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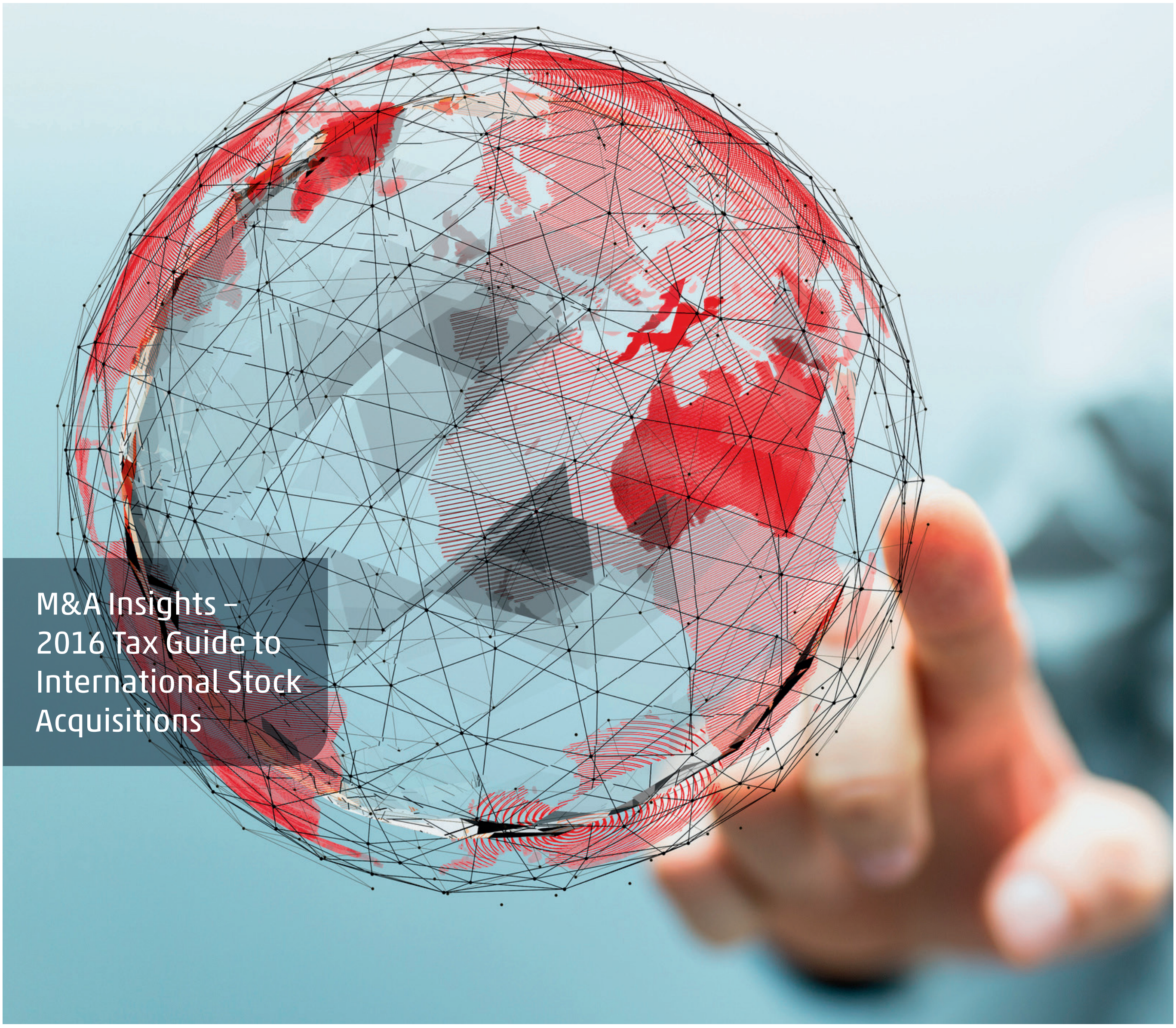

M&A Insights –
2016 Tax Guide to
International Stock
Acquisitions

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Dear Reader,

We are pleased to present our **2016 Guide to International Stock Acquisitions**. 2015 saw a record year for global merger and acquisitions (M&A) activities. Although we have seen a drop both in value as well in the number of transactions in the first half of 2016 mainly due to tightening US monetary policy, along with uncertainty caused by the Brexit vote and the US elections, both private equity investors as well as strategic investors seek external growth in the global economy, and businesses are increasingly turning to cross-border transactions as an avenue for value creation. Both large and small deals increasingly involve global target companies and multi-jurisdictional business issues. Indeed, much of the uptick in deal activity is attributed to aggressive cross-border expansion.

Effective international tax structuring increasingly plays a key role in determining whether targeted results are achieved. Avoiding the tax pitfalls and capturing the opportunities can be driving factors in gauging the success of a deal. Many countries facing fiscal crisis issues have used tax reform as a tool to help address budget deficits. Some rules are intended to encourage investment by reducing tax burdens, whereas others may have the opposite effect. Navigating the tax implications of a cross-border transaction can be challenging due to continually evolving rules.

The Guide provides a summary of certain key issues that a foreign acquirer may consider when purchasing the shares of a target company. The Guide does not address all issues associated with a stock acquisition. The issues covered are described below.

→ **Change of Ownership / Impact on Tax Attributes.** Many countries have rules that restrict the utilization of tax loss carryforwards or other attributes following a change in ownership. An understanding of the impact of these rules is critical in projecting the future after-tax cash flow of an affected target company.

→ **Debt Push-Down.** An acquirer may wish to capitalize a target company with intercompany debt. The deductibility of the interest paid or accrued on such debt may not only reduce the tax base of the target, it may also help ensure that sufficient cash flow is available to the parent or other related-party lender. This can be very important when a transaction is funded through external debt financing. The ability to achieve a debt push-down or deduct interest expense may be restricted or otherwise limited in many countries.

→ **Step-Up.** When a company is acquired, a step-up to fair market value in the tax basis of the target company's assets can sometimes be achieved. A step-up may offer the benefit of increased tax depreciation or amortization deductions. Although an asset-basis step up in a stock acquisition is typically not the norm, in some countries certain step-up benefits may be achieved.

→ **Transaction Costs.** External costs incurred in pursuing an acquisition, such as investment banking and professional advisory fees, can be substantial. The ability to deduct these costs and timing of such deductions should be considered.

→ **Exit Scenario.** The tax consequences of a disposition of target company shares should also be considered. In some cases, the sale of shares by a foreign shareholder may be entitled to preferential tax treatment, or may be free of tax altogether. An understanding of such rules is helpful not only for negotiating with the selling shareholder of a target company, but also for purposes of considering a future disposition by the acquirer.

In addition to the five categories above, we also highlight certain other issues that are particular to a country's tax regime.

We hope that you find our Guide useful and we thank our authors for their valuable contributions. Feel free to reach out to us or any of our local-country authors.

Corporate Share Deals by Non-Residents in Austria

Change of ownership rules

In general, pre-existing business tax losses can be utilized by an Austrian target company following a change of ownership. However, where there has been a considerable change in ownership (i.e., more than 75 percent) connected with a substantial change in the organizational and economic structures of the Austrian target, the losses may be disallowed. The organizational structure is deemed to have substantially changed if there has been a change in the majority of the managing board members. The economic structure is deemed to have substantially changed if there is a substantive quantitative or qualitative expansion of the existing business or a new business unit is started which is significantly larger (i.e., by 75 percent) than the old activity.

Debt push-down

A non-resident acquirer can establish a domestic holding company to acquire the shares of an Austrian target. Interest on the acquisition debt is generally deductible, provided that the Austrian target is not acquired from a related party. If the domestic holding company acquires more than 50 percent of the capital and voting rights of the Austrian target, the companies can form a tax group under Austrian tax law. A tax group requires that the domestic holding company holds a financial interest of more than 50 percent in the capital and voting rights of the Austrian target. The interest expenses of the domestic holding company can then be offset against the Austrian target's operating profits. The tax group must exist for at least three full business years or a recapture rule will apply. An alternative structure for a debt push-down is to merge the Austrian target with and into the domestic holding company. Generally, transferred assets may be carried over at their book value only if Austria retains the right to tax them after the merger. A business purpose other than tax avoidance must exist and the transaction may require the approval of the Austrian tax authorities.

Step-up for target company

The domestic holding company must book the acquired shares of the Austrian target at cost. Goodwill may not be amortized in a share deal.

Transaction costs

Costs associated with concluding the sales & purchase contracts (e.g., attorney and notary fees, commission fees, broker's fees, etc.) are considered part of the acquisition cost. Pre-acquisition costs (e.g., valuation, due diligence, advisory, etc) are generally immediately tax-deductible.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

Capital gains from the sale of a one percent or greater ownership interest in an Austrian target by a non-resident company are subject to corporate income tax. There is no withholding tax on capital gains. If a double tax treaty applies, however, the country of the seller's residence typically has the exclusive right to tax capital gains (unless the Austrian target is a real-estate company and the double tax treaty has a so-called "real estate clause"). In such cases, no capital gains taxation occurs in Austria, even if the ownership interest is one percent or greater.

Other special taxes or issues to be considered

If the Austrian target owns real estate, the transaction (unification of at least 95 percent of the shares in a company holding real estate) may be subject to Austrian real estate transfer tax. The real estate transfer tax rate in Austria is 0.5 percent of the asset value, depending on the location of the real estate.

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Change of ownership rules

As a general rule, tax losses and excess investment deduction can be carried forward indefinitely. There are however some specific time-limitation rules applicable to the carry forward of notional interest deductions.

A specific anti-abuse rule shall apply upon the change of the (direct or indirect) control over a company. Tax losses carried forward, investment deductions and unapplied notional interest deductions will be forfeited unless it can be demonstrated that the change of control is not mainly tax-driven.

Debt push-down

Belgian tax law does not provide rules for fiscal consolidation (no "tax group" for corporate income tax purposes). We notice several structures (equity stripping of the target followed by refinancing, merger transactions etc.) are utilized to push acquisition debt to the level of operating equity.

As a general rule, interest charges are tax deductible if they meet the conditions to qualify as deductible business expenses. For example, it must be demonstrated that these expenses are made in view of maintaining or increasing taxable income and that they relate to the company's business activities. A 5/1 debt/equity ratio applies for intercompany debt (or bank debt guaranteed by related companies).

A new general anti-abuse rule was enacted in 2012. We have noticed several cases where debt push-down structures are considered tax avoidance structures that can be disregarded by the tax authorities. A specific anti-abuse provision (based on the EU Merger directive) applies where debt push-down is achieved by using a tax exempt merger transaction. Said merger transaction may be a taxed transaction (triggering taxable dividend distribution and taxation of latent capital gains and tax exempt reserves) if the transaction is mainly tax-driven.

We have recently noticed the Belgian tax authorities actively challenging leveraged transactions. Several cases are pending before the courts. In one case, the court of first instance confirmed that the general anti-abuse provision may apply.

