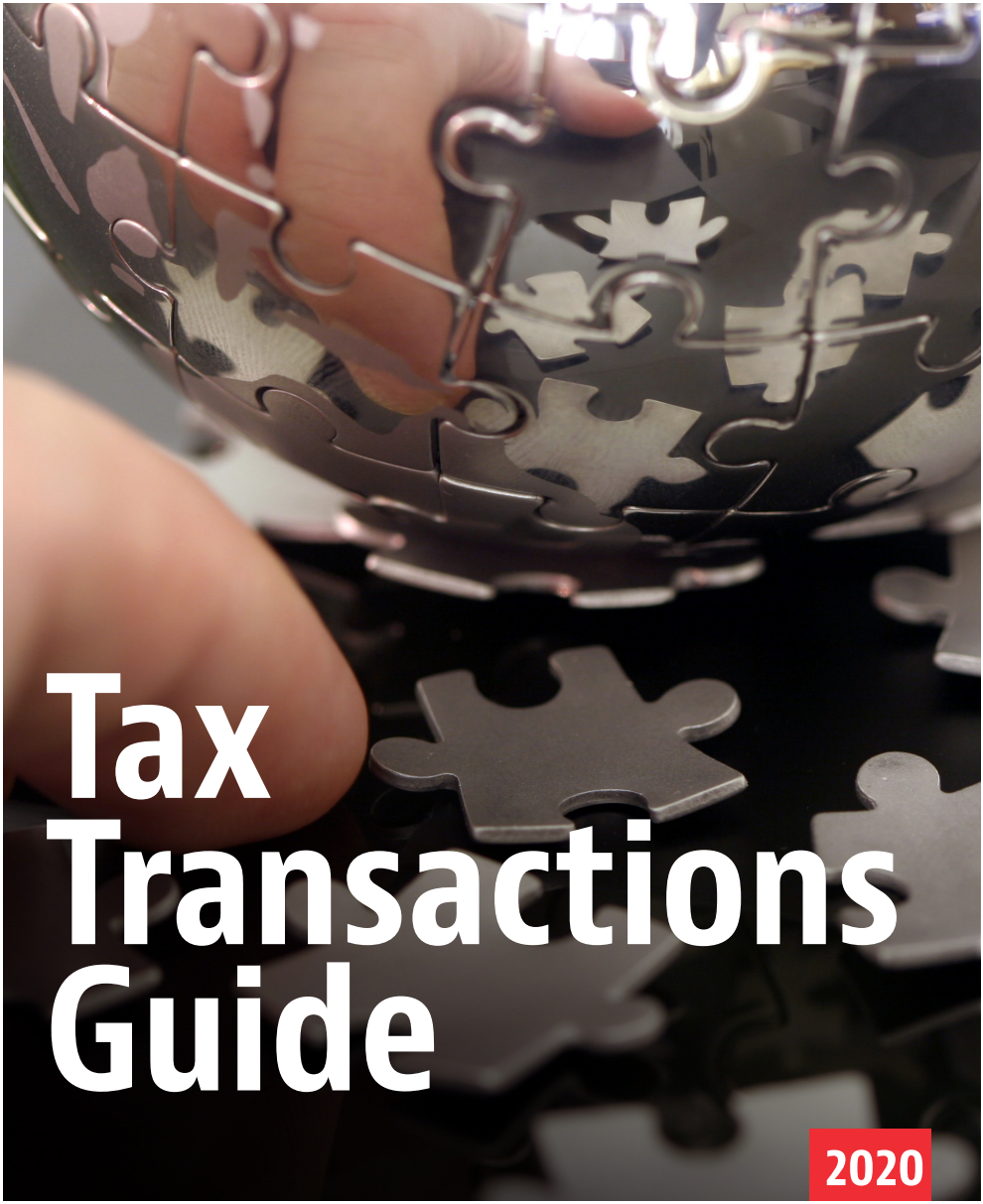
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Tax
EMEA



Tax Transactions Guide

2020

EMEA Tax Transactions Guide

2020

Foreword

Dear Reader,

We are happy to present you with the 10th edition of Baker McKenzie's EMEA Tax Transactions Guide.

So far, 2020 has been a unique year, marked by the COVID-19 pandemic and its widespread impact on people and businesses' realities. The European M&A market has been no stranger to this. In addition, Brexit negotiations at European Union level and the growing suspense around the US presidential elections have affected activity and cross-border deals in particular.

The first months of 2020 showed the surprise impact of the spreading COVID-19 on the economy and specifically on ongoing M&A deals. There was an initial dip in activity resulting from the market taking a pause, assessing consequences and potential for recovery. Divestitures were predicted to spike, but these expectations did not fully materialize due to the lower activity level being relatively temporary. Summer has seen a stabilization, with generally optimistic economic forecasts and less share price volatility. However, as we move into autumn, the outlook is again very uncertain as people brace for further restrictive measures.

Overall M&A activity is expected to grow but less exponentially than over the last five years or so. This is as it becomes clear that COVID-19 will have longer-term effects, with market actors being increasingly cautious and deals being subject to a higher degree of consideration and evaluation. Thinking ahead and adjusting to an altered economy are clearly key aspects for investors and advisers, especially while it is still unclear what the political future holds, notably with a hard Brexit on the horizon.

Our guide is intended to support you at the early stages of the M&A process, particularly in assessing the risks and opportunities of intended

transactions and navigating the international tax environment, which has become all the more important in the current climate. The aim of the guide is to provide you with basic information regarding the taxation of transactions taking place — or involving entities established — in a number of EMEA jurisdictions.

Each country chapter compares, in general terms, the tax consequences of acquisitions through asset deals versus acquisitions through share deals. Financing issues are also briefly addressed from a tax angle, and the opportunities for debt push-down are highlighted. Country chapters also address the tax aspects of holding the investment, as well as its future disposal (exit strategies). Finally, the basic tax regime for restructuring operations and pre-transaction carve-outs is briefly described, and each chapter also indicates whether special holding or investment regimes exist in the relevant jurisdiction.

The guide was prepared by Baker McKenzie tax lawyers (in each of the relevant jurisdictions) who specialize in tax transactional work. Together, they form a network of professionals called the EMEA Tax Transactions Group, which regularly assists clients involved in cross-border aspects (structuring, due diligence, and negotiation and drafting of contracts, taking into account due diligence findings).

The editorial board thanks all the authors for their willingness to share their expertise in tax transactional work and for the time they spent in preparing their respective country chapters.

We invite readers to contact any of the authors directly — or through their regular Baker McKenzie contact — if they would like any further information or advice in relation to a specific country.

We trust that this 2020 EMEA Tax Transactions Guide will provide you with useful information in determining your strategy for acquiring or disposing of businesses in the jurisdictions concerned.

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Austria



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At a glance

Corporate income tax rate (%)	25
Local income tax rate (%)	N/A
Capital gains tax rate (%)	25[1]
Tax losses carryforward (years)	Indefinite (with an annual 75% threshold for corporations)
Tax losses carryback (years)	Losses in 2020 for FY 2019 and 2018 limited to EUR 5 million (temporary COVID-19 measure)
Limitations on transfer of tax losses	Yes
Domestic withholding tax rate on dividends (%)	27.5, 25 or 0[2]
Domestic withholding tax rate on interest (%)	27.5, 25 or 0[3]
Capital duty (%)	0

[1] The 25% rate applies only to corporations. An exemption applies to certain capital gains on shares of a foreign (i.e., non-Austrian) corporation.

[2] The tax rate for dividends to natural persons as shareholders is 27.5%. If the dividend is distributed to an Austrian (or non-Austrian) corporation as shareholder, the rate is 25% (due to Section 93 (1a) of the Income Tax Act). An exemption (and thus a rate of 0%) applies, subject to the domestic implementation of EU directives or based on double tax treaty relief.

[3] The 0% rate is subject to the domestic implementation of EU directives; if no other relief is available, Section 93 (1a) Income Tax Act states that the rate is only 25% for interest paid to an Austrian or a non-Austrian corporate shareholder.

