ul style="list-style-type: none"> As above for Year 2 <p><u>MIP shares with extra-return</u></p> <ul style="list-style-type: none"> As above for Year 2 	<ul style="list-style-type: none"> Same as Corporate seller Payments that are treated as compensation under applicable US tax law, are not treated as additional purchase price. 	<ul style="list-style-type: none"> The difference between the estimated capital gains in Year 1 and the actual capital gains realized in later years is subject to Box 2 income taxation. If the actual capital gains are lower than the estimated amount in Year 1, the difference is taken into account as negative Box 2 income. This negative income may be offset against other Box 2 income in the current year, carried back one year or carried forward six years. In case of a lucrative interest, the earn-out result (at present value) may be realized at once (after which the receivable is in principle classified as an asset in Box 3 (savings and investments)) or as the instalments are received based on Dutch principles of sound business practice (<i>goed koopmansgebruik</i>). 	<ul style="list-style-type: none"> Treatment as subsequent purchase price with an effective tax rate of approx. 27% if earn-out <ol style="list-style-type: none"> payment is agreed in the SPA, and is not paid for activities performed by seller. Tax payable in the year of the receipt of the payment Otherwise, earn-out should be treated as salary of seller with an effective tax rate of approx. 45% that may be imposed via German wage withholding tax if seller is regarded as an employee; tax payable in the year of the receipt of the payment
Year 10	As above for Year 2	As above for Year 2	As above for Year 2	As above for Year 2	As above for Year 2

Taxation of consideration held back



- All cash consideration to be paid:
 - to corporate shareholder, 100% at closing
 - to founders / key employee shareholders:
 - 55% at closing
 - 15% every year to third anniversary of closing, subject to bad leaver restrictions

Taxation of consideration held back

UK	Italy	US	Netherlands	Germany
<p>Held back consideration in years subsequent to closing may be treated as capital receipts (cf. employment earnings) provided the founders and key employees are not receiving more per share than the corporate shareholder, and the consideration is paid in accordance with existing distribution waterfall, even if subject to bad leaver restrictions</p>	<p><u>Ordinary shares</u></p> <ul style="list-style-type: none"> Any capital gain subject to 26% capital gains tax <p><u>MIP shares with extra-return</u></p> <ul style="list-style-type: none"> Qualification of the consideration as employment income or financial income on a case-by-case basis. Qualification as financial income is presumed if certain conditions are met Any capital gain subject to 26% capital gains tax Employment income subject to income tax at approx. 45% <p><u>N.B.:</u> based on very recent tax assessments, tax authorities could consider a portion of the purchase price as a remuneration for the assumption of certain obligations by the managers/founders rather than the sale of shares. In this case, such remuneration is taxable at approx. 45% and potentially subject to WHT instead of 26% capital gains tax</p>	<p>Varies – generally may follow rules for earnouts</p>	<ul style="list-style-type: none"> In case the individual holds a substantial interest, the deferred consideration must be estimated at the time of sale. Any subsequent difference between the estimated consideration and the actual consideration realized in later years is considered taxable (negative) income in Box 2 (refer slide “Taxation of earn-outs”). In case of lucrative interests, the deferred consideration may be considered taxable income at the time of sale (at present value) or as the instalments are received. Taxation would depend on whether Box 1 applies or Box 2 is opted for 	<p>Held back considerations may be treated as purchase price; If employee receives more per share than the corporate shareholder, the difference should be treated as employment income as the difference is granted for the (ongoing or past) employment relationship; In case of Sweet Equity, it has to be determined if remuneration is granted for shares or for employment</p>

Taxation of earn outs - Germany

- German Federal Tax Court, November 11, 2023, ref. no. IV R 9/21 ruled that earn-out payments in connection with the sale of a limited partnership interest must be **taxed in the year of the receipt** of the payment
- Tax treatment before: **subsequent purchase price** that is taxable in the year of the sale of the interest or the shares; tax assessment notice for that FY was adjusted with retroactive effect
- Ruling is **not published by the tax authorities**
- Judgement should also apply to corporate sellers and sale of shares in a corporation
- Discussions **if exclusions** such as (i) partial income method for natural persons and (ii) participation exemption for corporate shareholders **are still applicable**
- (P) Both partial exclusions require the sale of an interest or shares
- If not applicable, the tax rate for the earn-out should increase
 1. Natural Persons: from approx. 27% to 45%
 2. Corporate Shareholders: from approx. 1.5% to 30%

Earn-out payments as income from employment - Netherlands

- Earn-out payments are part of the purchase price and subject to corporate income tax or income tax, depending on the seller being a company or individual
- Wage tax risks arise when the selling individual is bound to perform work for the target post-closing, whether through an employment agreement or through a management agreement with a personal holding company
- One of the key points of attention for recharacterization (holistic test): requirement to personally perform work by the selling individual
- General rules of thumb:
 - Retention earn-outs carry higher risk;
 - Revenue or EBITDA based earn-outs carry lower risk.
- Flip-side: if earn-out payments are recharacterized as income from employment, the payment thereof is generally deductible for a (Dutch tax resident) buyer
- In practice: negotiations should also cover wage tax risks associated with earn-out payments, which generally involve a tax indemnity for any wage tax due by the buyer/target post-closing in relation to the earn-out payments