Step-up for target company

The shares of an acquired Belgian target are reported at acquisition cost in the books of the domestic holding company. No step-up is recorded at the level of the target company if the transaction is a share deal.

Transaction costs

Costs associated with the transaction (e.g. due diligence, attorney and broker's fees, etc.) are tax deductible expenses if the general conditions for the deduction of business expenses are met.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

As a general rule, capital gains on shares are subject to a special tax of 0.412 percent if (i) the shares represent capital in a company subject to an income tax regime (taxation condition) and (ii) the shares have been held for an uninterrupted period of at least one year. No minimum shareholding is required. Where the shares are sold before the minimum one year holding period is lapsed, capital gains (if any) will be taxed at a separate rate of 25.75 percent. Where the taxation condition is not met (e.g. the target is not subject to corporate income tax), capital gains (if any) will be taxed at 33.99 percent (irrespective of whether the holding period condition is met).

Other special taxes or issues to be considered

Belgium does not impose a stamp duty or specific tax on share transactions.

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Change of ownership rules

The mere change of ownership in a Brazilian company does not prevent the offsetting of its tax losses. However, such offsetting is not allowed where the change in control of the Brazilian company coincides with a change in its business activities.

Debt push-down

Debt push-down may be implemented by means of a merger of the acquisition vehicle and the target. Other possibilities to allow for debt push-down may be analyzed on a case-by-case basis. There are no rules on the non-tax deductibility of interest expenses recorded by the target after debt push-down. However, the tax authorities may question the tax deduction of said expenses where they are not necessary, effective and usual. Further, financial expenses incurred with foreign related parties or parties domiciled in a tax haven or subject to privileged tax regimes, are subject to transfer pricing and thin capitalization rules.

Step-up for target company

The acquisition cost of an equity stake in a Brazilian target by a Brazilian holding company must be split into: (i) proportional net equity of the target company; (ii) the surplus or deficit arising from the difference between the fair value of the net assets and item (i); and (iii) goodwill, which corresponds to the remaining balance between items (i) and (ii), or gain from a bargain purchase, which results from the positive difference between the fair value of the net assets and the acquisition cost. The amounts paid corresponding to the surplus or deficit of net assets and/ or goodwill shall only be tax deductible/ taxable (and the bargain purchase amount shall only be taxable) in the following cases: (i) sale, disposal, or liquidation of the relevant equity stake (the premium is deducted as cost of the relevant investment); and (ii) merger of the Brazilian investor into the target company, or vice-versa.

Transaction costs

Transaction costs (i.e. attorneys' fees, valuation expenses, broker's fees) are tax deductible at the level of the Brazilian holding company provided they are necessary, effective and usual to the taxpayer's activities.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

Any capital gain realized by (individual or corporate) non-residents from the sale of an equity stake in a Brazilian company is subject to the same tax rules applicable to Brazilian individuals. Disputes exist as to whether the calculation of the capital gain realized by non-residents should be computed in foreign currency or in BRL.

Currently, a withholding tax rate of 15 percent (or 25 percent if the non-resident is located in a tax haven) applies. As of 1 January 2017, capital gains realized by Brazilian individuals are subject to progressive rates ranging from 15 percent (for capital gains not exceeding BRL 5 million – approx. € 1.25 million[1]) to 22.5 percent (for capital gains exceeding BRL 30 million – approx. € 7.5 million). Controversies may arise on the application of such progressive rates to the capital gains realized by non-residents.

Other special taxes or issues to be considered

Income received from the sale of an equity stake recorded as a current asset (less costs associated with the acquisition of said stake) are mandatorily subject to 4.65 percent Social Contribution on Revenues (PIS/ COFINS). Foreign exchange transactions on the inflow or outflow of funds may be subject to Tax on Financial Transactions (IOF).

If a transfer of shares occurs by death or donation, Donation and Inheritance Tax (ITCMD) is levied on the fair market value or the value of the relevant donation or inheritance. Applicable rates vary from state to state, and the maximum rate is 8 percent. In the State of São Paulo, ITCMD is currently levied at a rate of 4 percent. Pursuant to Brazilian tax law, transfer pricing rules apply to transactions involving equity stakes with related parties, related or unrelated parties domiciled in tax havens or non-residents subject to privileged tax regimes.

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[1] Exchange rate of € 1 = BRL 4.

Change of ownership rules

For certain industries in China, foreign investment is prohibited or restricted to enter into and the ownership of the target company cannot be changed.

In general, pre-existing business tax losses can be utilized by a Chinese target company following a change of ownership. During a share transfer, the tax position of the acquired Chinese target company would not change and the pre-existing losses would remain in the target company.

Debt push-down

A debt push-down in an inbound share deal is generally not feasible in China. Nevertheless, a non-resident acquirer can establish a domestic holding company to acquire the shares of a Chinese target. After the acquisition, the holding company and the Chinese target can be merged so that the interest on the acquisition debt may be deducted from the total profits of the merged entities.

However, the deductibility of the interest on the acquisition debt is still subject to foreign exchange control limitations and a debt/equity ratio.

Step-up for target company

A domestic holding company will generally book the acquired shares of the Chinese target at the purchase price. The value of the equity investment cannot be depreciated/amortized. The Chinese target cannot increase its book value of assets and shares to the fair market value for tax purpose.

Transaction costs

In the case of a cash payment, the purchase price will be the acquisition cost of the shares. In the case of a non-cash payment, the market value of the assets, as well as the related taxes, will be the acquisition costs of shares. However the costs associated with the conclusion of the share deal (valuation, due diligence, advisory, and other fees) are immediately tax-deductible for the domestic holding company.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

In general, capital gains realized by a non-resident company on the sale of the shares of a Chinese target will be subject to withholding tax at a rate of 20 percent (currently reduced to 10 percent). Under an applicable double tax treaty, a lower withholding tax rate may apply. In cases of special tax treatment (where several preconditions are satisfied), no capital gains should be recognized and, consequently, no withholding taxes should apply.

A transfer of an overseas company holding the equity interest in a Chinese subsidiary company may be subject to Chinese withholding tax, if the arrangement is considered as an abusive structure without reasonable commercial purpose. In this respect, it requires both the non-resident seller and buyer of the offshore indirect transfer to make a self-assessment on whether the transaction should be subject to Chinese withholding tax and to file the tax accordingly.

Other special taxes or issues to be considered

Currently, a transfer of shares is not subject to Chinese turnover tax. Each party to a share transfer agreement must pay a stamp duty of 0.05 percent on the total contract amount. If a domestic holding company is formed, there may be an additional 0.05 percent stamp duty levied on the holding company's registered capital value.

Furthermore, in a share deal the Chinese target company's retained earnings cannot be deducted in computing the non-resident seller's capital gain.

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Corporate Share Deals by Non-Residents in Czech Republic

Change of ownership rules

In general, the pre-existing business tax losses of a Czech target company remain available to an acquirer in a share deal. However, where there is a considerable change in ownership (i.e., generally > 25 percent) along with a substantial change in the business activities of the Czech target, the losses may be disallowed. The Czech target's business structure is deemed to have substantially changed if the post-acquisition income-deriving activities are significantly larger (i.e., by 20 percent) than the old activities. Moreover, certain post-acquisition tax loss deduction limitations may apply.

Debt push-down

A non-resident can establish a domestic acquisition holding company to acquire the shares of a Czech Target. Interest on the acquisition debt is generally not tax-deductible. There is no group taxation in the Czech Republic. A commonly used method for pushing down debt is to merge the Czech target with the domestic holding company, in which case the interest expenses can generally be deducted. An upstream or downstream merger will not cause any hidden gain taxation in the Czech Republic. However, a downstream merger may trigger a risk of negative equity with respect to the merged company, which may have a substantial tax impact under the thin capitalization rules and the interest limitation rules. Generally, transferred assets may be carried over at the value determined by a court-appointed evaluator. Tax depreciation is generally allowed only to the extent of the previous tax residual value of the assets.

Step-up for target company

The domestic holding company must book the shares of an acquired Czech target at cost. Goodwill may not be amortized in a share deal. Goodwill amortization is generally available only in an asset acquisition, in which case the annual cost is tax-deductible and amortized over a period of 180 months (15 years).

Transaction costs

Costs associated with the conclusion of the stock purchase agreement (attorney's fees, notary, commissions, broker's fees, etc.) are considered part of the acquisition cost. Pre-acquisition costs (e.g., valuation, due diligence, advisory, etc.) are deductible only if there is taxable income directly related to such costs.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

Under Czech tax law, capital gains from the sale of the shares in a Czech target by a non-resident shareholder are subject to corporate income tax. There is a 10 percent tax holdback from the purchase price of the shares if the acquirer resides in a non EU/EAA country that does not have a double tax treaty with the Czech Republic. The tax provision can be offset against the corporate or income tax on capital gains. However, if a double tax treaty applies, the country in which the seller is resident typically has the exclusive right to tax the capital gains, so that no taxation occurs in the Czech Republic, with the exception of Germany and certain other jurisdictions. On the other hand, capital gains on the sale of shares by a company resident in the EU are tax-exempt in the Czech Republic if the parent company holds more than 10 percent of the shares of the Czech subsidiary for a period of 12 months prior to the acquisition. This does not apply to partnerships or limited partnerships.

Other special taxes or issues to be considered

There is no real estate transfer tax levied upon a sale of shares, unless the real estate was contributed to the share capital of a company and the share deal occurs within five years after such contribution. It is possible to avoid the real estate transfer tax if the share deal occurs within five years after the contribution, provided that the previous shareholder retains at least one percent of the shares for the remainder of the five-year holding period (so-called time test).

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Change of Ownership rules

Corporate tax is levied at the moment profits are distributed, and not at the moment profits are realized. The accumulated deferred tax liability on undistributed profits in the company's equity is transferred upon a change of ownership. Capital contributions that can be distributed tax-free are transferred upon a change of ownership, but only if said contributions are declared to so transfer upon a change of ownership. Due to the aforementioned corporate tax system, tax loss carry forwards to be transferred do not exist.

Debt Push-Down

Debt push-down into an Estonian target company is possible under certain conditions. In particular, economic substance and reasons must exist and be evidenced to the tax authorities upon request.

Step-up for Target Company

Shares acquired are booked at acquisition cost. A "step-up" can be obtained if the fair market value is higher than the initial acquisition cost.

Transaction Costs

External transaction costs incurred in connection with an acquisition (e.g. notary fees, fees for professional advice, due diligence etc.) are tax deductible.

Exit Scenario: taxation of capital gains on the sale of shares by a non-resident

Capital gains (if any) realized by a non-resident upon the sale of shares in a resident company are generally not taxable in Estonia. Exemptions apply to real estate companies (i.e. companies the assets of which are composed of more than 50 percent of real estate).