Transfer tax rates (%)	Depending on nature of transfer
Sale of movable assets	0
Sale of real estate assets	3.5
Sale of shares of a real estate-oriented company	0.5[4]
Standard VAT rate (%)	20
Neutral tax regime for restructuring operations	Yes
Tax consolidation	Yes
VAT grouping	Yes

I. Acquiring the investment

1. Acquisition through an asset deal

1.1 Corporate income tax

In the case of an asset deal, the acquirer can achieve a step-up in basis as they will usually receive the assets and liabilities at fair market value. Among unrelated parties, any purchase price can be agreed on and it does not necessarily need to be the fair market value. A transfer among related parties has to occur at arm's length prices.

As a rule, all tangible assets acquired will be revaluated at fair market value (and can thus be further depreciated on that revaluated basis). Further,

[4] If 95% of the shares are either transferred *uno actu* or combined in the hands of one shareholder.

intangible assets developed by the seller will also be revaluated at fair market value. Those assets cannot be entered into the balance sheet of the seller because they constitute self-developed assets; however, the purchaser may now depreciate such assets over their useful lifetime. The difference (if any) between the total price paid and the revaluated net asset basis acquired can be capitalized as goodwill. For tax purposes, such goodwill can be depreciated over a period of 15 years. For accounting purposes, however, the goodwill may be depreciated over its useful lifetime (the maximum period being 10 years).

Interest paid on the financing of the purchase price can be deducted for tax purposes and is recognized as a business expense, as long as the interest is not paid to related entities located in a low-tax jurisdiction (where the interest payments are either not taxed due to a personal tax exemption of the receiving entity, or taxed at a nominal tax rate lower than 10%, or the interest income is taxed at an effective tax rate lower than 10%, or the tax paid on the interest income can be recaptured — by either the receiving entity or its shareholders — and, therefore, the effective tax rate is lower than 10%).

Losses pertaining to the assets transferred will remain with the seller and may be used to offset any capital gain resulting from the asset deal. Losses carried forward may be offset with up to 100% of the capital gain (however, the 75% threshold does not apply in this case), provided the assets qualify as business or business unit. In the event that the seller is an individual, certain tax advantages may be applicable to the taxation of the capital gain. If any of the aforementioned is applicable, these circumstances should be factored into the calculation of the purchase price.

1.2 VAT

The sale of assets is generally subject to VAT at the standard rate of 20%. Because Austria does not have a VAT exemption for a transfer of a going

concern, each asset has to be assessed separately to ascertain whether its transfer triggers VAT and at what rate. If a complete business or part of a business is transferred, and provided the asset purchase agreement does not reveal the value the parties allocated to each asset, as a rule, the assets have to be assessed at their going concern value. The transfer of certain assets (e.g., receivables) and the transfer of liabilities are VAT-exempt. However, the liabilities transferred always constitute part of the purchase price and may influence the calculation of the goodwill, which is subject to 20% VAT. The sale of real estate (building) is only subject to VAT if the seller opts in for VAT. If the seller has deducted input VAT on the construction, renovation or maintenance of the building, the transfer of such building without VAT within a period of 20 years will normally trigger a pro rata recapture, at the level of the seller, of part of the VAT initially deducted.

The VAT due on the transfer is often paid by way of transferring the input VAT claim of the purchaser to the tax account of the seller by applying for such a transfer with the tax authorities. As a result, the VAT obligation of the seller is offset with the input VAT claim of the purchaser. If such an offsetting is not feasible, the purchaser will pay VAT to the seller, who will remit such VAT to the authorities. If the purchaser is entitled to deduct fully the input VAT, the payment of VAT on the transfer will merely be a pre-financing cost. However, if the purchaser is not entitled to deduct fully the input VAT, the nondeductible VAT due on the transfer will constitute an actual cost.

Related entities resident in Austria may be part of a VAT group if they are integrated financially, economically and organizationally into a group of companies. If the transfer is made between members of a VAT group, it will be out of the scope of VAT.

Rate	20%[5]/13%/10%[6]/0%[7] (depending on the asset)
Basis	Agreed-upon purchase price Special rules may apply to transactions between certain related entities.
Date of payment	Until the 15th of the second month following the supply
Liable person	Seller
Recoverability	Deductibility of VAT as input VAT will depend on the business activity of the purchaser Deductible VAT is to be entered as a credit item in the periodic VAT return. The tax authorities may refund any excess input VAT to the taxpayer.
Exemption	Only certain assets (such as receivables or real estate if not opted-in) are exempt from VAT.

1.3 Transfer tax

Apart from VAT, transfer tax may apply as a result of the transfer of certain assets that might be part of the acquired business.

[5] A special VAT rate of 19% applies to transfers effected by business residents in the regions of Jungholz and Mittelberg.
[6] The 10% VAT rate for nonalcoholic drinks from 13 April 2020 to 1 January 2021.
[7] The 0% VAT rate for protective masks from 13 April 2020 to 1 August 2020.

First, asset deals may trigger stamp duties if, in the course of the asset deal, rights or receivables are assigned. Depending on the underlying agreement and the mechanics on the transfer of the agreement, stamp duties at a rate of 0.8% for assignments and up to 1% for lease agreements might be triggered. However, in a transfer of a complete business, all agreements and rights pertaining to that specific business are transferred by operation of law (see Section 38 of the Austrian Business Code), that is, automatically transferred to the buyer when the business is sold without the obligation to enter into a separate assignment agreement. If rights or agreements are transferred by operation of law, as a rule, no stamp duties are triggered. To utilize this exemption, the asset purchase agreement has to be worded carefully.

Second, real estate transfer tax (RETT) is due on the transfer of real estate located in Austria.

Rate	3.5% (or 0.5%)[8] RETT plus 1.1% registration fees for registering the new owner in the land register
Basis	Agreed-upon purchase price, but at least the so-called "real estate value" (which is a specific tax value that is usually — as a very rough estimate — 20% to 30% below the fair market value); the "real estate value" plays a role in transactions without or partially without a consideration and in the course of share transactions in a real estate-oriented company.

[8] The rate of 0.5% applies in the case of a transfer of at least 95% of the shares, *uno actu*, in a real estate-owning partnership or corporation, or in case at least 95% of the shares are combined in one hand. In these cases, the tax basis is the so-called "real estate value," independent from the consideration paid for the shares.

Date of payment	One month after receipt of the tax assessment; if self-assessed, until the 15th of the second month in which the tax liability arose, which is usually the month of the transfer
Liable person	Seller and purchaser; in the case of self-assessment by a notary public or lawyer, the notary public and the lawyer are liable for the payment of the taxes
Tax deductibility for corporate income tax	As a rule, transfer tax on buildings is activated and then depreciated over the same period as the building itself. A depreciation of the purchase price allocated to the land is not possible.

1.4 Other acquisition costs

Notary fees	1% to 3% (negotiable) of the sale price, including trustee fees
Mortgage registration duties	Mortgage duties of 1.2% of the debt guaranteed by the mortgage
Transfer of leases	The lease agreement is transferred by operation of law (i.e., automatically transferred to the buyer when the business is sold without the obligation to enter into a separate assignment agreement).
Stamp duties	As the lease agreement is generally transferred by operation of law, no stamp duties should be triggered. However, if the transfer is construed as

	taking over the whole agreement, such transfer might be subject to stamp duties at a rate of 0.8% of the purchase price paid for the transfer. If the transfer is construed as the new conclusion of a lease agreement, stamp duties at 1% of the annual rent (generally) multiplied by the duration of the lease contract may be triggered. The stamp duty issue should be considered carefully.
Tax deductibility for corporate income tax	Other costs relating to the acquisition of real estate are deductible under the same rules as the ones for the deductibility of RETT (see Section 1.3, Transfer tax). Other acquisition costs are deductible at once for corporate income tax purposes.