Earn-out payments as income from employment - Netherlands

- Miscellaneous:
 - Earn-out payments to high-earning individuals (i.e. € 700,000 annually) may pose particular wage tax risks, as excessive severance payments are subject to a 75% final levy from the employer which is not recoverable from the employee
 - Payments that reward, incentivise or compensate for work performed which is objectively useful or necessary for the sale/purchase of a participation are non-deductible for Dutch corporate income tax purposes

Earnouts United States

Fixed Consideration

- **Installment sale treatment** (§453)— May be treated as installment sales for US tax purposes - sellers recognize gain as payments are received rather than at the time of the initial sale. This method can provide tax deferral benefits, but it also requires careful tracking of payments and basis allocation.
 - §453 installment reporting is generally available for asset sales but may be restricted or unavailable for stock sales when amounts are contingent.
 - Does purchase agreement provide for maximum contingent consideration?
- **Capital gains vs. ordinary income** —If the earnout is considered part of the purchase price, it is generally taxed at capital gains rates, however, if the earnout is tied to the seller's continued employment or services, it may be classified as compensation and taxed as ordinary income.
- **Interest component** — Earnout payments may include an interest component, particularly if they are deferred over multiple years. The IRS may require sellers to recognize a portion of the earnout as interest income, which is taxed at ordinary income rates.

Earnouts United States

Contingent Consideration

- **Open vs. closed transactions** — Contingent payments can be treated as either open or closed transactions. In an open transaction (highly rare), the seller does not recognize the gain until the contingent payment is received. In a closed transaction (more typical), the seller estimates the fair market value of the contingent payment at the time of the sale and recognizes the gain accordingly.
 - Gross Profit Ratio
- **Section 83 considerations** — If contingent payments are tied to services performed by the seller, they may be subject to US Code Section 83, which governs the taxation of property received in exchange for services and may impact the timing and character of income recognition.
- **Interest component** — Earnout payments may include an interest component, particularly if they are deferred over multiple years. The IRS may require sellers to recognize a portion of the earnout as interest income, which is taxed at ordinary income rates.

What Is US Code Section 280G?

“Golden Parachute Payments”

Any payment in the nature of compensation to, or for the benefit of, a “disqualified individual” if:

- The payment is contingent on a change in ownership or effective control of the corporation, or a change in ownership of a substantial portion of the assets of the corporation.
- The aggregate present value of all such payments to the individual equals or exceeds three times a “base amount” described in the statute.
- ✓ These payments can include severance, transaction bonuses, pro-rated annual bonuses, acceleration of unvested equity, COBRA premiums paid by employer, acceleration of unvested deferred compensation, etc.
- ✓ The rules are broad in what they will consider as payments triggered by a change in control.

Disqualified Individual includes officers, shareholders owning $\geq 1\%$ of stock, and highly compensated employees (top 1% earning $> \$130,000/\text{yr}$)

The dual penalty

1) **Corporate Deduction Denied**

The paying corporation loses its federal income tax deduction for any "excess parachute payment."

2) **20% Excise Tax on Recipient**

The disqualified individual receiving the payment is subject to a 20% excise tax (on top of ordinary income tax) on the excess amount.

Other SPA payments

- Locked box ticker – purchase price or interest?
- Termination fees – VAT exempt compensation or taxable supply of services?
- Leakage payments, such as transaction costs and bonuses – input VAT recovery and net of CIT savings?
- Transaction bonus / severance payments – tax deductible for target? Tax consequences of excess payments?

Taxation of Warranty and Indemnity Payments

Taxation of warranty and indemnity payments - United Kingdom

- ‘*Capital sums derived from assets*’ - Section 22 Taxation of Chargeable Gains Act 1992
 - Marren v Ingles (1980) – Right to deferred contingent consideration is a disposal of a CGT asset
 - Zim Properties Ltd v Proctor (1985) – Right to take court action for compensation or damages is a CGT asset
- HMRC Extra Statutory Concession D33 (ESC D33) 1988
 - “*The principle of Zim Properties Ltd is not regarded as applicable to payments made by the vendor to the purchase of an asset under a warranty or indemnity included as one of the terms of a contract of purchase and sale.*”
 - Purchase Price Adjustment treatment for so long as the payment is made in accordance with the terms of the contract
 - Negative purchase price?
- Recoveries under W&I insurance policy
 - Exempt compensation and damages **OR** Capital sum derived from an asset **OR** Trading or business receipt?