Other special taxes or issues to be considered

Estonia does not impose a stamp duty on the transfer of shares.

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Change of ownership rules

In general, tax losses are carried forward and set off against income from the same source in the subsequent ten tax years. The right to carry forward tax losses may be forfeited due to direct or indirect change of ownership, unless exemption is granted by the Tax Administration. A Finnish company's right to carry forward tax losses is forfeited if more than 50 percent of the shares in the company have changed hands for reasons other than inheritance or bequest during the year in which a loss is recorded or thereafter (direct ownership change). If a majority share transfer has taken place in a company which owns at least 20 percent of the shares in the loss-making company, such shares in the loss-making company are deemed to have been transferred (indirect ownership change). The change of ownership rules do not apply to shares quoted on a stock exchange. The Tax Administration may, upon request by the company, grant exemptions to the forfeiture of tax losses due to ownership change, provided that the losses are not deemed as the object of the sale, and that the losses are necessary for the company's activities.

Debt push-down

Debt push-down into a Finnish target company is generally possible, and the corresponding interest expense is generally deductible for tax purposes, provided that the parties utilize an arm's-length interest rate. However, Finland applies certain restrictions on the deductibility of interest expenses between affiliated parties. Interest expenses are fully deductible up to the amount of interest income. Out of the amount exceeding interest income, the maximum deductible amount corresponds to 25 percent of the company's profit taxable in accordance with the Finnish Business Tax Act (incl. e.g. group contributions), plus interest expenses and depreciations deducted in taxation. All interest expenses related to third party loans are however fully deductible. Non-tax deductible interest expenses may be deducted in the following years within the maximum limits for deductibility, without any time limit. The above restrictions do not apply, i.e. interest expenses are fully tax deductible, in the following situations:

1) Interest expenses of the company do not exceed its interest income by more than € 500 k.
2) The company is taxed in accordance with the Finnish Income Tax Act (e.g. real estate companies).
3) The company is e.g. a bank, an insurance company or a pension company.
4) The so-called "safe haven rule": where the company's equity ratio (equity divided by total assets) equals or exceeds the equity ratio of an adopted group balance sheet.

Step-up for target company

There are no structures available under Finnish tax law whereby an acquirer may obtain a step-up in basis of the shares in the acquired Finnish target.

Transaction costs

As a main rule, transaction costs (e.g. advisory expenses) relating to the acquisition of shares are non-tax deductible as accrued, but should be added to the acquisition cost of the shares. However, transaction costs relating to financing and structuring of the acquisition should be tax deductible and the timing of the deductions should follow the accounting treatment.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

Provided that the shares are held by a non-resident corporate entity, and that the shares are not attributable to a permanent establishment in Finland, capital gains on the sale of shares should not be subject to Finnish taxation.

Other special taxes or issues to be considered

Finland levies a transfer tax of 1.6 percent or 2 percent on certain share transfers. No Finnish withholding tax is generally levied on interest payments to non-residents. Out of dividends paid to non-residents, the payer is required to withhold tax at 20 percent (corporate shareholder) or 30 percent (individual), unless EU/EEA rules and/or a double tax treaty provides for an exemption or a lower rate or unless the income is tax-exempt for other reasons.

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Change of ownership rules

In general, pre-existing business tax losses can be utilized by a French company following a change of ownership. However, the losses may be disallowed in several cases including: a change in the actual business activity or corporate purpose; an election is made for an alternate tax treatment; and in certain entity conversions, material divestments, and some other situations.

Debt push-down

A debt push-down is generally permitted under French tax law. In the case of third-party acquisition debt, interest is generally deductible if the debt instrument has a valid business purpose and was contracted by the acquirer in the acquirer's own interest. However, where the acquiring company has no autonomy to manage the acquired shares constitut- ing a controlling interest and does not have the ability to participate in the deci- sion process, the financial expenses attrib- utable to the acquisition are generally not deductible. This restriction does not apply to controlling interests below € 1 million, when interest is paid by an unrelated third-party, or when the company group's debt-to-equity ratio is greater than or equal to that of the acquirer.

The deductibility of interest to related persons is subject to several limitations. First, the maximum rate of deductible interest is a specific rate published by the tax authorities every quarter or, if higher, the market rate.

Second, the deduction is allowed only if the lending company is, for the pending fiscal year, subject to a minimum taxation on the interest, equal to one quarter of the French tax.

Third, the deductibility of interest may be limited if the buyer is under-capitalized according to one of the following three ratios: the debt ratio; the interest coverage ratio; and the related company's interests served ratio.

Fourth, when a domestic entity within a French consolidated group acquires shares in an entity that is controlled by shareholders who also control directly or indirectly the consolidated group, and that new entity joins the consolidated group, a portion of the interest paid by the consolidated tax group may not be deductible for nine years.

Lastly, all companies with a net yearly interest expense that is greater than or equal to € 3 million must add back 25 percent of the interest expense to their taxable income.

Step-up for target company

In general, companies may freely reevalu- ate their fixed assets. Any capital gain generated by the reevaluation is generally taxable income.

Transaction costs

Transaction costs are generally deductible from the calculation of capital gains/ losses. Pre-acquisition costs are generally considered operating expenses.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

Non-Residents are not subject to French income tax on gain from the sale of shares. However, and subject to an applicable double tax treaty, capital gains on the sale of the shares of a company headquartered in France and subject to corporate income tax, by a company domiciled abroad is taxable in France when the seller holds more than 25 percent of the financial rights in the company at any given time during the five year period preceding the transfer. Capital gains are generally taxable at a rate of 45 or 75 percent when the shareholder is a resident of a non-cooperative state or territory.

Other special taxes or issues to be considered

The transfer of shares in French companies is subject to stamp duty. The tax rate depends on the company's form. The transfer of shares in non-listed companies (such as S.A., S.C.A. or S.A.S.) is subject to stamp duty at a flat rate of 0.1 percent. The tax rate is 3 percent for other companies (like S.A.R.L.), and 5 percent for real estate companies. No stamp duty is applicable in case of a disposal within a tax group or a group.

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Change of ownership rules

In general, tax losses (incl. tax losses carried forward) of a German target company are proportionally forfeited if, within a five-year period, more than 25 percent of the target's shares are directly or indirectly transferred to a new sole shareholder or a group of shareholders with aligned interest. If more than 50 percent of the shares are transferred within a five-year period, tax losses may be disallowed entirely. A built-in gains exception may apply, whereby a tax loss is permitted up to the amount of the built-in gains to the extent that such gains are taxable in Germany. Further, an intra-group exception may apply, according to which tax losses are not forfeited if transferor and transferee are both 100 percent direct/indirect subsidiaries of the same shareholder; this also applies if the group's top holding entity (as the case may be a corporation, individual or partnership) is involved in the share transfer as transferor or transferee. In any event, however, the general German minimum taxation rules also apply post-acquisition.

Debt push-down

In order to push down debt on an acquisition, a domestic German holding company is often utilized as acquisition vehicle to offset related interest against the German target's profits. However, this requires the domestic holding company and the target to form a consolidated tax group. For this purpose, both companies must execute a profit and loss transfer agreement with a minimum duration of five calendar years. Alternatively, the domestic holding company and the target may merge, either upstream or downstream (both forms are possible in a tax-neutral manner). In any debt push-down scenario, however, the parties must also consider the general restrictions of the German interest limitation rules.

Step-up for target company

The shares of an acquired German target are reported at the acquisition cost in the books of the domestic holding company. A step-up in basis of the acquired target's assets may be possible in an upstream merger. However, this would create a corresponding gain in the target. No other structures or elections are available for a step-up.

Transaction costs

Costs associated with the transaction (e.g. due diligence, attorney, and broker's fees, etc.) are considered part of the acquisition costs if the principal decision to effect the acquisition was made at the time that such costs were incurred. Only costs incurred in advance of such decision (e.g., market survey, feasibility study) are tax-deductible. From the seller's perspective, transaction costs that are directly related to the sale must be subtracted from the consideration.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

60 percent of capital gains from the sale of 1 percent or more of the shares in a German target by a non-resident are subject to German income tax. If the non-resident is a corporate entity, however, 95 percent of any capital gains are generally exempt from corporate income tax. Germany does not impose a withholding tax on capital gains. If a double tax treaty applies, typically the seller's country of residence has the exclusive right to tax the capital gains (unless the German target is a real-estate company). In this case the transaction would not be subject to German tax at all, even in case of a 1 percent or more shareholding.

Other special taxes or issues to be considered

Germany does not impose a stamp duty. The transfer of shares is exempt from German VAT unless the seller opts for it. However, If the German target owns real estate, the transaction may be subject to German real estate transfer tax (RETT). German RETT rates generally range from 3.5 to 6.5 percent, depending on the location. The tax base for RETT is a specific value usually lower than the market value, i.e. the purchase price in case of an asset deal.

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Change of ownership rules

In general, pre-existing business tax losses of a Hong Kong target company can be carried forward indefinitely for set-off against the assessable profits earned in subsequent years. Tax losses are normally allowed to be carried forward following a change of ownership unless the sole or dominant purpose of the change in shareholding was for the utilization of those losses to obtain a tax benefit.

Debt push-down

A debt push-down structure may be possible by borrowing to replace equity funding with debt funding. For example, interest incurred on funds borrowed for the payment of dividends may be allowed for deduction where the equity is employed as capital or working capital in a business carried on for the purpose of earning assessable profits.

Step-up for target company

The domestic holding company would generally book the acquisition of a Hong Kong target company at cost (i.e. the actual purchase price). No special structures are available to obtain a step-up in the basis of the shares of the Hong Kong target company. Any goodwill is not deductible for profits tax purposes.

Transaction costs

As a general deduction rule, any expenses (other than capital expenditure) which are incurred in the production of the company's Hong Kong assessable profits are deductible. Hence, transaction costs incurred by a domestic holding company are deductible if the Hong Kong target investment is held for trading purposes and any subsequent gain resulted from the disposal of the target investment is taxable.

On the other hand, if the Hong Kong target investment is held for long term investment purposes, the relevant transaction costs would be considered as capital in nature and not deductible.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

There is no capital gains tax in Hong Kong. Profits derived from the disposal of shares which are held for long term investment purposes are generally considered as capital in nature and not taxable under Hong Kong profits tax.

Other special taxes or issues to be considered

Stamp duty is levied on the transfer of shares in Hong Kong, which is calculated at 0.2 percent (i.e. 0.1 percent payable both on the buy note and the sold note) of the consideration or the market value, whichever is higher. Stamp duty relief is available for transfer of shares in Hong Kong between associated corporate bodies under specified conditions.

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Change of ownership rules

If the majority of the shares of a Hungarian target company are directly or indirectly acquired by an unrelated company, pre-existing corporate income tax losses can be carried forward by the target if the target does not substantially change the nature of its operations (in terms of services, products, markets, etc.) and generates revenue from such operations for at least two consecutive tax years. The two-year limitation may be disregarded in certain cases. Loss carry-forwards assumed in the course of restructuring or acquisitions can only be used in each tax year up to the proportion of the tax year's sales revenue or revenue from the continued activity relative to the average sales revenue or revenue of the predecessor in the three years preceding the restructuring / acquisition.