1.5 Tax credits

Reinvestment tax credit	As a rule, any capital gain realized by a corporate seller on the occasion of a transfer of assets will be taxable at the standard corporate income tax rate (except for certain foreign — i.e., non-Austrian — participations). The transfer of hidden reserves to newly acquired assets and, therefore, avoidance of immediate taxation, is only available to individuals.
Other tax credits	N/A

1.6 Transfer of tax liabilities

If the asset deal is considered a sale of a business or part of a business, the purchaser is liable for all tax liabilities relating to the business that are attributable to the last calendar year prior to the transfer. This liability is limited to the tax liabilities the purchaser knew or should have known of and, further, it is capped with an amount equal to the fair market value of the assets received. Such taxes mainly concern VAT and wage tax, but not corporate income tax. It is not possible to limit this liability with effect vis-à-vis the tax authorities.

A similar liability exists for social security contributions, but this liability can be limited or excluded by obtaining a formal "nonpayment confirmation" from the social security agency indicating the exact outstanding amount. The purchaser will not be liable for any amount not mentioned in this confirmation.

2. Acquisition through a share deal

2.1 Corporate income tax

Unlike the situation under an asset deal, a purchaser cannot benefit from a step-up in basis in Austria if a business is acquired through a share deal. Interest paid on the financing of the acquisition costs is deductible for tax purposes only if the target is not yet part of the group of companies of the purchaser. In addition, interest is only deductible if it is not paid to a related entity located in a low-tax country (interest paid on the financing of the purchase price can be deducted for tax purposes and is recognized as a business expense as long as the interest is not paid to related entities located in a low-tax jurisdiction where the interest payments are either not taxed due to a personal tax exemption of the receiving entity, or taxed at a nominal tax rate lower than 10%, or the interest income is taxed at an effective tax rate lower than 10%, or the tax paid on the interest income

can be recaptured — by either the receiving entity or its shareholders — and, therefore, the effective tax rate is lower than 10%).

2.2 VAT and transfer tax

The sale of shares is exempt from Austrian VAT. In the past, the deductibility of the input VAT incurred in the framework of a share deal (e.g., VAT on advisory fees) was generally denied. However, pursuant to the *AB SKF* case at the European Court of Justice (ECJ 29 October 2009, C-29/08), it has been confirmed that such VAT is to be treated as deductible if it constitutes a general overhead cost for the seller and is not included in the price of the shares. Of course, if the acquirer is a holding company, VAT will still not be deductible, and adequate planning may be needed to prevent or at least reduce the incurring of extra cost.

The acquisition of shares of a real estate-oriented company is subject to RETT under the following conditions, provided that in all cases mentioned the company owns real estate in Austria:

- 95% of the shares in a corporation are transferred to another person *uno actu* (in one single transaction).
- 95% of such shares are concentrated (united) in one hand.
- 95% of such shares are concentrated in the hand of corporations forming a tax group due to Section 9 of the Austrian Corporate Tax Act.

Specific rules apply to partnerships owning real estate in Austria. In addition to the above-mentioned cases (95% of shares in a partnership are transferred to one and the same buyer or concentrated in one hand or in the hand of a tax group), RETT is also triggered if 95% of all partnership shareholders change within a period of five years.

The 95% limit applies as of 1 January 2016. Before that date, only the transfer/combination of 100% of the shares triggered RETT. Due to specific transitional rules, RETT will also be triggered if a person held, for example, 95% before 1 January 2016 and acquires additional shares after that date.

In cases of share transfers mentioned above, RETT is triggered at a rate of 0.5%, calculated on the specific "real estate value" (the "real estate value" is a specific tax value that is usually — as a very rough estimate — 20% to 30% below the fair market value). However, RETT on the acquisition of shares can be avoided if the shares are not acquired by a single purchaser (or combined in one hand or in the hand of a tax group), but by at least two purchasers, whereby both purchasers need to hold their shares on their own account. It is not possible to avoid RETT by way of fiduciary agreements.

2.3 Tax credits and other tax benefits

Losses carried forward on the level of the target company will usually survive change of control, unless a so-called shell acquisition is performed (see Section 2.4, Tax losses' preservation). Therefore, the purchaser may utilize, in general, the losses carried forward on the level of the target company for an indefinite period within the legal limitations. In an asset deal, meanwhile, those losses may only be utilized at the level of the seller to offset them with the capital gain resulting from the transfer.

Austrian income tax had not yet provided a loss carryback. Due to the COVID-19 issue, a carryback was introduced, whereby a loss in 2020 can be offset against profits of the last two years (i.e., the loss in 2020 can be offset against profits in the two previous years — 2019 and 2018). In order to benefit from the new loss carryback, it is necessary to have recorded profit years before the COVID-19 crisis. As a result, a loss carryback can lead to the complete elimination of tax payments for the last few years of profit. The loss carryback is offered to taxable persons both in the scope of

the Austrian Income Tax Act (Individuals) and in the Corporate Income Tax Act (Corporations).

The loss carryback is limited to the previous two years and has a limit of EUR 5 million. In contrast to the loss carryforward, the loss carryback has no annual 75% threshold for corporations. Pursuant to the current regulations the loss carryback is a personal right and, therefore, should only apply for the same tax number, which means that reorganizations in 2020 may make the carrying back of losses in 2020 more difficult or prevent it. Currently, the Ministry of Finance's Reorganization Tax Act does not provide guidance on that issue.

In the context of group taxation, the loss carryback may only be claimed by the parent company of the group, with a total maximum amount of EUR 5 million for the parent company and EUR 5 million for each group member. An ordinance announced by the Austrian Ministry of Finance should offer guidance in regard to group taxation.

2.4 Tax losses' preservation

The tax loss carryforward of a company that has been subject to a change of control generally remains valid and stays in the purchased company. However, if a shell acquisition is performed, losses carried forward may no longer be utilized. A shell acquisition is performed if, as a consequence of the acquisition, the following conditions are met:

- The organizational and economic structure of the target is substantially changed.
- There is a material change in shareholders.
- The transfer was effected against remuneration.
- The acquisition is not performed for recovery purposes to retain the employees.

An acquisition results in a change of the organizational structure if all or the majority of the managing bodies are exchanged. The economic structure is changed if the business unit that used to form the assets and the activity of the company cease to exist. This may happen if the former business unit is substantially diminished or terminated completely and is followed by a new activity, or if the former business unit is substantially increased (i.e., tripling its size over a short period of time; long-term increases are not harmful, however). A material change in shareholders is given if 75% of the shares are sold. Indirect shareholder changes are not harmful.[9]

A shell acquisition may also be considered if the above-mentioned conditions are partly fulfilled by the seller and partly by the purchaser. Further, it is irrelevant if such measures are taken prior or after the share transfer, and the consequences of a "shell acquisition" are also triggered if two conditions are fully, and one condition is only partially, met.

2.5 Transfer of tax liabilities

In the case of a share deal, all (hidden) tax liabilities of the past relating to the purchased company remain with the company and, therefore, are taken over by the purchaser together with the target entity. Conducting a thorough due diligence as to the existing tax liabilities is of high importance, therefore, as Austrian law provides for a statute of limitations of five years, which commences at the end of the year in which the tax was due. In the event tax fraud is involved, the period of limitations is up to 10 years. This general statute of limitations is extended by one year if the tax authorities take action to assess the tax due (such as issuing the initial tax assessment or commencing a tax audit). As a final statute of limitations, the law provides that in any event, the right to assess taxes is statute-barred for 10 years after the tax liability arose. This final statute of

[9] Austrian Administrative High Court 13 September 2017, Ro 2015/13/0007.

limitations does not apply to the right to execute the taxes due or for taxes being assessed in a court procedure.

It is usual practice to negotiate an indemnity for tax risks by negotiating guarantees for tax-related items.

