Tax on inbound investments 2018

November 2017

Acquisitions (from the buyer's perspective)

1. Tax treatment of different acquisitions

What are the differences in tax treatment between an acquisition of stock in a company and the acquisition of business assets and liabilities?

Whether a share acquisition or a business acquisition is more attractive to a potential purchaser from a tax perspective will depend on the facts, taking into account the nature of the relevant assets and liabilities of the business and what the purchaser intends to do with the business following its acquisition (eg, whether or not it intends to seek to sell on the assets or shares to a third party shortly after the acquisition).

Tax liabilities of a target company carrying on the business will remain with the target following an acquisition of shares in that company and, as a consequence, a purchaser will seek protection from the seller for pre-completion tax liabilities of the target, both known and unknown (see question 9). The target's historic base cost in its assets is unaffected by the transfer of ownership of its shares. Given that this is likely to be lower than the base cost the purchaser would acquire if it had instead purchased the assets from the target, if the purchaser intends to strip out and sell on the assets it would be preferable for the purchaser to purchase the assets themselves rather than shares in the target. Other tax attributes of the target also remain, in particular any tax losses continue to be available to set off against future profits (subject to various restrictions and anti-avoidance rules, see question 7).

A key attraction for a purchaser of acquiring business assets from the target rather than shares in the target itself is the ability to claim capital allowances (assuming the assets of the business include plant and machinery or other assets for which capital allowances may be claimed) and obtain tax relief for expenditure on intangible assets (but see question 2), rather than being confined to an inherited tax position.

2. Step-up in basis

In what circumstances does a purchaser get a step-up in basis in the business assets of the target company? Can goodwill and other intangibles be depreciated for tax purposes in the event of the purchase of those assets, and the purchase of stock in a company owning those assets?

Where a purchaser acquires business assets, the amount paid for such assets (plus the incidental costs of acquisition) will generally constitute the purchaser's new base cost in such assets for the purpose of calculating its chargeable gain on any future disposal. This is subject to a market value override that applies to transactions between connected parties.

There used to be a favourable regime for the acquisition of goodwill and other intangible assets enabling a purchaser to benefit from corporation tax deductions when expenditure on these assets was recognised in the accounts. This provided a significant incentive for a purchaser to acquire business assets from a target company rather than shares in the target. However, this relief was removed for expenditure on goodwill, and certain other intangible assets linked to customers and customer relationships, acquired on or after 8 July 2015. Investment in intellectual property and certain other intangible assets continues to benefit from relief in line with the purchaser's accounting treatment.

Where a purchaser acquires shares in a target company, there is generally no step-up in basis available in respect of the assets of that target company. However, a step-up can occur in circumstances where a degrouping charge is triggered: if another company in the seller's group had transferred capital assets or certain intangible fixed assets to the target within the six years before the purchaser acquires the target, a degrouping charge will be triggered upon the acquisition of the target by the purchaser and the target will be deemed to have disposed of, and immediately re-acquired, the relevant assets at market value at the time of the degrouping.

3. Domicile of acquisition company

Is it preferable for an acquisition to be executed by an acquisition company established in or out of your jurisdiction?

The UK has generally been regarded as a favourable holding company jurisdiction (for non-banking groups):

- with a corporation tax rate of 19 per cent, decreasing to 17 per cent by 2020, it has one of the lowest corporate tax rates in the G20;
- the dividend exemption should generally be available, irrespective of whether the holding company's shareholder is resident in the UK or elsewhere;
- a UK acquisition company should generally be able to benefit from deductions for the finance costs of acquiring the target (subject to the restrictions explained in response to question 8); and
- the substantial shareholding exemption (SSE) would enable a UK acquisition company to dispose of the target without triggering a chargeable gain if the conditions are satisfied (see question 15).

A key issue for business is whether the UK's exit from the EU is likely to have any adverse impact on the attractiveness of the UK as a location for a holding company, or an intermediate holding company, from a tax perspective. While there may be some changes relevant in certain fact patterns, in the majority of cases the attractiveness of the UK's tax regime is likely to be unaffected and may even be improved as the UK seeks to retain the inward investment it already has and aims to encourage further investment. It is worth noting that if, as is likely, UK resident companies lose the benefit of the Parent-Subsidiary Directive and the Interest and Royalties Directive, the UK's extensive tax treaty network is well-placed to protect a UK holding company from withholding tax on dividends, interest and royalties received from most European jurisdictions. There is potential for some tax leakage where the UK's treaties do not reduce withholding taxes to zero, but it is expected that groups should be able to restructure appropriately ahead of the UK's ultimate exit on 29 March 2019.