Debt push-down

Interest on acquisition debt is generally tax-deductible. For non-bank financing, the 3:1 debt to equity ratio and the arm's length requirements must be met. In order to offset a holding company's interest expense (and realized tax losses) against the target's operating profits, the holding company and the target may merge. The Hungarian tax authority reviews transactions based on the general substance over form and anti abuse rules i.e. mergers have to be supported with real economic or commercial reasons, which the taxpayer must prove.

Step-up for target company

In the case of an upstream merger, the target may revalue its assets at fair market value thereby improving its equity position. Upon revaluation, the positive difference between the tax book value of the assets and their market values is taxable. However, the companies may opt for a merger under the Merger Directive (i.e., a so-called "preferential merger"). In such case, the taxation of gain may be deferred over the useful life of the acquired assets. In the case of a downstream merger, revaluation would only be possible for the holding company. As of 2016, the holding company cannot account for goodwill in a share deal, if the purchase price exceeds the fair market value of the target's assets. Goodwill is still allowed to be created in asset deals. Goodwill must be revalued each year, and can be amortized if its value decreases. The amortized goodwill expense is generally not deductible for tax purposes (however, 10 percent of the goodwill is tax deductible, if the taxpayer declares in its corporate income tax return that the goodwill was created in accordance with general business and legal rules).

Transaction costs

Costs associated with the acquisition of a Hungarian target (e.g., attorney, valuation, due diligence, advisory expenses, etc.) are generally tax-deductible by the domestic holding company.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

Under Hungarian tax law, capital gains arising from the sale of a domestic target (other than a company owning real property) by a nonresident company is not subject to withholding tax. In the case of a Hungarian real estate company, where the fair market value of the assets of the company exceeds 75 percent (computed on either a stand-alone or consolidated basis) of the total assets, a withholding tax of 10 percent (up to a capital gain of HUF 500 million) and 19 percent (on the amount exceeding HUF 500 million), respectively, may apply in the absence of a favorable double tax treaty.

Other special taxes or issues to be considered

Where at least 75 percent of the shares of a domestic real estate company (i.e., a company whose main activities include e.g. construction, renting or operating real estate sales) are transferred, a transfer tax may be imposed on the nonresident acquirer. The transfer tax rate is 4 percent and is imposed on the fair market value of the property (up to HUF 1 billion and 2 percent above but not more than HUF 200 million per property). Sales between related companies are exempt from transfer tax. In most cases, transfer taxes may be eliminated by proper planning.

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Change of ownership rules

In case of change in ownership of a non-publicly-traded Indian target company, existing business losses are lost unless 51 percent of the shares are beneficially owned by shareholders who owned the company on the last day of the year(s) during which the loss occurred. However, this limitation will not apply to ownership changes of an Indian target that is a subsidiary of a foreign company on account of amalgamation /demerger of the foreign company subject to prescribed continuity of ownership conditions.

Debt push-down

Typically, interest on debt is deductible only if the debt is taken for business purposes. No deduction is available for expenses incurred in earning exempt income. Dividends received from an Indian company is exempt under Indian law (a Dividend Distribution Tax is payable by the company declaring dividends) and deductibility of interest on borrowings for share acquisition is debatable.

Step-up for target company

In a share acquisition, the cost base of assets of the company does not change. Any premium paid by the buyer for acquisition of the shares is not incorporated in the value of the block of assets of the company whose shares are acquired. The premium is available to the buyer as a cost of acquisition of the shares and is deductible only at the time of transfer of the shares by the buyer.

Transaction costs

Costs associated with the acquisition of the shares of an Indian target company are added to the purchase price. Such costs include brokerage, stamp duty, among others. In the case of a share deal, the seller can generally deduct all expenses relating to the transaction from the consideration received.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

Gains from sale of listed shares, held for a period exceeding 12 months and sold on the floor of the stock exchange after payment of securities transaction tax (STT), are exempt from income tax. In the event such listed shares have been held for less than 12 months and STT has been paid on the sale, profits on such sale will attract capital gains tax at the rate of 15 percent (excluding any surcharge and cess).

If the shares are not listed, the minimum period of holding for qualifying as a long term capital asset is 24 months. In case of a non-resident, if shares are sold after a period of 24 months from the date they were acquired, the gains are taxed at 10 percent. No benefit of indexation or exchange rate fluctuation is allowed while computing the taxable profits. In any other case, gains are taxed as normal income at the applicable rate of tax, generally 40 percent (excluding any surcharge and cess).

Other special taxes or issues to be considered

Indirect transfer: Indian tax laws provide that a share or interest in a foreign company or entity will be deemed to be situated in India, if the share or interest derives its value, directly or indirectly, substantially from assets located in India. A share or interest is deemed to derive its value substantially from assets located in India, if the value of Indian assets is 50 percent or more of the value of all the assets owned by the foreign company or entity. Rules have been prescribed for the valuation to be adopted for valuing Indian and foreign assets. Transfer of shares of a foreign company or entity whose shares are deemed to be situated in India will be taxable in India. Certain exceptions have been provided under the law, primarily to exclude transactions where the shareholder does not have a significant stake in the foreign entity.

Stamp duty: Share transfer attracts a stamp duty at the rate of 0.25 percent of the deal value. The responsibility to pay stamp duty, though commercially negotiated, usually lies with the buyer. However, stamp duty does not apply if the shares are held in dematerialized form.

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Change of ownership rules

In general, pre-existing business tax losses may be utilized by an Italian company following a change of ownership so long as the losses do not exceed 80 percent of taxable income for the fiscal year during which they are utilized. No limitation applies to losses incurred during the first three years of a new business. Pre-existing business tax losses are generally denied if a majority of voting shares is transferred and the main business activity carried out in the years when the losses were incurred is modified (either in the two years preceding or following the transfer of shares). However, the losses are generally allowed if the target company did not have less than 10 employees in the two years preceding the transfer and revenue from the main business activity and employment costs in the year of the transfer were not lower than 40 percent of the average amount over the two preceding years. Tax losses may also be (disallowed or) limited in the event of a merger, under certain conditions (e.g., regarding the equity of the merging companies, reduction of revenue and employment costs).

Debt push-down

If the share deal is funded by debt, it is possible (subject to anti-abuse scrutiny) to deduct interest on such acquisition debt from the target's profits if the debt is owned by an Italian company that is either merged with the target or joins the target in making an election for a fiscal unit regime.

Step-up for target company

Merger surpluses and merger deficits are irrelevant for corporate income tax purposes. Thus, no step-up in the value of the target company assets is ordinarily available in the case of a merger. A taxable basis step-up can however be requested against the payment of a substitute tax at a marginal rate up to 16 percent.

Transaction costs

From the perspective of the acquiring company, costs that are directly related to the acquisition of the target company's shares are generally capitalized in the value of the acquired shares. From the seller's perspective, if the participation exemption regime applies, transaction costs that are directly related to the sale must be subtracted from the consideration. Only five percent of expenses that are specifically inherent to the sale would thus be deductible.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

Under most double tax treaties, no taxation would occur in Italy in the case of the sale by a treaty country resident of the shares of an Italian resident company. In all other cases, Italy would tax gains arising from the sale of shares to Italian resident entities. Some exceptions may apply, provided that the transferred share is lower than below certain thresholds (between 2 percent and 25 percent), for listed shares and other shares by sellers resident in States with full exchange of information.

Other special taxes or issues to be considered

VAT does not apply to the transfer of shares. Unlike the acquisition of a going concern, which triggers substantial registration duties, a fixed registration duty of € 200 applies to the transfer of shares.

Since March 1, 2013 a "financial transaction tax" applies to the net daily balance resulting from transactions involving the transfer between unrelated parties of property rights on a variety of financial instruments, including shares (but not participations in limited liability companies) issued by Italian resident companies with a capitalization exceeding € 500 million, regardless of the residence of the transacting parties. Unless the transaction takes place on a regulated market (which would lead to a reduced rate of 0.1 percent), the generally applicable rate would be 0.2 percent.

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Change of ownership rules

In general, the pre-existing business tax losses of a Latvian target company remain available after acquisition in a share deal.

However, where there is a considerable change in direct and indirect ownership (i.e., generally > 50 percent) along with a substantial change in the business activities of the Latvian target, the losses may be disallowed.

Tax losses are not disallowed where there is no change in the nature of the principal business activity (as carried on by the company during the two tax years immediately preceding the change of control) for at least 5 tax years after the change of control.

Debt push-down

A non-resident can establish a domestic acquisition holding company to acquire the shares of a Latvian target. Interest on the acquisition debt is generally non-tax deductible. There is no group taxation in Latvia. A commonly used method for pushing down debt is to merge the Latvian target with the domestic holding company, in which case the interest expenses can generally be deducted.

An upstream or downstream merger normally will not cause any hidden gain taxation in Latvia. However, a downstream merger may trigger a risk of negative equity with respect to the merged company, which may have a substantial tax impact under the thin capitalization rules and the interest limitation rules. Generally, transferred assets may be carried over at the value determined by an independent evaluator. Tax depreciation is generally allowed only to the extent of the previous tax residual value of the assets.

Step-up for target company

The domestic holding company must book the shares of an acquired Latvian target at cost. Goodwill may not be amortized in a share deal.

Merger surpluses or losses are irrelevant for corporate income tax purposes. Thus, no step-up in the value of the target company's assets is ordinarily available in the case of a merger. In special cases step up in the tax value of assets can be achieved by liquidation of the target company, however, a gain from liquidation (if any) at the level of the holding company is taxable.

Transaction costs

Costs associated with the conclusion of the stock purchase agreement (attorney's fees, notary, commissions, broker's fees, etc.) are considered part of the acquisition cost. If the company has incurred some pre-acquisition expenses (such as expenditures relating to due diligence, evaluation and advisory services) but eventually decides not to complete the acquisition, such costs should immediately be deductible. However, there is a risk that this position may be challenged by the tax authorities, which would require the holding company to defend its position.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

Capital gains arising from the sale of shares in a Latvian target by a non-resident company are subject to the Latvian withholding tax only if more than 50 percent of the assets of a Latvian target consist of immovable property located in Latvia. Otherwise the capital gains are not taxable in Latvia. The domestic withholding tax rate for a sale of shares in immovable property companies is 2 percent. However, it may be reduced to zero pursuant to certain tax treaties. Income from a sale of shares at the level of a Latvian holding company is not taxable.

Other special taxes or issues to be considered

There is no real estate transfer tax levied upon a sale of shares.