Taxation of warranty and indemnity payments - Germany

- Payments are either treated as (i) reduction/increase of purchase price, (ii) income/expense, or (iii) non-taxable income if payment is a compensation for damages
- **Payments from insurances (W&I)** should be treated **as taxable income** as the purchase price is not reduced or increased by the parties; If buyer pays the **insurance premiums** should be treated as **operating expenses**; At the level of seller, treatment as costs of sale; **Tax-Gross Up** is usually **taxable income**
- Typically, the treatment as reduction/increase of purchase price is agreed between the parties in the SPA;
- If payment is paid directly to the target, the payment may be considered as taxable income
 - Treatment as (tax neutral) hidden contribution possible if buyer assigns claim from the SPA to the target; proper documentation required

VAT

- no VAT on purchase price adjustment & compensation for a damage
- VAT on taxable income

Taxation of indemnity payments - Italy

- Latest view of the tax authorities is that tax indemnity payments qualify as **price adjustments**
 - Payments reduce the capital gain of the seller and are not taxable for the buyer
- Under the Supreme Court, tax indemnity payments can have a **tax insurance function**. In this case:
 - payments do not qualify as price adjustment, even if they are accounted for as such
 - payments are fully taxable for the buyer and should be symmetrically deductible for the seller
- **What happens in practice?**
 - The SPA generally clarifies that tax indemnity payments shall be treated as price adjustments
 - The buyer tries to obtain a specific tax gross-up obligation from the seller
 - The party receiving the indemnity payment can file a tax ruling request to receive advance confirmation on the tax treatment from the Revenue Agency

Taxation of Indemnity Payments – United States

Seller Pays Buyer

Stock Sale

- Treated as purchase price: reduce seller's amount realized on the stock sale generally reducing seller's capital gain or increasing capital loss
- Recognized in the tax year the payment is made; if the original return was filed in a prior year, Seller may need to amend
- The reduction flows through as a capital gain adjustment — same character as the original stock sale; no ordinary income recharacterization unless the payment is for seller's own pre-closing conduct (e.g., fraud)
- Buyer increases its stock basis by the indemnification received; no immediate income to buyer — basis adjustment only

Asset Sale

- Reduction in the purchase price attributable to the specific asset giving rise to the indemnification claim; character follows the underlying asset (ordinary vs. capital)
- If seller previously deducted an expense that the indemnification reimburses, the payment is included in income to the extent a tax benefit was received
- Buyer reduces its allocated basis in the relevant asset class, affecting future depreciation and gain/loss calculations

Taxation of Indemnity Payments – United States

Seller Pays Buyer

Special Situations

- **Escrow Holdbacks:** Taxable event for seller generally occurs at closing (if amounts are fixed) or when released
- **Pre-Closing Tax Liabilities:** Indemnification for pre-closing taxes (e.g., sales/use taxes, employment taxes) is typically ordinary income to the paying party and deductible only if the underlying liability is deductible
- **Third-Party Claims:** Indemnification for claims by third parties (e.g., environmental, IP) follows the "origin of the claim" doctrine — deductible if the underlying claim would be deductible; capital if it relates to an asset

Taxation of Rep and Warranty Insurance United States

Seller Side Policy

- **Premium:** Generally deductible otherwise required to capitalized.
- **Stock Sale:** Proceeds received by seller from R&W insurance are generally treated as additional sale proceeds with capital gain character; no explicit statutory exclusion applies
- **Asset Sale:** Proceeds are allocated to the specific asset or class of assets to which the insured breach relates; character follows the asset — e.g., ordinary for inventory and or capital if goodwill

Buyer Side Policy

- **Premium:** Generally capitalized
- **Stock Sale:** Proceeds flow to buyer (not seller); buyer treats recovery as a reduction of purchase price or ordinary income depending on the nature of the breach; seller has no direct tax consequence
- **Asset Sale:** Buyer reduces basis in affected asset class; no current income if treated as price adjustment; if proceeds exceed basis, taxable gain is recognized

VAT deductibility of transaction costs

Deductibility of VAT on transaction costs - Netherlands

- Holding companies are not considered entrepreneurs and input VAT on transaction costs incurred is therefore non-deductible
- Holding companies that qualify as VAT entrepreneur (i.e. “active holdings”) may under certain conditions deduct input VAT. In a new Decree published in 2025, the Dutch State Secretary identifies three types of such VAT entrepreneurs:
 1. Involvement in the management of a company of which the shares are held (requires actual remuneration);
 2. Commercial trading of shares and other securities; or
 3. When the shares are held as a direct, necessary and lasting extension of an economic activity, including but not limited to
 - Transactions in shares aimed at restructuring of the organization of the entrepreneur’s economic activity;
 - Transactions in shares of which the purpose is to allocate the proceeds directly to the taxable economic activity of the entrepreneur;
 - Transactions in shares through which the entrepreneur seeks to expand or modify its operational activities; and
 - Transactions in shares that serve to cover obligations relating to the entrepreneur’s economic activity.

Deductibility of VAT on transaction costs - Netherlands

- If the holding company qualifies as VAT entrepreneur, the deductibility of input VAT on transaction costs is determined as follows:
 - Costs directly attributable to the transaction in shares → input VAT non-deductible, except if shares are sold to non-EU buyer
 - Only includes costs incurred for pre-closing services according to the State Secretary → discussions expected on this distinction, as EU and Dutch case law seems to indicate that no such general distinction between pre- and post-closing services is allowed
 - General costs (not being direct costs) → input VAT deductible depending on the economic activities undertaken by the entrepreneur according to the pro-rata
- Pro-rata: income from sale of shares is not included in calculation of pro-rata if the transaction constitutes an incidental financial transaction
 - Requirements for an incidental financial transaction:
 - A relatively limited extent of the entrepreneur's costs are used for the transaction; and
 - The transaction is a non-core business activity of the entrepreneur.
 - Does not apply to investment companies or participants involved in private equity investments according to the State Secretary → discrimination of groups owned or financed by private equity compared to other operational groups? Violation of neutrality principle?