4. Company mergers and share exchanges

Are company mergers or share exchanges common forms of acquisition?

Since the EC Mergers Directive was implemented in the UK in December 2007, it has been possible to effect a 'true' merger in which all the assets and liabilities of a transferor company are transferred to a transferee company and the transferor company thereupon ceases to exist without needing to be put into liquidation.

The UK regulations implementing the Directive require at least two companies from different EU member states to be merged, and allow for three types of cross-border mergers: merger by absorption, merger by absorption of a wholly-owned subsidiary or merger by formation of a new company. The procedure as implemented in the UK involves a number of court hearings, which has implications for the timetable of the proposed acquisition.

This procedure is not commonly used, and there are no other means of achieving a 'true' merger in the UK. It is not known whether these regulations will be amended or repealed following the UK's exit from the EU.

Share exchanges are, however, common forms of acquisition and can enable the seller to roll over any chargeable gain into shares or loan notes issued by the purchaser.

5. Tax benefits in issuing stock

Is there a tax benefit to the acquirer in issuing stock as consideration rather than cash?

The purchaser does not obtain a tax benefit from the issuing of shares as consideration.

6. Transaction taxes

Are documentary taxes payable on the acquisition of stock or business assets and, if so, what are the rates and who is accountable? Are any other transaction taxes payable?

Share acquisition

Stamp duty at the rate of 0.5 per cent of the consideration is payable on the acquisition of shares in a UK company. Stamp duty reserve tax (SDRT) is charged on an agreement to transfer shares in a UK company at the rate of 0.5 per cent of the consideration. Where an agreement to transfer such shares is completed by a duly stamped instrument of transfer within six years of the date when the SDRT charge arose, there is provision in many cases for the repayment of any SDRT already paid, or cancellation of the SDRT charge. A higher rate of 1.5 per cent SDRT is imposed if shares or securities are transferred (rather than issued) to a depositary receipt issuer or a clearance service and the transfer is not an integral part of the raising of share capital. The 1.5 per cent stamp duty 'season ticket' charge on issue is still on the UK's statute books but is not collected by HMRC as it has been found to be contrary to EU law (the Capital Duties Directive). The Capital Duties Directive will cease to apply to the UK upon leaving the EU but the intention of the European Union (Withdrawal) Bill 2017 is to preserve the effect of the CJEU case law which found the season ticket charge to be contrary to EU law and so, absent a change of UK law with effect from Brexit to reinstate it, the 1.5 per cent charge should not become payable on issues thereafter.

Prior to March 2015, takeovers of UK companies were frequently implemented by way of a cancellation scheme (the target's shares were cancelled and shares were issued by the acquirer to the target shareholders). There is no stamp duty on a cancellation of shares (as there is no instrument of transfer), so this enabled the transfer of ownership of a UK target without needing to pay any stamp duty. However, since March 2015 it is no longer possible for an acquirer to use a cancellation scheme to effect a takeover - acquirers must instead use a transfer scheme of arrangement or a contractual offer (on which stamp duty or SDRT is payable). Attempts continue to be made to effect takeovers without triggering stamp duty, and this is an area where HMRC are keen to react swiftly with anti-avoidance legislation. The acquisition of shares is not a supply for VAT purposes.

Acquisition of business assets

If business assets are acquired, stamp duty land tax (SDLT) will be payable on transactions in UK land (although land in Scotland is subject to a separate land and buildings transaction tax rather than SDLT and from April 2018, a new land transaction tax will replace SDLT in Wales). Where the consideration exceeds £250,000 the top rate of SDLT on transactions in non-residential property is 5 per cent. If the business assets include an interest in a partnership that holds stock or marketable securities, stamp duty at 0.5 per cent will apply to the transfer of the partnership interest.