2.6 Transaction costs

If the acquirer is an Austrian company, transaction costs relating to the acquisition of shares will be deductible at the level of that company (from any of its taxable profits), unless the company that was bought already belonged, directly or indirectly, to the group of companies of the purchaser. As indicated in Section 2.2, if the acquirer is a holding company (with no activities subject to VAT), the deductibility of the input VAT on these transaction costs is likely to become an issue, and planning may be needed to avoid or reduce the extra cost.

3. Financing the investment

3.1 Deductibility of financing expenses

As a rule, interest will be fully tax-deductible in the hands of an Austrian acquirer, irrespective of whether the transaction is structured as an asset deal or as a share deal. However, if the transaction is structured as a share deal, interest will not be deductible if the purchased company already belonged, directly or indirectly, to the group of companies of the purchaser. The deductibility of interest payments is also limited if made to a related entity located in a low-tax jurisdiction (where the interest payments are either not taxed due to a personal tax exemption of the receiving entity, or taxed at a nominal tax rate lower than 10%, or the interest income is taxed at an effective tax rate lower than 10%, or the tax paid on the interest income can be recaptured — by either the receiving entity or its shareholders — and, therefore, the effective tax rate is lower than 10%). Therefore, interest paid to a related company subject to an effective tax rate of less than 10% is no longer tax-deductible. Austria

believes that the requirements of Article 4 of the Anti-Tax Avoidance Directive (ATAD), concerning interest limitation rules, are fully met with these restrictions of the tax deductibility of interest payments. However, in December 2018 the European Commission announced a list of all the jurisdictions that have implemented measures considered equally effective to Article 4 of the ATAD. Austria was not included. In July 2019, the European Commission issued a press release announcing that infringement proceedings will be initiated against several member states regarding the ATAD. Subsequently, the European Commission sent a reasoned opinion to the Austrian government in July 2019, requesting it to implement the interest limitation rules in accordance with the directive and it formally opened an infringement procedure. If Austria does not comply with this request, the European Commission can refer the case to the European Court of Justice (ECJ).

A reactive measure of the Austrian legislature is still not being considered.

In the case of a loan granted by an affiliated company or shareholder, the interest rate has to comply with the arm's length principle.

In general, shareholders are free to decide whether to finance their company with equity or loans; there are no specific thin capitalization rules in Austria.

However, tax authorities may reclassify loans granted by shareholders, group companies and third parties guaranteed by group companies, as equity. From a tax perspective, for such reclassification of loans as equity, certain criteria (due to court jurisdiction) apply. These are mostly formal; that is, a written credit/loan contract is required that governs the amount of interest to be paid and the terms for redemption (due to a current court decision, securities are not a necessary part of the credit/loan contract in case of an intragroup credit/loan). It is important to mention that due to (older) court practice, material criteria can also apply (i.e., the equity of the company is insufficient to satisfy the solvency requirements of the

company, and the loan replaces equity from an economic point of view; the company's debt-to-equity ratio is significantly below the industry average; the company is unable to obtain any loans from third parties, such as banks; and the loan conveys rights similar to shareholder rights, such as profit participations). Though these material criteria have never been officially abandoned in court jurisdiction, they have, however, not been applied in both court and tax authority practices in the past decade. If a loan is reclassified (for example, during a tax audit), interest will not be deductible for tax purposes, and withholding tax on hidden profit distributions may become due.

Thin capitalization rules	None, but there are specific rules for credit/loans (which are mostly formal).
Arm's length principle	Any intragroup financing must meet the arm's length criteria. Therefore, the interest rate has to be comparable with the market rate, taking into account any adjustments based on the risk and performance profile.
Other limitations on the deducibility	The deductibility of interest paid to low-taxed related corporations is limited.

3.2 Withholding tax on interest

Under domestic law, there is no withholding tax on interest paid on loan agreements cross border to a corporate lender. Any other interest (such as credit interest on bank accounts) is subject to a 25% withholding tax, unless it can be demonstrated to the bank that the interest is business income of a domestic or foreign entity.

3.3 Group taxation

Austria provides for a group taxation regime that allows the profit and loss consolidation of the income of the group entities on the level of the head of the group. Where a foreign subsidiary is a member of the group, only the losses of such foreign subsidiaries may be merged with the income of the head of the group.

The head of the tax group must be an Austrian corporate entity (or a branch of an EU/EEA corporate entity) that has held more than 50% of the capital and voting rights in the subsidiary since the beginning of the subsidiary's fiscal year. Group taxation allows for a cross-border tax consolidation if an Austrian parent (first foreign tier) directly holds the foreign subsidiary and if the type of entity is comparable to an Austrian corporation from a legal perspective. Only those corporations resident in the EU and in the countries with which Austria has agreed on comprehensive administrative assistance, can be included in a tax group. The Austrian Ministry of Finance has published a list of all qualifying third countries. Only corporations (not partnerships) qualify as group members. The head of the group has to hold a direct or indirect participation in the participating group company of more than 50%, as well as the majority of the voting rights. If the head of the group holds a direct participation of less than the required threshold but more than 40%, it may form a group of heads together with other shareholders, each owning, directly or indirectly, more than 15% of the shares of the group company, thus enabling every member of the group of heads to benefit from group taxation.

The group so established needs to stay in place for at least three years. In the event the group is dissolved prior to the lapse of this period, the tax benefits, as displayed below, will generally be revoked and a recapture of the previous tax benefits will occur. In a mere domestic group, 100% of the annual taxable income of the group companies will be attributed to the head of the group, irrespective of the actual participation held. If a group

of heads is in place, 100% of the profit or loss of the group companies will be allocated to the members of the group of heads according to their specific participation. If a participating group company is a foreign corporation, only the losses will be attributed to the head of the group, but not the profits. Further, the losses are only allocated according to the actual participation held by the head and can only be accounted for up to 75% of the consolidated income of the head of the group. The utilization of losses of foreign group members is also limited to 75% of the domestic group income. Excess losses are included in the loss carryforwards for subsequent years. Should the foreign group company offset the losses against future gains or should the group company leave the group, there will generally be a recapture of the tax benefits.

Goodwill acquired in the course of a normal share deal is not deductible in Austria. Further, the goodwill deduction for acquisitions in the ambit of the group taxation has been abolished for acquisitions occurring on or after 1 March 2014. Remaining amortization amounts (one-fifteenth per year) from past acquisitions remain deductible for tax purposes.

II. Holding the investment

1. Main tax costs to be considered

Taxable income	Net income less deductible expenses (i.e., interest expenses, depreciations, etc.) is subject to corporate income tax at the standard rate of 25%.
Depreciation	Depreciation is allowed in respect of all tangible fixed assets (except land), as well as purchased intangible fixed assets, on the basis of their normal useful life. As a rule, the depreciation booked for accounting purposes is also accepted for tax purposes if

	depreciated on a straight-line basis. Any other depreciation methods (declining or progressive depreciation) are not accepted for tax purposes. Further, specific tax rules provide for mandatory depreciation rules for certain assets.
Write-offs or capital losses on shares	Write-offs on foreign shares are not deductible for Austrian tax purposes unless the Austrian shareholder opted for taxation (dividends or capital gains from certain foreign shares are otherwise tax exempt), or taxation occurs due to the shift from the exemption to the credit system. Write-offs on Austrian shares held by an Austrian company are generally accepted unless the drop down in value was triggered by a distribution; the write-off, however, has to be spread over a period of seven years.
Capital losses	Capital losses on foreign shares that are not subject to taxation are only deductible under certain conditions if realized in a liquidation of the relevant company (or if the shareholder opted for taxation). Capital losses on domestic shares are deductible.
VAT	As a rule, all supplies of goods and services are subject to VAT. The standard Austrian VAT rate is 20%. Reduced rates of 13% or 10% and exemptions may apply. Input VAT incurred on supplies constitutes a cost if it is not deductible.

License business tax	N/A
Other taxes	Stamp duties need to be paid when entering into agreements (i.e., especially if an asset deal is executed).