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Change of ownership rules

In general, pre-existing business tax losses, as well as losses of a Lithuanian target company can be utilized (carried forward) following a change of ownership of the target's shares, subject to several limitations. First, the losses can be carried forward by the target for an unlimited period of time, provided that the activities that generated the loss are continued. Furthermore, a reduction of the taxable profit by accumulated tax losses is limited to 70 percent of the taxable profit for the current taxable year (except for small enterprises that are subject to the reduced corporate income tax rate of 5 percent).

Losses from the trade in securities can only be offset against the profit from the trade in securities and the carry-forward of such losses is limited to five years.

Debt push-down

A non-Lithuanian acquirer may establish a domestic acquisition holding company to acquire the shares of a Lithuanian target company. Interest on the acquisition debt is generally tax deductible. However, according to the recent courts' practice debt push-down through the merger of the target company and the holding company is only possible under certain conditions. In particular, debt push-down is only possible if it can be proven that the merger and take-over of the debt results in economic benefit for the target that continues the activities after the merger.

Step-up for target company

The acquired shares are booked at acquisition cost. Goodwill created as a result of the acquisition of shares is subject to depreciation for corporate income tax purposes only after the subsequent reorganisation of the entities in the form of a merger or a transfer of assets. The depreciation period of such goodwill is 15 years.

Transaction costs

Costs relating to a share deal, such as legal advisory, notary, registration fees etc., are treated as part of the acquisition cost and are thus not immediately deductible. Pre-acquisition expenses are deductible in the tax period when incurred.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

There is no withholding tax on capital gains realized upon the sale of shares of a Lithuanian target company, provided that the shares are not attributable to a Lithuanian permanent establishment of the seller.

Other special taxes or issues to be considered

Since 1 January 2015, agreements for sale and purchase of shares in private limited liability companies (UAB) must be certified by a notary public if (i) 25 percent or more of the total shares in the company are sold, or (ii) the shares are sold at a price higher than € 14,500. An exemption from the requirement of notarial certification applies if personal securities accounts of shareholders are managed according to procedures laid down in legal acts regulating the securities market. The notary fee ranges between 0.4 percent and 0.5 percent of the shares' price, and is capped at € 5,800.

No withholding tax is levied in Lithuania on interest payments to an EEA-resident beneficiary and countries with which Lithuania has concluded effective double tax treaties. Outbound dividends paid to Lithuanian and foreign recipients holding at least 10 percent of the share capital for no less than 12 months are exempt from withholding tax in Lithuania.

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Change of ownership rules

In general, the pre-existing business tax losses of a Luxembourg target company may be disallowed in a share deal. This is likely to happen if the tax authorities conclude from the circumstances that the share deal was achieved for the sole purpose of tax avoidance. Such circumstances generally include the cessation of the activity that generated the losses, a lack of assets with real economic value, or a share deal occurring contemporaneously with a change in the target's primary business activity.

Debt push-down

A non-resident can utilize a domestic holding company to acquire the shares of a Luxembourg target company. The debt in the domestic holding company may be pushed down until the maximum debt-to-equity ratio (85:15) is reached.

If the ownership interest in the Luxembourg target is at least 95 percent, and provided that certain other conditions are met, a tax consolidation may be possible, allowing losses realized by the holding company to be offset against the Luxembourg target's profits.

In the event of the sale of shares by the holding company after a 1-year period, capital gains generated from the disposition would generally be tax-exempt but may still remain taxable up to the amount of the previously deducted interest expense.

In the case of a merger between the holding company and its subsidiary, the sale of the shares of the resulting company would not trigger the recapture mechanism.

Step-up for target company

The holding company generally cannot book the acquired shares of a Luxembourg target at a value exceeding its acquisition cost.

Transaction costs

Transaction costs incurred in connection with the acquisition of a domestic target's stock must be included in the acquisition cost and capitalized.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

According to most of the double tax treaties concluded by Luxembourg, capital gains generated by a sale of shares by a non-resident are taxable in the country of residence of the non-resident seller-shareholder. However, some treaties provide that capital gains remain taxable in the country where the target company is established (e.g., India, China). In the absence of an applicable double tax treaty, only capital gains realized upon the disposal of qualifying interests (i.e., greater than 10 percent) remain taxable in Luxembourg if the shares are sold within 6 months of the acquisition, resulting in taxation of the gain at the headline rate of 29.22 percent for companies located in the municipality of Luxembourg.

Other special taxes or issues to be considered

a. **Recapture rules:** Expenses directly connected to dividends and liquidation proceeds received in a given year are generally tax-deductible only to the extent that such expenses exceed the dividends received in a given year. Thus, interest on acquisition debt for a qualifying ownership interest (greater than 10 percent or greater than € 1.2 million, held for at least 1 year), or a write down of the ownership interest, is generally disallowed up to the amount of the dividends received in a given year. However, the amount of interest expense in excess of the dividends received in a given year will generally remain deductible. Special recapture rules apply to income generated from the disposal of a qualifying percentage ownership interest (greater than 10 percent or € 6 million, held for at least 1 year). Capital gains realized on such dispositions are generally tax-exempt, but remain taxable up to the sum of the expenses directly connected to the participation that were deducted in a prior tax year or during the current year.

b. **Registration duties:** Sales of fiscally transparent entities that own real estate are subject to a registration duty at a rate of 7 percent (10 percent, if located in the municipality of Luxembourg and used for business purposes).

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Change of ownership rules

As a general rule, pre-existing tax losses (for income tax purposes) can be fully deducted by a Mexican company following a change of ownership.

Nevertheless, there are some special rules that should be taken into account: (i) in a merger, tax losses cannot be transferred from the absorbed company to the surviving company; (ii) in a de-merger, tax losses may be divided among the new companies subject to conditions; (iii) in a merger, the surviving company may only offset tax losses against profits obtained in the same line of activities for which the losses were incurred.

Debt push-down

Debt push-down structures were a common feature some years ago. Whilst the domestic income tax law does not specifically regulate debt push-down transactions, a number of transactions were structured in this way.

However, the Mexican tax authorities audited a number of transactions, and denied the deduction of interest payments on the basis they did not satisfy the general requirement of deductions being "strictly indispensable" for the business' corporate purposes. On such grounds, tax litigation cases arose and as of today the tax courts have in some instances confirmed the non-deductibility of interest. These cases however do not presently constitute mandatory jurisprudence.

Accordingly, whilst debt push-down transactions are acceptable under Mexican corporate law, they have lost their attractiveness from an income tax perspective given the potential challenges on the deductibility of interest payments. Such transactions may still be implemented but close attention should be paid to the business reasons justifying the interest payments.

Step-up for target company

Corporate law allows reevaluation of fixed assets, provided certain formalities are duly complied with. No capital gain is deemed to exist for such reevaluation for tax purposes.

Transaction costs

In general transaction costs are deductible for income tax purposes, provided they are related to the company's corporate purpose. Else, they should be considered non-tax deductible.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

Non-residents that do not have a permanent establishment in Mexico are subject to Mexican income tax from the transfer of shares issued by Mexican resident companies or non-resident companies where more than 50 percent of the accounting value of those companies derives from real estate property located in Mexico.

The general tax rate is 25 percent on the gross amount of the transaction (no deductions allowed) or 35 percent on the gain realized (if any), provided certain formalities are duly complied with (e.g. having a tax representative in Mexico).

Mexico has a wide network of double tax treaties for income tax matters that provide tax reductions or even tax reliefs on revenue derived from the transfer of shares (as outlined above).

Other special taxes or issues to be considered

Mexico does not impose a stamp duty. Nevertheless, Mexico's states provide transfer taxes in case of real estate properties which are generally levied from the acquirer (share of stock acquisition is not subject to these transfer taxes). Transfer tax, including registration costs and public notary fees, generally ranges from 4 to 7 percent of the asset value depending on its location.

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Change of ownership rules

In general, pre-existing business tax losses can be utilized by a Dutch company following a change of ownership subject to certain limitations. A substantial change of (direct or indirect) ownership in a Dutch company can result in a limitation on the utilization of loss carry-forwards or carry-backs and can restrict the formation and utilization of fiscal reinvestment reserves. Tax losses that originate in years during which the company had an active business are usually not affected in the case of a "going concern" situation. Similar rules apply to the utilization of tax losses incurred after an ownership change to offset profits realized before the ownership change.

Debt push-down

A debt push-down can be achieved by using a debt-financed domestic holding company as an acquisition vehicle. The holding company can be merged into the target company or the two companies may be joined in fiscal unity, resulting in a netting of target's profits against the acquisition financing costs. The deductibility of interest in a debt push-down is generally limited, but any non-deductible interest expense may be carried forward to the next year. If the amount of interest remains below € 1 million, or the amount of the acquisition debt is not excessive, the interest is generally deductible unless other restrictions apply. A deduction is permitted for acquisition debt up to 60 percent of the acquisition price for the first year following the share deal. This safe harbor percentage decreases by 5 percent points per year until the 25 percent threshold is reached.

If the acquisition debt is an intercompany or related party loan, the interest is generally not deductible unless the taxpayer establishes that the acquisition and financing structure was based on valid business purposes or that the lender is sufficiently taxed on the interest in its resident country.

Step-up for target company

For Dutch tax purposes, a merger is viewed as a transfer of assets and liabilities between the merging entities. Accordingly, a merger (not a fiscal unity) between a domestic holding company and the Dutch target company can generate goodwill on the surviving entity's balance sheet. Such goodwill may generally be amortized but the deduction is generally limited to a maximum of 10 percent of the initial amount per year. This is, of course, only relevant if the merger is not carried out in a tax-neutral manner (e.g., the merger lacks a valid business purpose).

Transaction costs

Acquisition costs incurred by a domestic acquisition vehicle (assuming the participation exemption applies to the target company) are generally not deductible. Expenses that are linked to the acquisition, but which are not real acquisition costs, can generally be deducted (e.g., expenses incurred for initial structuring advisory services). However, the Dutch tax authorities tend to cast a wide net when determining which costs are non-deductible acquisition costs.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

A non-resident company can be liable for Dutch corporate income tax on capital gains realized on the sale of shares of a Dutch target (that is not a fiscal investment fund). Such percentage ownership interest must be at least 5 percent, and must not be part of the non-resident shareholder's business activity. In general, this only applies in cases where the main purpose of the structure is to avoid Dutch income or dividend withholding taxes.

Where an applicable double tax treaty grants the exclusive right to tax capital gains to the shareholder's country of residence, these taxes will generally not be an issue.

Other special taxes or issues to be considered

No capital stamp duty exists on equity investments in Dutch companies.
Dutch real estate transfer taxes may be due if the Dutch target company directly and/or indirectly owns substantial Dutch real estate.

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Change of ownership rules

In Norway, pre-existing business tax losses generally remain available in a share deal. There are no specific regulations applicable to a change of ownership. However, an anti-abuse rule states that if the acquisition is "mainly" performed due to tax reasons, the tax position may be disregarded. For example, a takeover of a passive entity with tax losses from previous business activities will not be accepted if the losses are the entity's "main assets". This anti-abuse rule was introduced in 2004.