Most supplies of land are exempt from VAT, unless the seller has opted to tax the land. If the transfer of assets meets the conditions for being a transfer of a business as a going concern, there will be no taxable supply for VAT purposes.

7. Net operating losses, other tax attributes and insolvency proceedings

Are net operating losses, tax credits or other types of deferred tax asset subject to any limitations after a change of control of the target or in any other circumstances? If not, are there techniques for preserving them? Are acquisitions or reorganisations of bankrupt or insolvent companies subject to any special rules or tax regimes?

There are anti-avoidance rules that can deprive a company of, or restrict its use of, carried-forward losses after a change of control of that company. There are also restrictions on how carried forward losses can be used which apply irrespective of change of ownership.

Carry-forward of losses - general rules

Under the pre-1 April 2017 rules, trading losses can be set off against profits in the same or the previous accounting period, or (subject to satisfaction of various conditions) be surrendered by way of group or consortium relief. To the extent that trading losses remain unused, they will be carried forward but may only be set against profits of the same trade in subsequent accounting periods. No time limits apply to the carry-forward of losses, and if a company transfers its trade to another member of its group the transferee will, subject to anti--avoidance rules, inherit the tax losses of the transferor, unless the transferor is in liquidation. The UK is proposing to introduce, in the second Finance Bill of 2017, new rules on loss relief that will apply retrospectively from 1 April 2017. These proposed reforms will deliver greater flexibility on the use of carried-forward losses, but reduce the amount of taxable profits that can be offset by such losses. In summary, under the new rules:

- losses incurred on or after 1 April 2017 will be able to be carried forward and set off against profits from other income streams and against profits from other companies within a group; but
- from 1 April 2017, the amount of taxable profit that can be offset by carried-forward losses (whenever incurred) will be restricted to 50 per cent (although this only applies to taxable profits in excess of £5 million calculated on a group basis).

The reforms have created a very complex, dual regime that requires companies to consider carefully the way they use their losses. It is particularly harsh that pre-1 April losses do not benefit from the increased flexibility (so, for example, carried forward trading losses can only be set against profits of the same trade in subsequent accounting periods) but, if set against post-1 April 2017 profits, will be subject to the restriction on the amount of profits they can be set against.

Carry-forward of losses - banks and building societies

Banks and building societies have been subject to a restriction (the bank loss restriction) since 1 April 2015 on the carry-forward of trading losses, non-trading loan relationship deficits and management expenses. Initially, 50 per cent of their taxable profits in any accounting period could be offset by these carried-forward amounts (subject to a £25 million allowance for groups headed by building societies or savings banks). This was cut to 25 per cent from 1 April 2016 and from 1 April 2017 banks will also have to operate the proposed new carry-forward loss restriction (outlined above) to losses that fall outside the scope of the existing bank loss restriction.

Change of control

There are various anti-avoidance rules aimed at preventing ‘loss buying’ and ‘loss refreshing’. In particular, the carry-forward of trading losses may be denied if there is:

- a major change in the nature or conduct of a trade carried on by the loss-making company within three years before, or up to three (or five – see below) years after, the change in ownership; or
- a change in ownership of a company at any time after the scale of its trading activities has become small or negligible but before any considerable revival of the trade.

(The insertion of a new holding company at the top of a group of companies does not of itself constitute a change in ownership for these purposes.)

Similarly, there are restrictions on the carry-forward of non-trading losses following a change of ownership where there is:

- a major change in the nature or conduct of the trade or business of the loss-making company within three years before, or up to three (or five – see below) years after the change in ownership;
- a significant revival of a trade or business that has become small or negligible; or
- a significant increase in the capital of the business.

The post-change of ownership three year period is extended to five years under the proposed reforms where both the change to the trade or business and the change in ownership take place on or after 1 April 2017.

To the extent that losses are not already dealt with by the loss-buying rules explained above, under the proposed new rules where the change of control occurs on or after 1 April 2017, carried forward losses cannot be used against profits that arise within five years of the change of ownership and which can be attributed to a major change within the required period (five years for a trade or eight years for an investment business) in the nature or conduct of the company’s business or of a co-transferred company’s business. (A co-transferred company is any company that was related to the transferred company both immediately before and immediately after the change in ownership.)