2. Distribution of profits

Withholding tax on dividends distributed by a local company	As a rule, withholding tax on dividends is levied at the rate of 27.5% (25% to corporate shareholders). An exemption from withholding tax on dividends paid to foreign corporate shareholders applies, based either on double tax treaty relief or on the domestic implementation of the Parent-Subsidiary Directive. Dividend distributions by resident subsidiaries to nonresident EU parent companies are exempt from any withholding tax under the following conditions: • The parent company has a form listed in the directive. • The parent company owns at least 10% of the capital in the subsidiary. • The shareholding has been held directly for an uninterrupted period of one year. Both treaty relief and relief based on the Parent-Subsidiary Directive are subject to withholding if

	tax avoidance is a given. Tax avoidance is deemed a given if the receiving company is active in the asset administration, it does not employ its own personnel and it does not maintain its own business facilities (directive shopping through shell companies). If the Parent-Subsidiary Directive is applicable, the avoidance criteria is interpreted autonomously by the ECJ and, therefore, a general assumption of an abusive design (e.g., in cases involving third countries) without closer consideration of the requirements (in particular those of EU law) is inadmissible. The ECJ jurisprudence that relates to wholly artificial arrangements aimed at circumventing the application of the legislation of the member state is applicable. A justifiable reason for a structure is not only given if the structure is necessary to achieve the goal but also if the goal could be achieved more easily and safely with the chosen structure. If the anti-abuse provision kicks in, tax must be withheld at a rate of 27.5%/25% and the shareholder may start a refund procedure.
Taxation of dividends received by a local company	Dividends received by an Austrian corporation from participation in an Austrian AG or GmbH are exempt from corporate income tax. A preliminary withholding tax of 25% has to be withheld if the shareholder holds a participation of less than 10%. Such tax may be returned in a refund procedure. Capital gains are always subject to tax.

	This national participation exemption also applies to dividends received by an Austrian corporation from a foreign corporation in which it has held a share of 10% or more for at least one year ("qualified participation"), if this subsidiary is either a resident in an EU member state and not exempt from corporate income tax, or is a resident abroad but comparable to an Austrian AG or GmbH. In the case of qualified participations, this exemption also covers capital gains. The same applies to "portfolio participations," which is participation below 10%. In this case, only dividends can benefit from the exemptions, and capital gains are subject to corporate income tax at a rate of 25%. Further, if portfolio participations in companies that do not reside in the EU are concerned, there has to be an agreement on comprehensive administrative assistance in place for the exemption to apply. If there is no such agreement, such dividends are generally taxed at a rate of 25%. The tax exemption of any foreign dividend is only applicable provided the income from such participations is not tax-deductible at the level of the foreign corporation. Dividends resulting from considerable portfolio participations (>5%) as well as qualified participations will, in any event, be subject to tax based on a shift from the exemption to the credit system if (i) the total tax charge of the foreign company based on the determination of the taxable income by Austrian tax accounting

	methods does not exceed 12.5%, (ii) the foreign company derives mainly passive income (e.g., interest, licensing, dividends, financial leasing or invoicing/factoring entities), and (iii) the Austrian CFC regime does not apply to these participations. If such a shift to the credit system takes place, any foreign tax imposed on the dividend — preferentially the corporate income tax — can be credited to the Austrian tax payable. If the foreign tax to be credited exceeds the Austrian tax liability, the excess amount can be carried forward and utilized in subsequent years. Capital gains derived from portfolio participations are always subject to tax. Further, in the case of qualified participations, the Austrian shareholder may also opt for taxation if they envisage that the participation will be loss making. Only if the taxpayer opted for taxation will losses resulting from the impairment of foreign qualifying participations be tax-deductible in Austria. The exercise of such an option is irrevocable.

III. Selling the investment

1. Asset deal

Capital gain taxation	Any capital gain realized upon the transfer of assets will normally be subject to tax in the hands of a corporate seller at the standard corporate income tax rate of 25%. If the asset

	transferred qualifies as a business or part of a business, the capital gain can be offset with any loss carried forward up to 100% of the capital gain, provided the assets qualify as a business or business unit, and the 75% limitation rule does not apply.
Selling costs/transfer taxes	The transfer of assets will trigger VAT and possibly RETT and stamp duties. Any cost incurred by the seller in relation to the transfer is taken into account to calculate the net gain, which will be subject to corporate income tax.
Sale by corporate nonresidents	Any gain realized by a foreign corporate nonresident upon the disposal of assets forming part of an Austrian permanent establishment is taxable in Austria at the normal corporate income tax rate of 25%. The same rule applies to capital gains realized upon the disposal of Austrian real estate property.

2. Share deal

Capital gain taxation	Capital gains realized on the sale of shares in an Austrian company are taxable at a rate of 25%, unless a double tax treaty allocates the taxing right to the country where the seller resides. Most treaties concluded by Austria provide for such a provision (one exception, among others, is the treaty with France). An exception may further apply if the shares are held in a real estate

	company. However, if the Austrian company is a real estate company, most double tax treaties allocate the taxing right to Austria, provided the real estate is predominantly located in Austria. Any capital gain realized by an Austrian company selling shares in a domestic company is also subject to tax at a rate of 25%. Capital gains resulting from the sale of a foreign participation are exempt from tax, provided the participation is a qualified participation and there is no shift from the exemption to the credit system.
Selling costs/transfer taxes	Generally, the transfer of shares in an Austrian company does not trigger transfer taxes. Regarding VAT, a tax exemption applies; regarding RETT, tax only becomes due if at least 95% of the shares in a real estate-owning corporation (or partnership) are transferred *uno actu* or are combined in one hand.

IV. Tax regime for restructuring operations

Austrian law, namely the Austrian Reorganization Tax Act, provides for comprehensive regulations generally allowing the tax-neutral reorganization of companies by means of, among others, mergers, demergers, contributions or conversions. Reorganizations may only occur at fair market values in certain situations. Depending on the underlying facts, the act also allows for prolonged taxation (i.e., payment in installments) over the duration of seven years for cross-border mergers where EU companies or companies that reside in the EEA are involved. If during the seven-year period the respective assets are sold or transferred

outside the EU/EEA, all outstanding installments are due. The act further allows for a retroactivity of nine months.

In general, most of these reorganizations allow for the survival of losses carried forward, subject to the limitation of the above-mentioned shell acquisition and certain other conditions as laid down in the Austrian Reorganization Tax Act. In particular, and apart from the shell acquisition test, losses in most reorganization measures only survive if the loss-causing asset is still existent at the effective date of the reorganization. As an additional limitation, the loss-making asset has to exist on the effective date in comparable extent. Any of these reorganizational measures are exempt from VAT. RETT is lowered to 0.5% of the so-called "real estate value" (see Section 2.2) if the Austrian Reorganization Tax Act is applicable.

Merger or demerger	This may be done in a tax-neutral way (rollover regime) depending on whether it is a purely domestic merger or a cross-border merger. Outbound cross-border mergers can be effected in a tax-neutral way if the assets remain in an Austrian permanent establishment. Losses may survive under the specific rules of the Austrian Reorganization Tax Act.
Contribution of universality or business divisions or shares	This may also be done in a tax-neutral way, unless Austria loses the taxing right in the assets/shares contributed. Losses may survive under the specific rules of the Austrian Reorganization Tax Act.
Impact of foreign reorganization	The Austrian Reorganization Tax Act also applies to foreign reorganization measures involving Austrian assets and, therefore, tax neutrality might be given. Losses may survive under the

transactions on Austrian assets	specific rules of the Austrian Reorganization Tax Act.
Filialization of an Austrian establishment	This may also be done in a tax-neutral way, unless Austria loses the taxing right in the assets contributed. Losses may survive under the specific rules of the Austrian Reorganization Tax Act.