Debt push-down

It is possible to structure an inbound share deal in Norway using group taxation as long as the domestic holding company (acquisition vehicle) holds more than 90 percent of the target's shares. Group taxation enables the target to offset its profits with the domestic holding company's losses.

Norway has introduced limitations on the deductibility of interest in its tax regime with effect from fiscal year 2014. The specific limitation on a group's ability to deduct interest on acquisition debt, or third party loans guaranteed by the group, is set to 25 percent of the EBITDA if the amount exceeds NOK 5 million. The calculation will be based on tax deductions / amortizations, not financial reporting figures if there is a difference. Note also that the deduction amount denied can be carried forward for a maximum of 10 years.

Acquisitions utilizing domestic holding company structures must in addition to the above generally conform to arms-length principles.

Step-up for target company

For tax years after 2006, a step-up in the basis of the target company is no longer available for a non-resident acquirer. Any step-up must follow the full fair market value and create a similar gain in the Norwegian target as in the holding company. However, a step-up with full continuity may be possible in a merger of a subsidiary into its parent, which is a rather non-complex procedure under Norwegian tax law.

Transaction costs

Normally, all of the acquirer's transaction costs are linked to the acquisition price of the shares. However, exceptions may apply to pre- and post-restructuring costs, assessments related to valuation, strategic plans, etc., as long as such costs are relevant to operations, regardless of a stock purchase agreement. These costs are subject to scrutiny by the Norwegian tax authority, as the participation exemption regime in Norway creates a 25 percent step difference. Note that also the refund of VAT on such acquisitions can be denied if the share transaction is not relevant for the VAT business activity.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

Non-residents are not subject to any capital gains tax. The gain will not be subject to Norwegian taxation regardless of the application of a double tax treaty.

Note, however, that exit limitations may apply if the target or the target's assets are moved outside of Norway. These limitations may be further reduced or eliminated by EEC and double tax treaty considerations.

Other special taxes or issues to be considered

Norway does not impose a stamp duty, nor are there any other special taxes or issues to be considered in an inbound share deal. It is however noteworthy that the Ministry of Finance is about to introduce a new withholding tax regime with effect from fiscal year 2017, expected to be announced in fall 2016. Among other new introductions a withholding tax on interest, leasing and license payments may be put in place for the first time in the history of taxation in Norway.

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Change of ownership rules

The Bureau of Internal Revenue has consistently ruled in previous rulings that pre-existing business tax losses can be utilized following a change of ownership. However, the latest ruling issued by the Tax Bureau on this matter dated February 28, 2012, the Bureau declared that pre-existing business losses cannot be transferred and absorbed by the acquiring corporation as this privilege can be availed of merely by the absorbed corporation.

Debt Push Down

A non-resident acquirer can establish a holding company to acquire the shares of a Philippine target. Interest paid or accrued on intercompany debt is tax deductible provided that the necessary withholding taxes are paid. There are no specific regulations of the Tax Bureau or the Securities and Exchange Commission in respect of excessive thin capitalization. However, the central bank implemented a 75:25 long term debt-to-equity ratio for those entities covered by it.

Step-Up for Target Company

If along with the shares exchanged, money or property is received, any gain is recognized up to the fair market value of the property received. If in the exchange, the party assumes liabilities in excess of the cost of assets transferred, gains should be recognized. However, losses cannot be deducted.

In case of the acquisition of assets structured as a tax-free exchange, the transferor alone or no more than four others must obtain control over the corporation. The cost basis would be the same as the original acquisition cost to the transferor of the property exchanged. Likewise, the cost basis to the transferee of the property exchanged for the shares is the same as it would be to the transferor.

Transaction Costs

Costs associated with the transaction (valuation, tax, legal and financial due diligence, advisory and opinion, etc.) are considered part of the acquisition cost.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

Capital gains from the sale of shares by a non-resident shareholder may be exempt from capital gains taxation or subject to a preferential rate under the relevant provisions of the applicable tax treaty. However, the exemption or preferential rate is not automatic. In order to take advantage of the same, a tax treaty relief application must be timely filed before the Tax Bureau. Such confirmatory ruling of the Tax Bureau shall then be the supporting document in claiming the preferential rate or tax exemption.

Other special taxes or issues to be considered

The assignment of properties pursuant to a merger or consolidation may be exempt from income tax if the exchange is made solely for shares of stock in a corporation that is a party to the merger or consolidation provided that certain requirements are met. The assignment is also exempt from documentary stamp tax.

However, if the transfer of property is not pursuant to a merger or consolidation (including transfer to gain control of the transferee), the following documentary stamp tax rates apply:

- → In case of transfer of shares: 0.375 percent of the par value.
- → In case of transfer of real property: 1.5 percent of the selling price or fair market value, whichever is higher, minimum PHP 15.
- → In case of receipt/subscription of shares as consideration for the transfer of shares or real property: 0.5 percent of the par value.

There may be VAT considerations to be taken into account, if the transfer includes goods sold in the ordinary course of business or properties used in business.

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Change of ownership rules

Pre-existing tax losses may be utilized by a Polish target company after a change of ownership by way of a share deal. A loss may be carried forward for five consecutive tax years; however no more than 50 percent of the loss is available for deduction in any of those years. In general, Polish law forbids utilization of pre-existing tax losses in the event of a corporate merger, division or conversion (change of status), except for the conversion of a company into another type of company.

Debt push-down

The acquisition of a Polish target by way of a share deal may be carried out through a newly incorporated Polish holding company with which the target will either merge or form a tax group. There are a number of restrictions on- and requirements for- creating and operating tax groups, including a requirement that tax profit must amount to at least 3 percent of revenue. Therefore, tax groups are not as popular as in other countries.

As regards mergers, the main requirement to achieve a tax neutral treatment is that the operation must be carried out for valid commercial reasons and that tax evasion or tax avoidance is not (one of) its principal objective(s). When planning the financing structures for the acquisition of a Polish target by way of a share deal it should be borne in mind that restrictive GAAR (general anti-avoidance rules) have been in force in Poland since 15 July 2016.

Where a deal is financed using intercompany loans or credit facilities, thin capitalization restrictions and transfer pricing regulations will apply.

Step-up for target company

In share deals, Polish law does not allow for a step-up in tax basis of the target's assets.

According to Polish law, tax depreciation deductions must generally continue to be made in the original amounts also in the event of mergers, divisions and contributions of going-concern business as equity capital, if the assets that are acquired and, for carve-outs, also the assets remaining in the original entity, continue to form a going-concern business. In addition to various other requirements, Polish law prohibits deducting depreciation on assets contributed to the company in exchange for its shares to the extent the value of such assets is not recognised as share capital. As a result, step-ups are currently quite rare as a tax planning tool, because they involve a number of legal transactions with tax risks.

Transaction costs

Expenses necessarily incurred to acquire shares in a Polish company, including the purchase price of the shares, transaction tax, notarial and court fees and stamp duty, cannot be deducted when incurred. They become deductible only upon the sale of the shares for consideration. Other transaction costs, which were not necessary for the transaction to be duly completed (such as business, legal and tax consulting, financial analysis, etc.) can be recognized as indirect tax costs that are deductible on the date they are incurred. In this respect, controversies exist as to the exact date on which costs are incurred. The tax authorities maintain that this is generally the date on which the cost becomes an accounting expense (a charge to revenue accounts); meanwhile, the courts hold that it is the date on which the cost is recorded in the accounts.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

Capital gains on the sale of shares are treated as corporate income and taxed at the standard corporate income tax rate of 19 percent. However, for non-resident sellers, most double tax treaties allow such gains to be taxed in the seller's country of residence (except for the sale of shares in real estate companies).

Other special taxes or issues to be considered

A purchase of shares in a Polish target is subject to a transaction tax of 1 percent of the market value of the shares. The tax is to be paid by the purchaser.

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Change of ownership rules

In general, pre-existing business tax losses can be utilized by a Russian company following a change of ownership. Thus, irrespective of the amount of acquired shares in a Russian target company, the tax losses will generally remain available to the Russian target. The general rule is that such losses can be carried forward over the 10-year period following the year during which the loss was incurred.

Debt push-down

A non-resident may wish to establish a domestic holding company to make an acquisition. Generally the amount of deductible interest expenses are based on the following rules:

1. In principle, the amount of deductible interest expenses is based on the actual agreed interest rate of the loan if the deal is not considered controlled by a related party.
2. If a non-resident has issued a loan to a domestic holding company and this transaction was recognized as a controlled transaction (i.e. transaction between related parties), the amount of deductible interest expenses is limited by Russian tax law. In particular, the limitations refer to whether the actual interest rate on the loan complies with the appropriate rate interval:
   a) for a loan issued in RUR: 75-125 percent of the key rate of the Russian Central Bank;
   b) for a loan issued in a foreign currency: the LIBOR, EURIBOR, SHIBOR is applied based on an appropriate formula.
3. If the aforementioned requirements are satisfied, the actual interest incurred is deductible. Otherwise, Russian transfer pricing rules apply to estimate the amount of deductible interest expenses. In other words, the amount of deductible interest expenses is based on the relevant limits set by the Russian transfer pricing rules.
4. Additionally, thin capitalization rules for loan arrangements between related parties have been introduced into Russian tax law: a maximum 3/1 debt/equity ratio for loans granted (or guaranteed) by a foreign company that owns directly or indirectly more than 20 percent of the borrower's capital. The Russian thin capitalization rules are expected to be amended with effect from January 01, 2017.

Step-up for target company

The acquired shares are booked at acquisition cost. No special structures are available to obtain a step-up in basis of the shares or assets of the acquired Russian target company.

Transaction costs

All costs directly connected with the purchase of shares are considered acquisition costs. Legal and advisory services, due diligence, evaluation charges, and fees of agents, brokers, registrars and notaries, are generally regarded as directly connected with the acquisition of shares and as a result are included in the acquisition costs. If the company has incurred pre-acquisition expenses (such as expenditures relating to due diligence, evaluation and advisory services) but eventually decides not to complete the acquisition, such costs should be deducted from the income of the same fiscal year.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

Capital gains arising from the sale of shares in a Russian target by a non-resident company are subject to Russian withholding tax only if more than 50 percent of the assets of a Russian target consist of immovable property located in Russia. Otherwise, the capital gains are not taxable in Russia. If the shares of a Russian target are listed on a stock exchange, the capital gains are non-taxable in Russia. The domestic withholding tax rate is 20 percent. However, it may be reduced to zero if a double tax treaty applies.

Other special taxes or issues to be considered

Russia imposes a stamp duty for the issuance of additional shares (in joint stock companies) of 0.2 percent of the nominal share value, but capped at RUR 200,000.