Although the new rules permit group relief surrenders of carried forward losses, where there is a post-1 April 2017 change in ownership of a company, the new group will not be able to claim group relief for any of the acquired company’s pre-acquisition losses in the following five years.

There are, separately, a range of restrictions on the use of capital losses.

8. Interest relief

Does an acquisition company get interest relief for borrowings to acquire the target? Are there restrictions on deductibility where the lender is foreign, a related party, or both? Can withholding taxes on interest payments be easily avoided? Is debt pushdown easily achieved? In particular, are there capitalisation rules that prevent the pushdown of excessive debt?

In principle, a UK resident acquisition company benefits from relief from UK corporation tax for borrowings incurred to acquire the target, but this is an area that is subject to continually increasing restrictions:

- the UK has a thin capitalisation regime that applies to domestic as well as cross-border transactions – if the lender is a related party or the borrowing is guaranteed by a related party, these rules will be applied to determine the amount that the borrower could have borrowed from an independent lender and this can result in part of the borrowing costs being non-deductible;
- a new EBITDA-based cap on net interest expense (see below);
- interest will not be deductible where it is treated as a distribution – this will include situations where the interest exceeds a reasonable commercial return, the rate depends upon the performance of the borrower or the loan is convertible into shares;
- interest relief may also be restricted where the loan has an unallowable purpose, namely where a main purpose of being party to the loan in the relevant accounting period is to obtain a tax advantage; and
- interest relief may be denied or reduced by a targeted anti--avoidance rule where:
- a loan-related tax advantage arises from arrangements;
- the obtaining of the tax advantage was a main purpose of the arrangements; and
- the tax advantage cannot reasonably be regarded as consistent with the policies and principles of the legislation.

The UK is proposing to introduce an EBITDA-based cap on net interest expense in line with the Organisation for Economic Co-operation and Development (OECD)'s recommendations in relation to Action 4 of the base erosion and profit shifting (BEPS) project. The restrictions, which are to apply from 1 April 2017, were included in the second Finance Bill of 2017 and include both a fixed ratio rule that will limit corporation tax deductions for net interest expense to 30 per cent of a group's UK EBITDA and a group ratio rule based on the net interest to EBITDA ratio for the worldwide group. The worldwide debt cap (the previous interest restriction regime) will be repealed, but rules with 'similar effect' are to be integrated into the new interest restriction rules to ensure a group's net UK interest deductions will not be able to exceed the global net third party interest expense of the group.

Withholding tax on interest (at 20 per cent) may be reduced or eliminated under a relevant double tax treaty, or benefit from one of the various domestic exceptions (see question 13). In any event, there is no requirement to withhold tax from interest payable on borrowings where the loan is only capable of being outstanding for less than one year.

9. Protections for acquisitions

What forms of protection are generally sought for stock and business asset acquisitions? How are they documented? How are any payments made following a claim under a warranty or indemnity treated from a tax perspective? Are they subject to withholding taxes or taxable in the hands of the recipient?

On an acquisition of shares, a purchaser would expect to receive the benefit of both a tax covenant and tax warranties. The tax warranties will seek to elicit information about the target, and potentially form the basis of a claim for breach of contract if they prove to be incorrect, subject to the purchaser being able to evidence causation and loss. The tax covenant will give pound-for-pound protection (ie, the purchaser will not have to show loss to bring a claim) in respect of historic tax liabilities of the target; this protection may be sought up to the last accounts date, a specified 'locked box' date or the date of completion, depending on the commercial agreement between the parties as to the basis on which the purchase price has been calculated and the allocation of risk. The tax covenant is often drafted as a deed but it can also be included in the share purchase agreement.

Payments under a tax covenant claim or tax warranty claim should always be made between the seller and the purchaser as an adjustment to the purchase price (rather than being made directly to the target company); the purchaser should not then be subject to UK tax on receipt (nor should there be any requirement to withhold tax from the payment). If any payment exceeds the purchase price (which is most likely to occur following the sale of a distressed company), these payments (to the extent of the excess) are likely to constitute taxable receipts for the purchaser. In this situation, the purchaser should seek to negotiate a gross-up obligation in the sale documentation.

There are fewer tax warranties given in a typical business purchase agreement because in general the tax liabilities remain with the company and do not attach to the assets.