Deductibility of VAT on transaction costs in MLBOs - Italy

- Deductibility of VAT on transaction costs incurred by the SPVs (e.g., due diligence, legal fees, etc.) has been for years one of the most controversial aspects of MLBOs
- Since 2016, the tax authorities have denied SPVs the right to deduct VAT on transaction costs as SPVs were treated as passive holding companies (i.e., not VAT-able persons)
 - Tax assessments
 - Negative tax rulings
 - Case-law on denials of refunds
- In 2024, the Supreme Court confirmed deductibility of VAT on transaction costs incurred by SPVs under the same criteria that would have applied if the costs had been directly borne by the target (e.g., based on the pro-rata). Under the Supreme court's view:
 - The activities carried out by the SPV before the merger are merely preparatory to the business operations of the target post-merger
 - Accordingly, the SPV should be treated as VAT-able person even if it does not provide services to the target or its subsidiaries before the merger

Deductibility of VAT on transaction costs in MLBOs - Italy

- **With Ruling No. 7/E of 12 February 2026, the tax authorities revised their view and acknowledged the right of SPVs to deduct VAT on transaction costs**
 - What if the SPV has granted an I/C loan (VAT-exempt transaction) to the target before the merger?
- **New opportunity to recover VAT on transaction costs incurred for past MLBOs**
 - Transactions costs incurred before 2025: with Ruling No. 58 of 2 March 2026, the tax authorities excluded the possibility to file amended VAT returns → The only recovery mechanism deemed available is the filing of a refund claim by 9 August 2026
 - Transactions costs incurred in 2025: deduction of VAT still possible in the VAT return to be filed by 30 April 2026. Is refund claim by 9 August 2026 possible?
 - Which years can be covered by the refund claim? It should be possible to claim the refund of VAT on transaction costs for MLBOs carried out since 2016
 - If input VAT on transaction costs was originally deducted by the SPV for CIT purposes, the refund of such VAT will be subject to CIT (on the target if the SPV was merged)

Pillar 2 and M&A

Pillar 2 and M&A

- Appropriateness of a closing accounts accrual or pre-closing tax indemnity
 - Is it the same or different to secondary liability or consolidated group liability?
 - Joint and several liabilities for Pillar Two Taxes
 - Loss of deferred Pillar Two assets
 - Should there be different approaches for QDMTT (e.g., stateless entities) vs IIR vs UTPR?
 - Warranties on the non-application of Pillar 2 taxes
 - Need to consider specific provisions for specific Pillar 2 circumstances - Pillar 2 tax credits at completion, the existence of permanent establishments, real presence for Pillar 2 purposes etc.

Pillar 2 and M&A

- Access to information and cooperation and conduct on proceedings
 - Assessment of Pillar 2 risks: neither seller nor buyer wants to share group Pillar 2 tax returns and other (financial) information not specific to the target company/group
 - Seller entity designation as responsible and representative party
 - Use of third-party agents
- Straddle period – closing of the books?
- A role for insurance?
 - W&I coverage for Pillar 2 risk generally unavailable, unless there is sufficient due diligence for specific risks
- Competitive advantages for PE and US MNEs?

Migrations to the US

What is Driving Interest in Domestications (“Reversions”?)

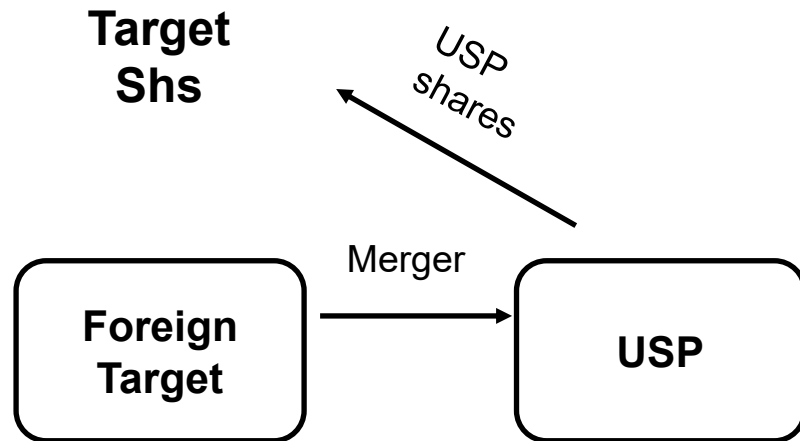
- Public market considerations – attractiveness of U.S. markets
 - But ... is it necessary to be a U.S. incorporated entity?
- Pillar 2 side-by-side
- Narrowing of gap between U.S. and non-U.S. tax systems
 - Headline corporate rates
 - Anti-base erosion efforts
 - Pillar 2
 - U.S. incentives (e.g., Foreign-Derived Deduction Eligible Income)

Structuring cross-border migrations to the US

How to become US?