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Change of ownership rules

For Singapore income tax purposes, the unutilized capital allowances, trade losses and donations can only be deducted against future income if companies satisfy the Shareholding Test. If this test is not satisfied, the unabsorbed capital allowances, trade losses and donations would be disregarded permanently unless a waiver of the test has been obtained. In general, the waiver will be granted where the company can prove to the satisfaction of the tax authorities that the change of shareholdings was due to genuine commercial reason and not tax driven. Deduction of unutilized capital allowances is subject to an additional condition that there is no change in the company's principal activities during the relevant dates.

The company is said to have satisfied the Shareholding Test when there is no substantial change in its shareholders and their shareholdings as at the relevant dates. The percentage of shares owned by the same shareholders collectively over the total number of shares issued by the company on each relevant date should be at least 50 percent. Shareholders refer to shareholders of the ultimate holding company (where applicable). Note that any part of a share of a shareholder that is not fully paid up is disregarded.

Debt push-down

Expenditure which is connected to the acquisition of capital assets is capital in nature and not tax deductible in Singapore. Therefore, interest incurred from debt used to finance the acquisition of shares (capital assets) cannot be deducted for tax purposes in Singapore.

If the company carries out share transactions frequently with the purpose to earn profits, the shares transferred could possibly be deemed as trading stocks instead of capital assets and the profits derived from the selling of shares will be subject to tax in Singapore. In this case, interest expenses will only be tax deductible by the company against the income derived from its investment activities and cannot be used to set off against the trading income of other companies in the same group.

Step-up for Target Company

The company is not allowed to step-up the cost base of shares of the Target Company. The cost base should be booked as the acquisition cost.

Transaction costs

Expenditure which is connected to the acquisition of capital assets is capital in nature and not tax deductible in Singapore. Therefore, the transaction cost (i.e. advisory fees) associated with the transfer of shares (capital assets) is capital in nature and not tax deductible in Singapore. If the company carries out share transactions frequently with the purpose to earn profits, the shares transferred could possibly be deemed as trading stocks instead of capital assets and the profits derived from the selling of shares will be subject to tax in Singapore. In this case, the transaction cost will be deductible for tax purposes by the company against the investment profits.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

If shares are deemed as capital assets, any gains derived therefrom will not be taxable in Singapore. On the contrary, if they are treated as trading stocks, gains derived will be deemed as revenue rather than capital gain and will be subject to Singapore income tax at a tax rate up to 17 percent. This could be restricted by applicable double tax treaties. In Singapore, income will be subject to tax depending on whether the income is sourced or received in Singapore. Whether the income recipient is a Singapore resident or not, generally has no effect on the taxability of the income.

Other special taxes or issues to be considered

Transfer of shares is subject to Singapore stamp duties at a rate of 0.2 percent on the purchase price or market value of the shares, whichever is higher. Stamp duties can be remitted on the transfer of shares under certain scenarios subject to prescribed conditions, such as the transfer of shares between associated permitted entities or as part of the reconstruction or amalgamation scheme.

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Change of ownership rules

A company is taxed as a separate taxpayer from its shareholders in South Africa. The tax status of the company would generally not change if there is a change in shareholding. In some situations the tax status of the company may however depend on the characteristics of its shareholders, for example, headquarter companies, which could be affected by a change in ownership.

The use of a company's tax loss carried forward may be disallowed following a change in shareholding if the revenue authorities are satisfied that the sole or main reason for the acquisition was the utilization of such loss. The acquisition of a direct or indirect controlling interest in a company that has, or is likely to have, an assessed loss exceeding ZAR 50 million, should be reported to the tax authorities.

Debt push-down

A number of interest deduction limitations exist that may prevent interest deductions in the case of debt push-downs. These include interest on debt used to fund acquisitions of assets acquired from related persons using corporate roll-over relief. Further interest deduction limitations exist in the form of thin capitalization provisions and limitations on the deductibility of interest paid to related persons in whose hands the interest would not be subject to tax in South Africa. The thin capitalization limitations are based on arm's length principles while other limitations are based on an interest to profit ratio limitation.

Step-up for target company

The acquired shares are booked at the acquisition cost. No special structures are available to obtain a step-up in the basis of the shares or assets of the acquired target company.

Transaction costs

In general, transaction costs will be capitalized and added to the tax cost of the shares.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

Non-residents are only subject to capital gains tax on the disposal of immovable property (including an interest in such immovable property) or business assets attributable to a permanent establishment situated in South Africa. A shareholding of at least 20 percent in a company where at least 80 percent of the market value of the company's shares is attributable to immovable property (other than immovable property held as trading stock) would constitute an "interest in immovable property". The disposal of any shares in South African companies by non-residents in circumstances other than the above would generally not be subject to tax in South Africa.

Other special taxes or issues to be considered

Value extracted or realized in the form of dividends (including share buy-backs) may be subject to dividend withholding tax at a rate of 15 percent unless the relevant double tax treaty reduces the rate.

Securities transfer tax applies to the transfer (but not the issue) of shares. This tax is levied on the purchaser at a rate of 0.25 percent.

Corporate migration of South African resident companies to become foreign tax residents may trigger a number of exit tax consequences in the hands of the company.

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Change of ownership rules

In general, pre-existing corporate tax losses of a Spanish target company can be utilized following a change of ownership. However, in case of a substantial change of ownership tax losses will no longer be available in any of the following circumstances:

- → The acquired entity has been inactive during a period of three months prior to the acquisition, or becomes inactive after the acquisition; or
- → the acquired company significantly changes its business activity within the two years following the change of ownership; or
- → the acquired company can be considered an asset-holding company.

Debt push-down

Debt push-down structures which involve the establishment of a domestic holding company to acquire the shares of a Spanish target are restricted when financed with intercompany debt.

In practical terms, interest accrued on intercompany debt – regardless of the tax residence of the lender – destined to acquire the shares in another entity from a related party are generally non-tax deductible unless the transaction is based on valid business purposes.

Step-up for target company

The domestic holding company must book the acquired shares of the Spanish target at cost. In case of a share deal, goodwill cannot be amortized as a deductible acquisition cost. However, if both entities merge after the share deal, goodwill may arise and its tax treatment will depend on the tax year in which the shares were acquired:

- → If the shares were acquired before 2015, goodwill amortization is tax deductible provided some general requirements are met.
- → If the shares were acquired in or after 2015, goodwill amortization is non-tax deductible.

Goodwill amortization can be recorded in an asset acquisition, in which case the annual cost can be amortized for tax purposes over a period of 20 years (for accounting purposes over a period of 10 years). However, goodwill impairment losses are non-tax deductible.

Transaction costs

Costs associated with the transaction (due diligence, valuation and advisory fees etc.) are considered part of the acquisition cost.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

In general, capital gains from the sale of shares in a Spanish company by a non-resident are subject to taxation in Spain. Where the transferor is a resident of another EU Member State, the capital gain realized will be tax exempt provided that the participation in the Spanish target has been at least 5 percent - or with an acquisition price exceeding € 20 million - for a minimum period of one year prior to the transaction.

However, where the main assets of the Spanish target consist of real estate located in Spain, the sale of the shares will be subject to taxation in Spain at a rate of 19 percent.

Notwithstanding the above, in any case, the tax treatment will be determined by the corresponding double tax treaty.

Other special taxes or issues to be considered

In general, the sale of shares in a Spanish target by a non-resident can benefit from VAT and property transfer tax exemptions provided that some requirements are met.

However, the transfer of the shares will be subject to VAT or property transfer tax where over 50 percent of the assets (at market value) of the Spanish target are not related to its business activity. Property transfer tax rates depend on the municipality in which the main assets of the company are located.

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Change of control rules

In general, tax losses carried forward can be utilized by a Swedish company following a change of ownership, subject to certain limitations. Such losses may generally be carried forward indefinitely and may be offset against future profits or group contributions. However, losses may not be carried back. In case of a change of ownership whereby the new owner obtains direct/indirect decisive control over the company (i.e. generally more than 50 percent of the voting capital), there are two limitations on the utilization of prior tax year's losses: (i) the capital restriction; and (ii) the group contribution restriction. In brief, the capital restriction results in the definite disallowance of losses exceeding 200 percent of the total consideration paid. The group contribution restriction applies to any tax losses surviving the capital restriction and results in the disallowance of utilizing the losses against group contributions during a five-year period following the change of control. Further, company mergers may affect prior tax losses in both the transferring company and the surviving company during a six-year period. Tax losses incurred in the same year as a change of control are generally not subject to any limitations.

Debt push-down

Debt push down structuring is generally possible in Sweden and interest expenses are generally deductible for tax purposes, provided arm's-length interest rate. However, as of January 1, 2013, the Swedish interest deduction limitation rules have been extended to cover interest on all intra-group debt. Exceptions to these limitations may apply if: (i) the receiver (beneficial owner) of the interest income is subject to a minimum of 10 percent taxation and the debt arrangement has not been established to obtain a significant tax benefit (the "10 percent rule"); or (ii) if the debt relationship is predominantly motivated by business reasons (the "business reason test"). Even if the interest income is taxable to the beneficial owner at a minimum of 10 percent, an interest deduction will be disallowed if the debt relationship is predominantly motivated by tax reasons. The application of the business reason test also requires the interest recipient to be resident within the EEA or a jurisdiction covered by a Swedish double tax treaty. Particular consideration shall be given to whether the financing could have been made through a shareholder's contribution instead of a loan.

The current Swedish rules on deductibility of interest expenses are under review. New rules are expected to be implemented as of 2018.

Step-up for target company

There are no structures available under Swedish tax law whereby an acquirer may obtain a step-up in its basis of the acquired Swedish target company's shares.

Transaction costs

Costs connected with share deals, such as costs for legal advisory etc. are considered part of the acquisition cost and, as such, generally not deductible. Such costs are instead capitalized and included in the acquisition cost for the shares. However, if a share deal is planned but not fully executed, the transaction costs are generally deductible. Transaction costs relating to acquisition financing may be deductible during the lifetime of the acquisition debt.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

Provided that the shares are held by a non-resident corporate entity, and that the shares are not attributable to a permanent establishment in Sweden, capital gains on the sale of shares should not be subject to Swedish taxation.

Other special taxes or issues to be considered

Sweden does not levy stamp duty on the transfer of shares. No Swedish WHT is levied on interest payments. Further, WHT on dividend payments made to non-resident corporate shareholders is normally not levied, provided that the shareholder is an EU resident and owns at least 10 percent of the share capital, or is a limited liability company covered by a Swedish double tax treaty.

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Change of ownership rules

In Switzerland, no change of ownership rules apply. In particular, a change in the ownership of a Swiss company does not affect the ability of such company to utilize its tax loss carry-forwards within the generally applicable seven year period from the date such losses were generated.