Post-acquisition planning

10. Restructuring

What post-acquisition restructuring, if any, is typically carried out and why?

The nature of any post-acquisition restructuring will be specific to each transaction; however, the objectives will often be similar. These include the desire to ensure that the newly acquired assets are fitted into the purchaser's group in the most efficient manner, as influenced by tax and financing considerations, and that interest relief obtained in respect of any debt funding incurred to finance the acquisition can be set off against taxable profits generated by the business.
Restructuring will often involve steps such as hiving down the target or its business into existing subsidiaries, sale and leaseback arrangements with property investment subsidiaries, the sale and licensing of intellectual property, or the insertion of new holding companies.

11. Spin-offs

Can tax neutral spin-offs of businesses be executed and, if so, can the net operating losses of the spun-off business be preserved? Is it possible to achieve a spin-off without triggering transfer taxes?

There are various corporate actions available to achieve a spin-off, including direct-dividend demergers, indirect (or 'three-cornered') demergers, capital-reduction demergers or liquidation schemes. Effecting a tax-efficient demerger involves ensuring that shareholders do not receive taxable income, rollover relief is available for shareholders in respect of any receipt of new shares, no chargeable gain is realised by the demerging company and transfer taxes are minimised.

These structures rely on different reliefs and exemptions from a shareholder perspective – direct-dividend demergers will often seek to fall within the exempt distribution legislation, whereas capital-reduction demergers will seek to ensure shareholders benefit from reorganisation treatment (and thus, effectively, a rollover of any chargeable gain).

The choice will depend upon commercial factors, as well as the distributable reserves position, whether shares or business assets are to be spun out, the residence of the companies involved and the residence and other characteristics of the shareholders of the demerging company.

Trading losses may be capable of being preserved, although the plethora of anti-avoidance rules (see question 7) will need careful consideration in this context.

While stamp duty or SDRT would be payable if the spin-off involves the transfer of shares in a UK company, in practice it is usually possible to rely on available reliefs (notably acquisition relief), or ensuring that there is no transfer for consideration (ie, by implementing a cancellation scheme rather than a transfer scheme, or relying on a distribution being for no consideration). No stamp duty or SDRT should therefore be payable. Where a spin-off involves transactions in UK land, it is likely that SDLT would need to be paid in respect of such transaction.

UPDATE & TRENDS

The 2016 Autumn Statement promised a move towards one fiscal event a year (starting from 2018) in order to slow down the rate of change in tax legislation and provide more certainty for businesses. Since then, we've had the March 2017 Spring Budget and a Spring Finance Bill followed by a snap general election that resulted in only the bare essentials from the initial Finance Bill becoming enacted in Finance Act 2017 before Parliament was then dissolved for the election, the rest being postponed for a second Finance Bill to be passed in the Autumn prior to the Autumn Budget. This has resulted in an unusual and unsatisfactory period where provisions that are not yet law (and in some cases are still subject to change) are to be applied retrospectively from 1 April 2017 (for example the interest restriction rules and the loss carry-forward rules). Add Brexit preparations into the mix and the outlook for business is more uncertain than ever.

Brexit

There is a lot to do before the UK leaves the EU on 29 March 2019 – both in the negotiations with the EU and at home. Work has begun on the European Union (Withdrawal) Bill 2017, the objective of which is to preserve the effect of EU legislation and caselaw on the date of Brexit except where UK legislation is passed to amend it with effect from or after Brexit. (This is a better approach than what was to be called the Great Repeal Bill which would have repealed everything EU law based except where specifically saved.) On the assumption that the UK leaves the EU Customs Union, the UK government is consulting on a new customs regime governing the movement of goods between the UK and the EU post-Brexit. UK tax policy is dependent on the outcome of the

Brexit negotiations but it is expected that the UK's corporate tax system will remain competitive to retain and attract investment post-Brexit, to the extent it can do so whilst being mindful of its commitments to the OECD's BEPS project.

BEPS

The UK has continued to pursue BEPS-related reforms: anti-hybrids legislation has been in effect from 1 January 2017; the corporate interest restriction was included in the second Finance Bill of 2017; and the UK has signed the Multilateral Convention and has notified most of its treaties to the OECD so that (subject to the relevant treaty partner's agreement) the modifications to the UK's tax treaties required by BEPS can be made.