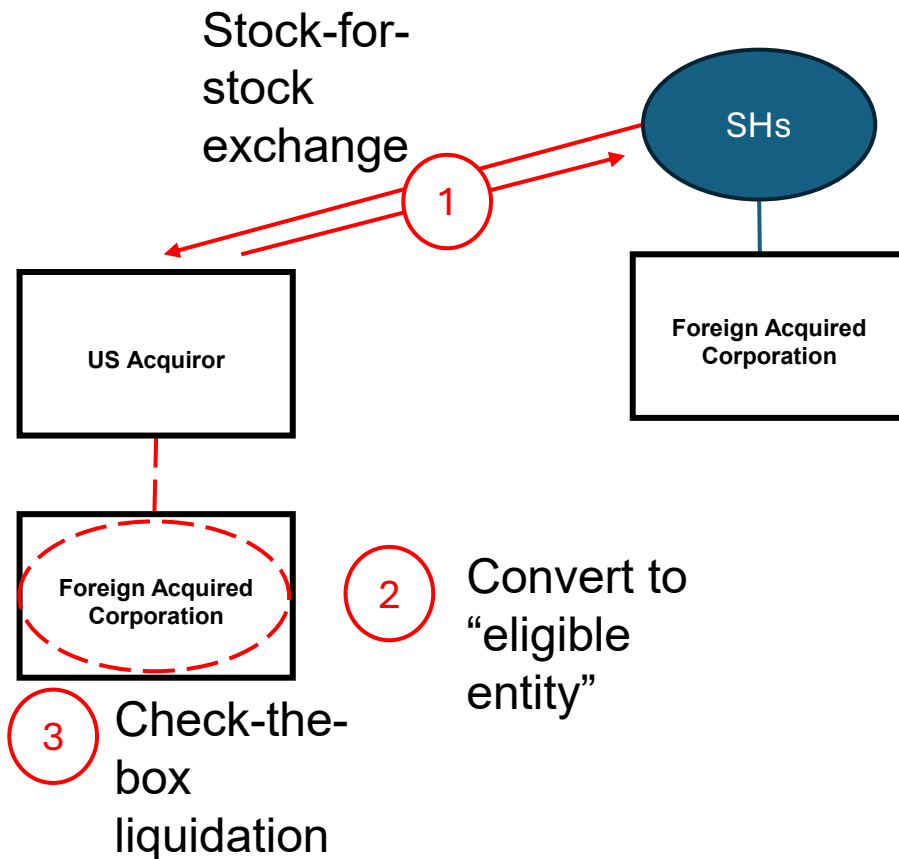
- US listing
- US HQ
- New US Topco
- Spin-offs / demergers
 - UK distribution
 - EU cross-border merger Target of De-SPAC

Inbound Asset Reorganization – US perspective



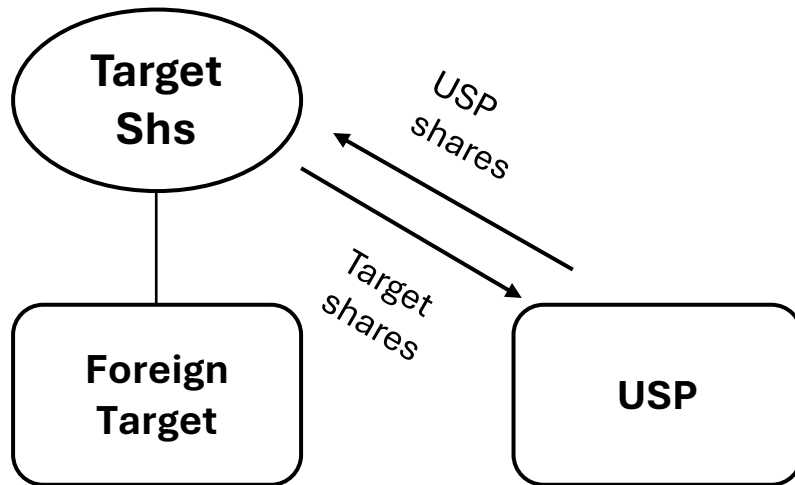
- Tax Free
- 367 Overlay:
 - 1.367(b)-3 Inclusion
 - $\geq 10\%$ Shareholders must include in income their “All E&P Amount”
 - $< 10\%$ Shareholder must either recognize gain or, upon election, include in income their All E&P Amount
 - Information Requirements necessary to make that election
 - Why still relevant/appropriate post-TCJA?
- **CAMT**:
 - To the extent tax-free, no income recognition for CAMT purposes
 - Boot has an impact