Belgium



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At a glance

Corporate income tax rate (%)	25[1]
Local income tax rate (%)	N/A
Capital gains tax rate (%)	25[1]
Tax losses carryforward (years)	Indefinite, but now with an annual limitation in use
Tax losses carryback (years)	N/A[2]
Limitations on transfer of tax losses	Yes
Domestic withholding tax rate on dividends (%)	30
Domestic withholding tax rate on interest (%)	30
Capital duty (%)	0
Transfer tax rates (%)	
Purchase of movable assets	0

[1] The standard corporate income tax rate was decreased from 29.58% (including a 2% crisis surtax) to 25% (and the crisis surtax was abolished) as from financial year 2020 (linked to assessment year (AY) 2021) onward. A participation exemption applies to capital gains on shares (subject to a one-year holding period for companies) and a spread taxation regime may apply to capital gains on certain other assets (each time subject to conditions).

[2] A one-off carry back of tax losses has been introduced, however, in the framework of COVID-19 for the losses of a fiscal year that follows a fiscal year ending in the period between 13 March 2019 and 31 December 2020.

Purchase of real estate assets	12.5 or 10[3]
Purchase of shares of a real estate-oriented company	0[4]
Standard VAT rate (%)	21
Neutral tax regime for restructuring operations	Yes
Tax consolidation	Since FY 2019
VAT grouping	Yes

Preliminary comment: Consider DAC 6 reporting obligation

Belgium has implemented the EU Directive 2018/822 of 25 May 2018 (DAC 6) by the act of 20 December 2019. Since 1 July 2020, Belgian intermediaries (or, in certain cases, the relevant taxpayers) are obliged to report certain cross-border arrangements to the Belgian tax authorities (that will then automatically exchange such information with tax authorities in other EU member states through the Common Communication Network). Even though the Belgian act only entered into force on 1 July 2020, the reporting obligation applies with retroactive effect to reportable arrangements of which the first step was implemented between 25 August 2018 and 1 July 2020.

The reportable arrangements are cross-border arrangements that meet at least one of the relevant hallmarks (and the main benefit test, as the case

[3] The rate is 12.5% if the real estate is located in Brussels or in the Walloon region and 10% if it is located in the Flemish region. However, in certain cases, the transfer may, be subject to VAT instead of transfer tax.

[4] Except in the case of simulation or application of the general anti-avoidance rule (GAAR) for registration duties (transfer tax).

may be). The Belgian act implemented all of the relevant hallmarks of Annex IV of the DAC 6 Directive.

It is important to consider carefully the possible impact of this reporting obligation in the context of M&A transactions, not only in the due diligence of the target, but also with respect to the transaction itself as some of the hallmarks could potentially apply.

I. Acquiring the investment

1. Acquisition through an asset deal

1.1 Corporate income tax

In the case of an asset deal, the acquirer can achieve a step-up in basis, as it will receive the assets and liabilities at fair market value. As a rule, all tangible assets acquired need to be revaluated at fair market value (and can then be further depreciated on that revaluated basis). The difference (if any) between the total price paid and the revaluated net asset basis acquired can be activated as goodwill. Such goodwill can be depreciated over its expected lifetime (which cannot be longer than five years for accounting purposes). For tax purposes, however, the Belgian tax authorities generally require that the goodwill (clientele) be depreciated over a period of 10 to 12 years.

An asset deal also makes it possible for the financing costs of the acquisition (if any) to be directly offset against the income from the acquired business (which is not as easy to achieve in the case of a share deal in Belgium, as will be seen later). If the acquisition is funded through additional equity financing, the notional deduction for incremental risk capital (notional interest deduction (NID)) will possibly be available in relation to the business acquired (which is certainly not the case under a share deal).

As a transfer of assets is normally subject to tax in the hands of the seller (see below), it can be expected that in comparison to a share deal, the price due under an asset deal would be higher (as it would normally anticipate the corporate income tax due in the hands of the seller and possibly also any further tax due upon remittance of the net gain to the ultimate shareholders).

In net present value terms, the advantage of the step-up in basis that can be achieved at the level of the purchaser is not likely to compensate for the higher price that such a purchaser will have to pay because of the additional taxation due in the hands of the seller, except if the latter taxation can be reduced on the basis of existing tax loss carryforward at the level of the selling entity (which might otherwise be lost after the transaction).

1.2 VAT

The sale of assets is normally subject to VAT at the standard rate of 21%. The transfer of certain assets (e.g., receivables) and liabilities is, however, VAT-exempt. The sale of buildings is subject to VAT only if the buildings are still new for VAT purposes (i.e., if they are transferred within a period of two years following the year of their first use or in case of substantial refurbishment). If input VAT has been deducted by the seller on the construction or the renovation of the buildings, the transfer of such buildings without VAT within a period of 15 or five years, respectively (calculated as of 1 January of the year during which the right to deduct the input VAT arose), will normally trigger a pro rata recapture at the level of the seller of (part of) the VAT initially deducted.

The purchaser normally pays to the seller the VAT due at the occasion of the transfer, and the seller is to remit such VAT to the authorities. If the purchaser is entitled to deduct fully the input VAT, the payment of such VAT merely represents a pre-financing cost. However, if the purchaser is not entitled to deduct fully the input VAT, the nondeductible portion of

the VAT due at the occasion of the transfer constitutes an actual cost for the purchaser.

As an exception to the rules above, the transfer of assets and liabilities under an asset deal is exempt from VAT if it relates to an "entire business" or a "branch of activity" (so-called transfer of going concern (TOGC) exemption). Transferred items constitute an "entire business" or a "branch of activity" if, for the purchaser, they constitute a combination of elements, allowing the purchaser to carry on an independent economic activity. If all elements relating to an existing business are transferred, the TOGC exemption normally applies. If certain elements of the business are excluded from the transfer, it may be advisable to seek confirmation on the application of the TOGC exemption through a formal or informal ruling.

If the transfer is made between members of a VAT group, it is also exempt from VAT (irrespective of whether the conditions for the TOGC exemption are met or not).

Rate	21%
Basis	Agreed-upon transfer price for the relevant assets Special rules may apply to transactions between certain related entities.
Date of payment	This depends on the situation of the seller; it is generally due on a monthly basis (i.e., within 20 days after the end of the month during which the transaction was completed or the price was paid to the seller, whichever comes first) but for certain companies it is only due on a quarterly basis (i.e., within 20 days after the end of the quarter during which the transaction

	was completed or the price was paid to the seller, whichever comes first).
Liable person	Generally, it is the seller, but VAT is financially borne by the purchaser.
Recoverability	Deductibility of input VAT paid depends on the business activities of the purchaser. The deductible VAT is to be entered as a credit item in the periodic VAT return. If the deductible VAT for the period concerned exceeds the VAT due, a refund can be requested. The refund is normally made on a quarterly basis.
Exemption	TOGC exemption; a ruling is sometimes advisable to confirm the application of this exemption.

1.3 Transfer tax

Transfer taxes may apply with respect to the transfer of certain assets (whether as part of the business acquired or separately). In particular, real estate transfer tax is due at the occasion of the transfer of real estate, provided that such transfer is not subject to VAT.

Rate	12.5% (in the Walloon and Brussels regions) or 10% (in the Flemish region) The general rate is reduced to 4%, 5% or 8% (depending on the region) for acquisitions by professional real estate brokers under certain conditions.

	The rate is 2% on the transfer of "leasehold" (*emphytéose* or *erfpacht*, which can be granted for up to 99 years).
Basis	Agreed-upon transfer price or fair market value (if the latter is higher) in the case of transfer of real estate Cumulated amount of rental fees and charges in the case of transfer of "leasehold"
Date of payment	Upon registration of the acquisition (payment via notary public) and at the latest, four months after the signing of the private deed of sale
Liable person	The purchaser, but the seller has joint liability (and the notary public acts as a type of paying agent).
Tax deductibility for corporate income tax	As a rule, any transfer tax related to the acquisition of real estate is activated and is then depreciated over the same period as the relevant building itself. Although no depreciation is possible for any portion of the transfer tax relating to the sub-laying land, a tax deduction can possibly be achieved for that amount if a write-off is justified and booked at the end of the year of acquisition (or at a later stage).