Debt push-down

The typical acquisition structure for a debt push-down is as follows: An investor incorporates a Swiss acquisition vehicle that is financed with equity and debt to acquire the target company. After the acquisition, a merger is intended to ensure that the operating target's cash-flow can be used for interest payments and repayments of the acquisition vehicle's funding. However, according to Swiss tax administrative practice, the deduction of such interest payments after a merger is not admitted tax-wise. This even applies if the merger is carried out years after the acquisition. It is therefore recommendable to effect the repayment of the acquisition vehicle's funding before the merger.

Step-up for target company

In a share-deal, the purchaser acquires the target company with all tax attributes. A step-up in basis, i.e. the appreciable revaluation of the target's assets, is not possible. The same applies in case of a merger; the assets and liabilities have to be transferred at tax book values.

Transaction costs

Transaction costs are – inter alia – expenses for financing, due diligence, professional advice as well as transfer taxes. They are generally considered as deductible expenses. However, in the course of a transaction it has to be differentiated between costs of the acquisition vehicle and costs of the target company. In this regard, each entity has to bear its own costs meaning that only strictly transaction-related costs can be charged to the acquisition vehicle.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

In general, capital gains from the sale of shares of a Swiss target company by non-resident shareholders are not subject to tax in Switzerland. An exception applies when the Swiss target owns real estate in Switzerland and tax-wise qualifies as a real estate company. The respective qualification depends on whether the company holds real estate for operating or for investment purposes. Only a company that holds real estate for sole investment purposes (i.e. no operating business activity attached to it) can qualify as real estate company. In case more than 50 percent of the shares of a real estate company are transferred, capital gains in connection with such sale are subject to real estate gains tax in Switzerland. It has to be noted that the transfer of a majority shareholding of a real estate company can also be assumed where several shareholders jointly transfer shares of more than 50 percent altogether.

Other special taxes or issues to be considered

Where a Swiss resident sells shares of a Swiss company, the assessment of the tax consequences depends on whether these shares are private or business assets of the seller. The sale qualifies as tax-free if the shares are held as private property. If the shares are held as business property, the sale is subject to income or profit tax to the extent the sales price exceeds the book value of the shares. Under certain conditions, however, even the sale of shares that are held as private property is subject to tax. This is the case when a so-called indirect partial liquidation applies.

Equity contributions to Swiss companies made by shareholders that exceed CHF 1 million trigger stamp tax of 1 percent. Furthermore, the transfer of Swiss or foreign securities triggers securities transfer tax in case Swiss security dealers (banks, actual dealers or companies that hold securities with a tax book value of more than CHF 10 million) participate as contracting parties or as intermediaries. The ordinary tax rate of Swiss securities transfer tax is 0.15 percent for securities issued by a Swiss tax resident and 0.3 percent for securities issued by a foreign tax resident.

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Change of ownership rules

In general, pre-existing business tax losses can be utilized by a Turkish company following a change of ownership, whereas utilization of the losses may be subject to certain limitations in other types of mergers, acquisitions and split-ups. Pre-existing business tax losses generated over the last five years that do not exceed the equity calculated on the date of mergers & acquisition are not forfeited provided that the acquired organization continues to operate for a period of five years following the fiscal year of the merger or acquisition. In split-ups, the same rules generally apply unless the losses do not exceed the equity attributed to the new entity and that the amounts of such losses correspond to the transferred pushed-down asset value.

Debt push-down

Turkish tax law allows Turkish corporate taxpayers to merge in a tax-free manner under certain conditions. Accordingly, Turkish companies may accomplish a tax-free merger if all of the items of the balance sheet of the merged entity are transferred to the acquiring entity. Typically, if one of the companies has an outstanding debt, there is no restriction on the transfer of the loan to the acquiring entity. Interest on this loan can generally be deducted by the acquiring entity. However, in the implementation of merger transactions, special consideration should be given as to whether the merger transaction possesses economic substance. In other words, merger transactions accomplished solely for tax motivation purposes are subject to scrutiny by the Turkish tax authorities under the substance-over-form rules.

Step-up for target company

In a share deal, the Turkish acquisition company must book the acquisition cost of the Turkish target at fair market value, which prevents the amortization of goodwill. Goodwill amortization is only available for Turkish companies entering into asset deals with other Turkish resident companies for which the acquirer would be paying an amount higher than the net book value of the tangible assets that are being sold.

Transaction costs

The acquirer is required to capitalize expenses incurred during the acquisition of the assets of a Turkish target company. Among such allowable expenses are finance expenses relating to the purchase of the assets, transportation, storage, and installation fees attributable to these assets, and attorney, notary, commission fees, broker's fees, inter alia. The acquirer would amortize the assets over their capitalized value.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

Although Turkish tax rules provide opportunities for foreign entities to be outside the scope of Turkish capital gains taxation arising from the sale of joint stock companies, most of the double tax treaties which Turkey has concluded with other countries restrict the right of the source country (i.e. Turkey) to tax capital gains derived from sale of Turkish company shares where the holding period exceeds one year.

Other special taxes or issues to be considered

Capital increases trigger a 0.04 percent fund for limited liability and joint stock companies in Turkey. In addition, a Stamp duty is imposed on signed contracts and agreements either executed in Turkey or, if concluded abroad, the contracts provide a benefit within Turkey. The general stamp duty rate is 0.948 percent for 2016, and is imposed on the stated contract amount. With regard to the stamp tax, there is an upper limit threshold that is determined and revalued annually.

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Change of ownership rules

Pre-existing losses can generally be utilized by a UK company following a change of ownership (subject to some "same activity", "same entity" type-restrictions). However, where there is also a major change in the nature or conduct of the trade or business within the three year periods preceding and/or following the ownership change, the losses may be disallowed. Further rules may in some cases deny subsequent tax relief for an acquired company's pre-existing deferred tax attributes.

A company's pre-existing capital losses survive its acquisition, however if the acquisition is by a group, the losses may thereafter generally only be set against gains on other assets owned by the company at the time it joined the group.

Forthcoming changes may reduce the "same activity", "same entity" type-restrictions on offset of brought forward losses, but introduce limits on the proportion of taxable profit which can be sheltered by brought forward losses.

Debt push-down

In principle, interest on borrowing by a UK acquisition company to acquire another UK company is tax-deductible, and the acquisition company's resultant tax losses can offset the acquired company's same year taxable profits under the group relief provisions (subject to a 75 percent group relationship existing). A number of provisions can limit or deny interest deductibility, including:

→ related party transfer pricing rules (applicable both cross-border and domestically)
→ thin capitalization rules/distribution rules characterizing certain interest flows as non-deductible distributions
→ a worldwide debt cap, applying where a group's UK operations are higher leveraged than the worldwide group
→ unallowable purpose rules (which should not generally apply to borrowings to finance commercial acquisitions)

Introduction of further limitations on interest deduction is anticipated in 2017, reflecting the UK's implementation of the OECD's BEPS recommendations.

Step-up for target company

There is no general ability to step up the "inside basis" of an acquired company's assets in the course of a share acquisition. However, "de-grouping charges" triggered where capital or intangible assets are hived-down pre-sale and the recipient company then sold, can have this side-effect.

Transaction costs

Transactions costs may fall into one of the following categories:

i. Costs related to debt finance are generally deductible subject to the points in section 2.
ii. Revenue costs which are generally only deductible when incurred "wholly and exclusively" for the purposes of the company's business. Generally, transaction costs will only be deductible for investment holding companies. Transaction costs will generally be revenue when incurred before the "decision phase" of the potential transaction has been completed.
iii. Capital costs (incurred in the execution phase, i.e. "post decision phase") and so contributing to the base cost of the shares.

The recoverability of VAT on transaction costs can be complex.

Exit scenario: taxation of capital gains on the sale of shares by a non-resident

In general, a nonresident seller should not be subject to UK tax on capital gains arising from the disposal of shares in a UK company (exceptions exist in some real estate and oil & gas cases).

Other special taxes or issues to be considered

The UK imposes a stamp duty payable at a rate of 0.5 percent of the consideration paid in a share deal. Relief may be available where shares are transferred within a 75 percent ownership group.

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Change of ownership rules

If a corporation with tax loss carry-forwards undergoes an ownership change (more than 50 percent within a three year window), its ability to use the loss carry-forwards is generally limited. The annual limitation is based on the fair market value of the corporation at the time of the ownership change multiplied by a published interest rate. Relief from the limitation may be available to the extent there is built-in gain in the corporation's assets at the time of the ownership change.

Debt push-down

Due in part to the relatively high US corporate income tax rates (e.g., 40 percent), foreign acquirers often seek to push debt into a US target company and thereby create tax-deductible interest expense. There are various techniques for achieving a debt push-down. For example, the foreign acquirer could form a new US acquisition subsidiary and capitalize it with a mix of debt and equity. This acquisition company could either purchase the shares of the US target (and form a tax consolidation with the target) or could merge with the target. In establishing the debt structure, the foreign acquirer should take into account general debt versus equity principles as well as the so-called "earnings-stripping" rules (which may defer the interest expense deduction if certain cash-flow thresholds are not met). Under many US double tax treaties, the payment of interest to a foreign person is subject to a lower rate of withholding tax (or no withholding tax) than is the payment of dividends. This potentially offers an additional benefit of the debt push-down. There are proposed regulations which would re-characterize certain related party debt transactions as equity if they exceed a certain volume. Certain common debt push-down structures would be impacted by these proposed regulations if they come into force. In addition, the proposed regulations would apply strict documentation and substantiation requirements designed to ensure that parties to a loan transaction behave as if they were unrelated.

Step-up for target company

A purchase of shares in a US target corporation ordinarily does not result in a step-up in the tax basis of the corporation's assets. A notable exception involves transactions in which an Internal Revenue Code Section 338 Election is made – in which case the transaction is treated as a taxable asset purchase with a corresponding asset basis step-up. This often results in the creation of goodwill for tax purposes, which is amortizable (deductible) over 15 years. Special requirements must be met in order for the transaction to be eligible for an election. Depending on the particular facts, there may or may not be an additional tax cost in making the election.

Transaction costs

In general, costs paid to "facilitate" a transaction must be capitalized. In a share deal, this means that they would be added to the tax basis in the shares and thus would not be deductible. In a share deal treated as an asset deal (see above), the capitalization of transaction costs may lead to future deductions (e.g., increase in tax-deductible goodwill).

Exit Scenario: taxation of capital gains on the sale of shares by a non-resident

The sale of shares in a US corporation by a foreign shareholder is generally not subject to US tax. An exception applies in the case of a sale of shares in a so-called "United States Real Property Holding Corporation" (a domestic corporation which has US real estate assets constituting 50 percent or more of the value of its total business assets).

Other special taxes or issues to be considered

Despite their many corporate-like characteristics, domestic (e.g., Delaware) Limited Liability Companies (LLCs) are generally treated as pass-through entities for US tax purposes. Accordingly, the purchase of LLC shares typically results in asset purchase treatment to the acquirer for tax purposes – and hence a potential step up in asset basis. LLCs can also elect to be treated as taxable corporations.

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