Inbound F Reorganization – US Relaxation Rules



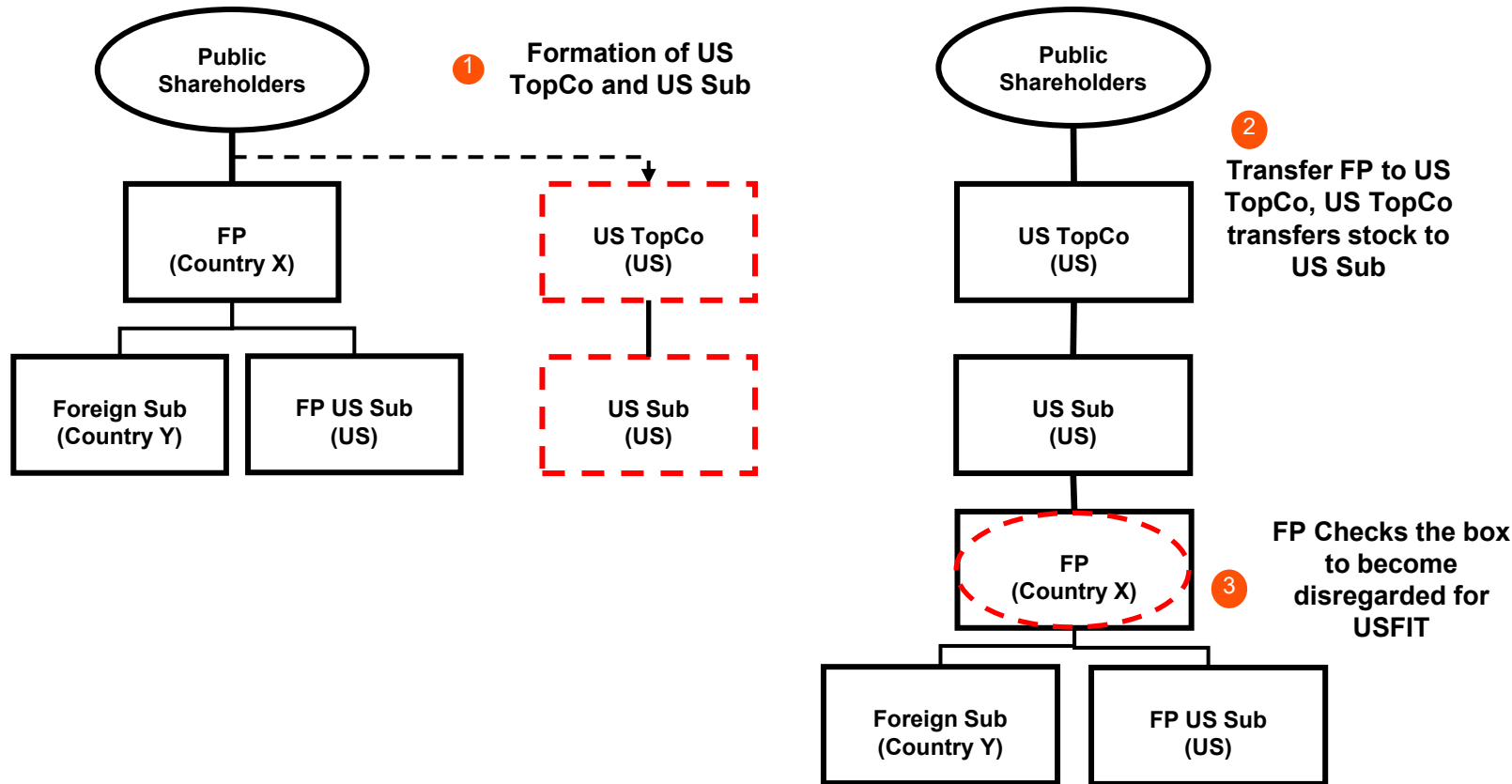
- Self-domestication structure as “inbound F” reorganization – stock-for-stock exchange (e.g., because a merger is not permitted)
- “Mere change in identity, form, or place of organization of one corporation, however effected.”
- Same person or persons must own all of the stock of the transferor corporation in identical proportions (identity of shareholder interest)
- Notice 2025-45 – new proposed regulations to be issued: “[s]atisfaction of the identity of stock ownership requirement ... would not be affected by a disposition of stock in either the transferor corporation or the resulting corporation if that disposition is not included in the plan of reorganization.”
 - Notice also relaxed certain FIRPTA rules in connection with an inbound reorganization of a publicly traded corporation

Inbound Stock Reorganization – US perspective



- General requirements of 368
- 367 Overlay:
 - No 1.367(b)-3 Inclusion
- 245A DRD
 - Need to satisfy 1-year holding period before 245A DRD available
 - Tacked holding period; informational challenges
 - Application of 1059
 - Proposed 1059(g)
- Ongoing Issues
 - Inability to make a 338(g) election in connection with the acquisition
 - If FT has US subsidiaries, USP may be left with a sandwich structure