1.4 Other acquisition costs

Notary fees	Notary fees are normally only due if real estate is being transferred as part of the

	transaction. Such fees amount to the deed costs (averaging EUR 700-1,100) plus a percentage of the selling price for the real estate, decreasing from 4.56% of the lowest bracket to 0.057% of the highest bracket. The total amount thereof is subject to VAT. However, notary fees may also be due in a specific situation where the special company law procedure for the transfer of a business division or entire business is being applied.
Mortgage registration duties	Mortgage duties of 1% of the debt guaranteed by the mortgage; additional mortgage tax of 0.3% upon transcription into the mortgage registry
Transfer of leases	Any transfer of lease agreement needs to be registered, and a 0.2% registration duty is due on the total amount of the remaining lease payments at the time of such transfer.
Stamp duties	N/A
Tax deductibility for corporate income tax	Other acquisition costs relating to the acquisition of real estate are deductible under the same rules as the ones for the deductibility of real estate transfer tax (see above). Other acquisition costs relating to other assets are deductible at once for corporate income tax purposes.

1.5 Tax credits

Reinvestment tax credit	As a rule, any capital gain realized by a corporate seller on the transfer of assets is taxable at the standard corporate income tax rate. Under certain conditions, however, taxation can be spread in time if the seller decides to reinvest an amount equal to the total sales proceeds in other amortizable assets. However, as it cannot be determined whether the seller will apply that regime, it is rather unusual to take that timing advantage into account in determining the price under an asset deal.
Other tax credits	An investment deduction applies in relation to certain new assets acquired by companies or individuals. If applicable, such an investment deduction can be spread over the lifespan of the assets, and be proportionate to the amortization booked on the latter. Any spread investment deduction still to be applied at the time of the transfer of the relevant assets might be accelerated at the level of the seller, but does not transfer to the acquirer. The acquirer will not benefit from any investment deduction in relation to assets that are not new at the time of acquisition.

1.6 Transfer of tax liabilities

A purchaser of assets and liabilities (qualifying as an "entirety of goods composed of elements that enable keeping the clientele") can, under

certain circumstances, be held jointly liable for all corporate tax liabilities of the seller that exist at the end of the month following the one during which the tax authorities were notified of the transfer, and up to the amount already paid for such transfer (or the liabilities already assumed) at that time.

A similar joint liability provision exists for VAT and social security.

Joint liability can be avoided if a "clean" certificate is obtained from the relevant authority and enclosed with a copy of the transfer deed upon its notification to the same authority. At the time of the notification, the certificate may not be older than 30 days.

It is always of paramount importance to notify the relevant authorities of the transfer once completed, irrespective of whether or not a "clean" certificate was applied for or was delivered. In the absence of such a notification, the purchaser remains jointly liable for all tax liabilities of the seller for an indefinite period, up to an amount equivalent to the price paid or the liabilities taken over.

2. Acquisition through a share deal

2.1 Corporate income tax

Contrary to the situation under an asset deal, a purchaser cannot benefit from a step-up in basis in Belgium if a business is acquired through a share deal. However, as the seller will usually be exempt from tax on any capital gain realized on the occasion of such a share deal (often, also if the seller is an individual), this type of deal will normally result in a lower acquisition price (compared to an asset deal, whereby the overall taxation to be borne by the seller is generally taken into account in the determination of the purchase price). As an example, the price for the acquisition of shares of a real estate company is often subject to a discount designed to reflect part (generally 50%) of the latent taxation on the hidden gain related to the underlying asset(s).

An acquisition through a share deal makes it more difficult for the purchaser to offset any financing costs (if any) against the income from the acquired business. The new tax consolidation regime (i.e., the so-called group contribution regime) only takes effect after a certain uninterrupted holding period (and subject to certain conditions) and it is often not easy to implement alternative debt push-down strategies (see Section 3.3).

2.2 VAT and transfer tax

The sale of shares is normally exempt from Belgian VAT.

In the past, the deductibility or recoverability of the input VAT incurred by the seller in the framework of a share deal (e.g., VAT on advisory fees) was generally denied. Pursuant to the ruling of the European Court of Justice in the *AB SKF* case, however, such VAT is, under certain circumstances, to be treated as recoverable if it constitutes a general overhead cost for the seller and is not (merely) included in the price of the shares, but in the price of the corresponding goods or services (as well). However, if the seller is a mere passive holding company, the VAT will generally not be recoverable.

The recoverability of input VAT incurred by a purchaser in the framework of a share deal (e.g., VAT on advisory fees) depends on the purchaser's outgoing transactions. If the purchaser is a mere passive holding company, the VAT is generally not recoverable.

If the purchaser is an active holding company, which is involved in the management of its subsidiary, the input VAT is generally recoverable (unless it would have a mixed VAT exempt status). The input VAT incurred on broken-deal costs is also generally (fully) recoverable by an active holding company, as long as it had the intention to actively manage the target company (*Ryanair* case (C-249/17), 17 October 2018).

2.3 Tax credits and other tax benefits

The advantage of a share deal (compared to an asset deal) is that all tax credits available at the level of the purchased company can normally be maintained after the change of control.

Certain tax assets (in particular, tax loss, dividend received deduction (DRD), and NID carryforwards), however, may be forfeited if the change of control is considered not to meet legitimate needs of a financial or economic nature (see the following section).

2.4 Tax losses' preservation

The tax loss carryforward (as well as the DRD, NID, and investment deduction carryforwards) of a company that has been subject to a change of control can continue to be carried forward despite such a change of control, only if the change of control meets legitimate needs of a financial or economic nature (equivalent to a business motives test).

According to the tax authorities, such legitimate needs are to be appreciated at the level of the company itself. In practice, the condition should be deemed to be satisfied if the company's activities and level of employment are maintained. If needed, a ruling can be obtained ahead of the transaction to confirm the transferability of these tax assets despite the change of control.

If the legitimate needs condition is not satisfied, the tax loss, DRD, NID, and investment deduction carryforwards are forfeited as of (and including) the year of the change of control. Caution, therefore, is recommended to prevent the profits of the year during which the transaction takes place from becoming (unexpectedly) taxable as a result of the change of control.

2.5 Transfer of tax liabilities

In the case of a share deal, all (hidden) tax liabilities relating to the past will be inherited by the purchaser.

Careful pre-acquisition due diligence, therefore, is of utmost importance. As a rule, the statute of limitations in Belgium is three years (as from the closing of the accounting year) for corporate income tax matters, while it is seven years in the case of tax fraud (but in certain specific cases, the tax authorities can reassess even after the expiration of the above three or seven-year periods). A five-year period applies for withholding tax matters.

Under current practice, it is still unusual (but not impossible) to obtain full indemnity from the seller for any tax liabilities relating to the past. Instead, specific indemnities are more often agreed upon for specific tax risks identified during the due diligence.

2.6 Tax consolidation regime

Traditionally, Belgium did not have any tax consolidation regime for income tax purposes. However, since FY 2019, a special form of consolidation regime applies (i.e., the so-called group contribution regime). Under this regime, Belgian corporate taxpayers can transfer part of their profits to other qualifying Belgian group entities, subject to certain conditions and limitations. The receiving group entity can then offset the profits received with its current-year losses (but not with tax assets from previous years).

This new regime applies to Belgian companies and Belgian establishments of foreign companies resident in an EEA member state. The receiving group entity only qualifies to the extent that it is either a direct parent or a direct subsidiary of the corporate taxpayer transferring its profits, each time with a minimum participation of at least 90%, or if both are sister companies, whereby the joint parent holds a direct participation in both entities of at

least 90%. Moreover, the entities only qualify for this group contribution regime if the minimum participation of 90% has been held for at least five consecutive years. This five-year period is calculated as from 1 January of the fourth calendar year that precedes the calendar year by reference to which the so-called "assessment year" is called.[5]

As an example, if a Belgian company is acquired by another Belgian company in the course of 2020 and both companies have a fiscal year that corresponds to the calendar year, then these companies can enter into a group contribution arrangement at the earliest as of FY 2024 (which corresponds to AY 2025), provided that the minimum participation continues to be held at least until the end of 2025.