Unacceptable tax behaviour

The UK has added further layers to its anti-avoidance armour this year with:

- a new offence of deliberately enabling offshore tax evasion or non-compliance by another person that came into force on 1 January 2017;
- two new corporate criminal offences that come into effect on 30 September 2017 of failing to prevent the facilitation of UK or foreign tax evasion. Organisations will be responsible for the actions of their employees and other persons performing services for or on behalf of the organisation unless they can show they have reasonable procedures in place to prevent those offences being committed; and
- the enablers legislation in the second Finance Bill of 2017 that will, with effect from Royal Assent, impose penalties on enablers of defeated abusive tax arrangements.

12. Migration of residence

Is it possible to migrate the residence of the acquisition company or target company from your jurisdiction without tax consequences?

A UK-incorporated company will be resident in the UK for tax purposes regardless of whether or not its central management and control is located in the UK. The only way to migrate a UK-incorporated company such that it is no longer treated as UK resident is to ensure that its place of effective management and control is in a jurisdiction with a suitable double tax treaty. Such a treaty would need either to contain a residence tiebreaker clause (providing that the company is treated as resident solely in its place of effective management and control) or provide for a mutual agreement procedure to determine residence (which may resolve the question in favour of the place of effective management and control, but carries with it the risk of uncertainty of outcome).

A non-UK-incorporated company will only be tax resident in the UK if it is centrally managed and controlled in the UK. Such a company can lose its UK tax residence by becoming centrally managed and controlled in another jurisdiction.

The UK imposes an exit charge on UK resident companies (whether UK or non-UK-incorporated) which cease to be UK tax resident: the company is deemed to have disposed of and immediately reacquired all of its capital assets at their market value when it leaves the UK, thus creating a charge to corporation tax on any latent capital gains (unless a relief such as the SSE applies). Companies migrating to an EU or EEA country can seek to agree an exit charge payment plan with HMRC, which allows the resulting corporation tax to be paid in instalments, or deferred for a period of up to 10 years until the relevant asset has been sold. Such payment plans will remain available after the UK leaves the EU unless there is a subsequent change of law.

The migrating company must notify HMRC of its proposed migration.

13. Interest and dividend payments

Are interest and dividend payments made out of your jurisdiction subject to withholding taxes and, if so, at what rates? Are there domestic exemptions from these withholdings or are they treaty-dependent?

Interest

The UK imposes withholding tax at the rate of 20 per cent on ‘yearly interest’, namely interest paid on loans capable of being outstanding for one year or more. This rate may be reduced by an applicable double tax treaty, and can currently be eliminated where the Interest and Royalties Directive applies.
In addition, there are various domestic exceptions that may be available. There is no obligation to withhold if:

- the interest is paid by a bank in the ordinary course of its business;
- the person beneficially entitled to the interest is a UK resident company, or is non-UK resident but carries on a trade in the UK through a permanent establishment and is subject to UK tax on the interest;
- the interest is paid on a quoted Eurobond, namely an interest-bearing security issued by a company listed on a recognised stock exchange; or
- the interest is paid on qualifying private placements.

In order to make the UK wholesale debt markets more competitive, the UK Government intends to introduce, from 2018, a new exemption from withholding tax on interest for debt traded on a multilateral trading facility operated by a recognised stock exchange in an EEA territory.
There is no obligation to withhold tax on ‘short interest’ (broadly where the loan will be outstanding for less than one year) or on returns that constitute discount (rather than interest).

Dividends

The UK does not generally impose a withholding tax on dividends. However, ‘property income dividends’ paid by UK real estate investment trusts are subject to withholding tax at a rate of 20 per cent if paid to non-resident shareholders (or to certain categories of UK resident shareholders), although this may be reduced by an applicable double tax treaty.

Royalties

Until recently, withholding tax (at 20 per cent) was only due on a narrow range of royalties, notably certain annual payments and royalties in respect of patent rights, copyright or a right in a design. Double tax treaties can then apply to exempt royalties from withholding, or reduce the applicable rate.