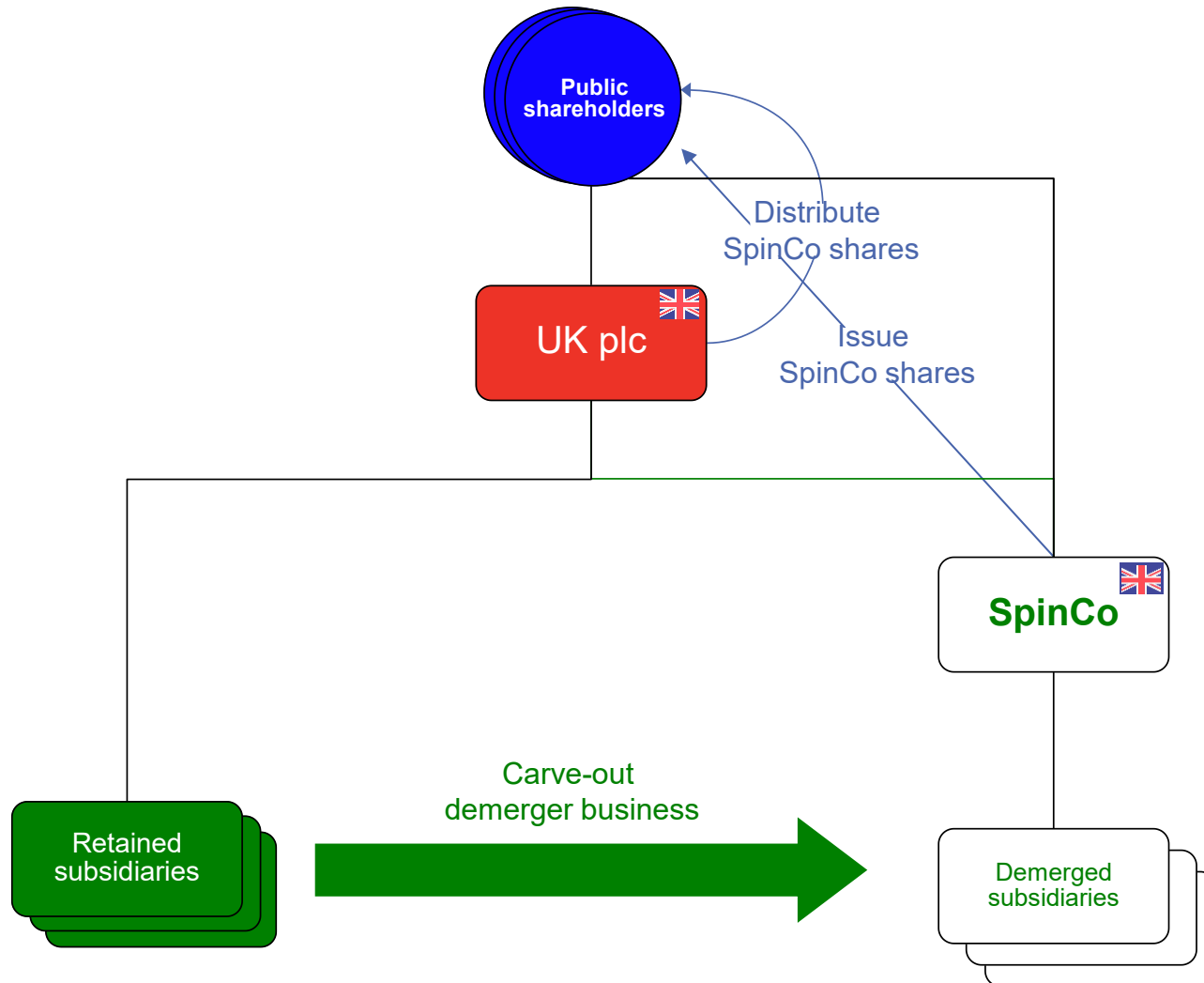
Section 351 Transaction Followed by Inbound F-Reorg



Consequences:

- Public shareholders are not subject to tax as they are not exchanging shareholders in an asset reorganization or inbound liquidation transaction
- Treas. Reg. section 1.367(b)-3 applies to the inbound F reorganization of FP into US Sub.
- US TopCo must include in income as a deemed dividend the “all E&P” amount

Structuring cross-border migrations to the US – United Kingdom



UK tax considerations

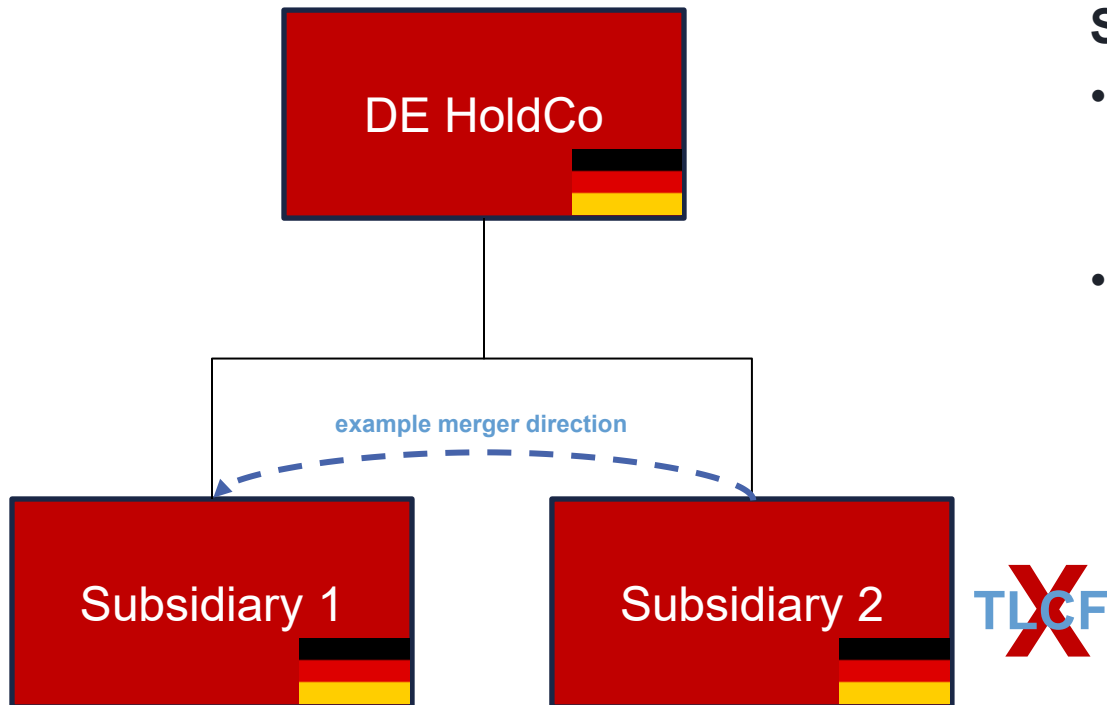
- No gain no loss / tax neutral transfer of assets intragroup
- Exempt distribution 'statutory demerger' for UK resident public shareholders
 - Five year chargeable payments restriction
 - Degrouping charges – clawback of built-in gains on carve-out assets
- Substantial shareholding exemption (SSE) for UK plc
- UK stamp duty / stamp duty reserve tax for US listings
 - HMRC clearances

Unlocking Trapped Cash / Cash repatriation

Unlocking Trapped Cash - Germany

Problem

- Yearly Balance sheet profit / loss + profit / loss carryforward = balance sheet profit
- In general, only balance sheet profits can be distributed to the shareholder



Solution

- If there is a **free capital reserve** (from previous contributions of the shareholder), it may be released to the balance sheet profit
- In case of corporate mergers (all directions), the taxpayer has the choice to (i) keep the book values or (ii) to **realize the built-in gains**; a potential German GAAP profit should not be taxable due to the special regime of the German Reorganization Tax Act
 - (P) merged entity loses all of its tax loss carry forwards
 - (P) merger may trigger German real estate transfer tax

Tax aspects of cash repatriation by a Dutch company

Dividends and share repurchases:

- 15% DWT on Dividend payments and repurchases of shares. Basis for repurchase is the amount exceeding the average paid-up share capital of the shares. Exemptions may apply or the DWT is reduced under a double tax treaty ("**DTT**").
- The DWT exemption applies if (i) a corporate shareholder owns at least 5% of the total nominal paid-up share capital and (ii) is a resident of a jurisdiction that has concluded a double taxation treaty with the Netherlands containing a dividend provision and provided the anti-abuse provisions are not met. The anti-abuse provisions include a beneficial ownership requirement and an anti-abuse rule involving a main purpose test and artificial arrangement test.

Repayments of capital:

- The decrease of the nominal value of the company's shares followed by a repayment thereof is not subject to DWT if the following steps are completed:
 - The repayment has been decided by the general meeting of shareholders; and
 - The nominal value of the relevant shares is reduced by an equal amount by amendment of the articles of association.
- Share premium (insofar the company has “pure profits”) should be converted into nominal share capital prior to any repayment (pursuant to the steps above) thereof.

Points of attention:

- New case law: ensure active involvement of parent company in Dutch company to reduce risk of artificial arrangement test being met;
- Application of DWT exemption to dividend payment to non-Dutch corporate shareholder requires notification to Dutch tax authorities
- Conditional withholding tax of 25.8% applies if dividends are paid to a controlling shareholder established in certain blacklisted jurisdictions

Tax aspects of cash repatriation by an Italian company

- WHT on outbound **dividends** is 26%
 - Reduced to 5%-15% WHT under the DTT
 - Reduced to 1.2% WHT for EU corporate shareholders (under recent case-law also for non-EU corporate shareholders)
 - WHT exemption for EU corporate shareholders could apply under the EU Parent-Subsidiary Directive
- **Distribution of capital/capital reserves** (e.g., share premium) is not taxable up to the amount of the tax basis in the shares of the distributing company in the hands of the foreign shareholder, but it reduces such tax basis
 - Any surplus is treated as a dividend
- **Dividend priority rule:** in case of distributions of capital/capital reserves, if there are distributable profit reserves, the amount distributed (up to the amount of profits) is **primarily treated as a dividend for tax purposes**, regardless of the nature of the distribution from an accounting perspective
 - To avoid arbitrage between the tax treatment of profits and that of capital reserves
- In acquisitions of targets with cash, after the reverse merger of SPV into target, a **merger reserve (capital reserve) in the surviving company is generally available for distributions**. However, if target has profits, the dividend priority rule applies
 - **N.B.:** WHT exemption/reduction is **often challenged** based on the GAAR / lack of beneficial ownership

Tax aspects of cash repatriation by an Italian company

- **Some common routes to upstream cash**
 - The SPV is financed by the foreign shareholder through a mix of **equity and a SHL**. After the acquisition:
 - **Before the merger of SPV into target**, the SPV repays the SHL or distributes capital reserves
 - If SPV grants a SHL to target, target repays the SHL to SPV
 - If no SHL to target, target distributes cash to SPV
 - **After the merger of SPV into target**
 - Target repays the SHL to the foreign shareholder (SHL to be respected as a loan if third-party debt exists)
 - Target distributes the merger reserve (dividend priority rule applies if target has profits)
 - Target grants an **upstream loan** at arm's length conditions
 - Corporate interest and financial assistance aspects to be carefully evaluated by the BoDs
 - Expectation of repayment of the upstream loan at some point in time

Questions?