However, since 28 June 2016 withholding tax is applied to any royalty paid in respect of intangible assets. The scope and significance of this withholding tax on royalties has been extended by two related changes:

- royalties connected with a permanent establishment (PE) or, in diverted profits tax (DPT) terms, an avoided PE, that a non-UK resident has in the UK will be treated as having a UK source; and

- a treaty override will apply if a royalty payment is made to a connected person as part of arrangements a main purpose of which is to obtain a tax advantage by virtue of a double tax treaty, such that the withholding tax will be required irrespective of whether the treaty would otherwise restrict the UK's taxing rights.

14. Tax-efficient extraction of profits

What other tax-efficient means are adopted for extracting profits from your jurisdiction?

Profits may be extracted from a UK company either by way of declaring dividends or by interest payments on loans made to the company by its shareholders. Dividends are not deductible for corporation tax purposes. Interest payments are, however, deductible for the borrower (even where loans are advanced by a shareholder), subject to the restrictions outlined in question 8.

Disposals (from the seller's perspective)

15. Disposals

How are disposals most commonly carried out - a disposal of the business assets, the stock in the local company or stock in the foreign holding company?

While this will depend on the particular facts, sellers typically prefer to sell shares in the target where the disposal would be expected to result in a gain. The SSE will exempt any chargeable gain from corporation tax where the relevant conditions are satisfied. There are three exemptions within the SSE, the main one applying where:

- the seller holds a 'substantial shareholding' in the target (broadly 10 per cent);
- the target is a sole trading company or a member of a trading group;
- the seller is a trading company or a holding company of a trading group or subgroup; and
- the seller has held the substantial shareholding for a continuous 12-month period beginning not more than two years before the date on which the disposal takes place.

The availability of the SSE is not restricted to the disposal of shares in UK companies; the conditions are equally capable of applying to disposals of shares in foreign holding companies. Legislation included in the second Finance Bill of 2017 is intended to broaden the scope of the SSE with retrospective effect for disposals made on or after 1 April 2017.

If the disposal would result in an economic loss for the seller and the conditions for the SSE would apply to the sale of shares, no capital loss will be crystallised by the disposal of such shares. The seller may consider disposing of the business assets in this scenario.

16. Disposals of stock

Where the disposal is of stock in the local company by a non-resident company, will gains on disposal be exempt from tax? Are there special rules dealing with the disposal of stock in real property, energy and natural resource companies?

Gains arising from the disposal of shares in a UK company by a non-resident are generally not subject to UK corporation tax, subject to certain anti-avoidance rules. There are anti-avoidance rules applying to the disposal of shares in a company that owns UK real estate. Where a non-resident acquires UK real estate through a UK company, such that the main purpose of the acquisition is to realise a gain, an income tax charge may arise in respect of gains made on the disposal of shares in the UK company holding the real estate.

Separately, special rules apply to disposals by non-residents of shares in companies that hold petroleum production licences for the exploration or exploitation of oil and gas in the UK or the UK's continental shelf.

17. Avoiding and deferring tax

If a gain is taxable on the disposal either of the shares in the local company or of the business assets by the local company, are there any methods for deferring or avoiding the tax?

Where a UK company is disposing of shares and would otherwise realise a chargeable gain on such disposal (ie, the conditions for the SSE to apply are not satisfied), the seller may still be able to defer payment of any tax liability if the consideration for the sale comprises shares or loan notes:

- if the consideration comprises qualifying corporate bonds (QCBs) in the purchaser (broadly, securities expressed and redeemable in sterling), the chargeable gain will be held over until the QCBs are redeemed or sold; and

- if the consideration consists of shares issued by the purchaser or securities that do not constitute QCBs, any gain will be rolled over into those shares or non-QCBs and will be triggered when such shares or securities are sold or redeemed.

Where a UK company disposes of business assets, tax on any chargeable gains arising from the sale of land, buildings and fixed plant and machinery can be deferred by claiming business asset rollover relief, provided the proceeds of the sale are reinvested in qualifying assets. The gain is effectively rolled over into the new asset and becomes payable when the replacement asset is sold (unless a further claim for rollover relief is made at that time) or, if the new asset is a depreciating asset, on the earlier of the disposal of that asset and 10 years following its acquisition.

A similar rollover regime applies to the disposal of intangible assets.

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