Please also note in this regard that it is not possible to use the new regime (once the five-year requirement is met) for any loss built up at the level of either of the two companies over the period between the acquisition and the first year of application of the group contribution regime.

3. Transaction costs

3.1 Deductibility of financing expenses

As a rule, financing expenses are fully tax-deductible in the hands of a Belgian corporate purchaser, irrespective of whether the transaction is structured as an asset deal or as a share deal. In the case of a share deal, if the purchaser has other taxable activities, the financing charges relating to

[5] Please note in this regard that for companies with a fiscal year that coincides with the calendar year, the assessment year is the year which follows that fiscal year (e.g., for fiscal year ending on 31 December 2020, the relevant assessment year is AY 2021). For companies with a split fiscal year, however, the assessment year is equal to the year in which the relevant fiscal year ends (e.g., for fiscal year ending on 31 September 2020, the relevant assessment year is AY 2020).

the acquisition of the shares can be used to offset the taxable income resulting from these other activities (with no recapture at a later stage).

Undoubtedly, the financing expenses need to meet the general deductibility conditions for tax purposes. These rules require, among others, that such expenses (and hence, indirectly, the acquisition as such) must have been made to acquire or maintain the taxable income of the purchaser. According to certain case law, the expense also needs to be aligned with the corporate purpose of the relevant company. However, the most recent Supreme Court case law seems to step away from this requirement.

Interest expenses, of course, also need to meet the arm's length test.

Traditionally, a general thin capitalization rule providing for a five to one debt-to-equity ratio applied for interest payments made to intragroup companies and (related or unrelated) companies located in tax havens.

Since FY 2019, Belgium applies an interest deduction limitation rule whereby the net borrowing costs are tax-deductible only up to EUR 3 million or 30% of the adjusted earnings before interest, taxes, depreciation, and amortization (EBITDA) (i.e., the interest deduction capacity), whichever is higher. Excess interest deduction capacity can be transferred between Belgian members of a group (i.e., Belgian companies or Belgian establishments of EEA companies) under certain conditions.

An exception to the interest limitation rule is made for standalone entities, the financial sector and public infrastructure projects. Loan agreements concluded before 17 June 2016 are grandfathered and remain subject to the thin capitalization rule as long as they have not been subject to any fundamental change. The thin capitalization rule also continues to apply for interest payments made to tax havens (but, in that case, in addition to the application of the 30% EBITDA rule).

Thin capitalization rules	A five to one debt-to-equity ratio applies if the interest expenses are paid to: (i) a group entity and the loan is grandfathered (see above); or (ii) a (related or unrelated) taxpayer that is not subject to tax or that is, with respect to the interest income received, subject to a tax that is "notably more advantageous" than the tax regime applicable to such income in Belgium. A one to one debt-to-equity ratio applies if the interest expenses are paid to a lender that carries out managing functions (e.g., a director mandate) at the level of the borrowing company. An exception, however, applies if the lender is a Belgian company. Such exception should be extended to EU companies.
Interest limitation rule	Since FY 2019, an interest limitation rule applies whereby the net borrowing costs are tax deductible only up to EUR 3 million or 30% of the adjusted EBITDA, whichever is highest. The EBITDA is determined taking into account taxable income only.
Arm's length principle	In order to be deductible, the interest rate may not exceed the applicable market rate, taking into account the specific circumstances of the case and, in particular, the duration of the loan and the financial condition of the borrower. Specific transfer pricing rules apply if the lender is a related entity. Under certain circumstances, an interest rate that would be considered too low (i.e., below

	market rate) could, if the lender is a related party, lead to actual taxation, at the level of the Belgian borrower, of the so-called abnormal or benevolent advantage received (by that Belgian borrower). The same applies to interest-free loans.
Other limitations on the deductibility	Some older case law suggests that in order to be deductible, an expense needed to be in line with the corporate purpose of the relevant company. On that basis, it was always recommended to check whether a contemplated acquisition would fit within the corporate purpose of the acquiring company. According to Supreme Court case law, an extension of the corporate purpose of the acquiring company immediately before the transaction could even be ignored, potentially, in order to determine whether the previously mentioned condition was satisfied. However, the most recent Supreme Court case law seems to step away from this corporate purpose test. Nevertheless, caution is still recommended.

3.2 Withholding tax on interest

As a rule, a 30% withholding tax applies to any interest paid, subject to a possible exemption or reduction based on the applicable tax treaty.

Moreover, there are a number of specific domestic exemptions from withholding tax, including, among others, the following:

- an exemption for interest paid to a related EU company (application of the Interest and Royalties Directive, but with a more extensive

scope than the directive itself, since interest paid to companies with a qualifying indirect participation link to the Belgian payer also qualifies for the exemption in Belgium)

- an exemption for interest paid to credit institutions established in the EEA or in a treaty country
- an exemption for interest paid on certain registered bonds held by qualifying nonresident investors
- an exemption for interest on certain mortgage debts

3.3 Debt push-down

Under the new tax consolidation rules (so-called group contribution regime — see Section 2.6 above for more details), an uninterrupted minimum holding period of five years is required in order to benefit from the regime and, therefore, in case of acquisition, it generally takes an interim period of at least three full calendar years after acquisition before the rules can have effect between the new shareholder and the target (and there is no possibility to benefit from the regime for that period, even in retrospect). Moreover, any alternative form of debt push-down is generally more difficult to achieve than in many other countries. Belgian tax authorities generally consider that the merger of a target company into a (highly) leveraged acquisition vehicle does not meet the business motives test and, therefore, does not qualify for a tax-neutral treatment (rollover relief). A ruling can be asked for to confirm the tax neutrality of mergers, but a positive ruling is not likely to be obtained if there is a (substantial) tax advantage resulting from the merger.

In this context, the most typical way of achieving debt push-down in Belgium is to have the acquired company borrow funds in order to finance a capital reduction or a distribution of retained earnings that can then serve to repay the acquisition debt at the level of the acquiring entity. Note, however, that while traditionally accepted, such structures involving

a leveraged equity distribution or repayment are often challenged now by the tax authorities, and with success in recent case law; therefore, caution and proper documentation is certainly required. In addition, note that specific timing issues may arise because of the one-year holding period for dividend-withholding tax exemptions and the two-month waiting period for capital reductions. Specific considerations may be required, therefore, to mitigate the negative impact of these waiting periods.

II. Holding the investment

1. Main tax costs to be considered

Taxable income	Net income less deductible expenses (i.e., interest expenses, depreciations, etc.) is subject to corporate income tax at the standard rate of 25% as of FY 2020/AY 2021
Deduction for the incremental risk capital invested/NID	The taxable basis is reduced by the deduction for NID. This NID used to apply on the full amount of net equity of the relevant company, subject to certain adjustments. However, since FY 2018, the NID base is no longer the full amount of a company's risk capital of the prior fiscal year, but one-fifth of the positive difference (if any) between the amount of risk capital (i.e., net equity with certain adjustments)[6] at the end of the relevant taxable period and the amount of risk capital (with certain adjustments) at the end of the fifth preceding taxable period. The benefit of the NID (on the increase in risk capital) is now

[6] That is, the amount of risk capital is reduced with an amount representing the fiscal value of any participation held in another company.

	spread out over five years (provided each time the increase is maintained compared to the fifth preceding year). The current rate of the NID for FY 2020/AY 2021 (to be applied on the aforesaid difference) is negative (i.e., -0.092%) and, therefore, does not give rise to any effective NID (whereas the rate for SMEs is increased by 0.5% to 0.408%).
Depreciation	All tangible fixed assets (except land) as well as most intangible fixed assets can be depreciated based on their normal useful lifetime. As a rule, the depreciation booked for accounting purposes is also accepted for tax purposes. In a number of cases, however, specific tax rules deviate from the accounting depreciation rules. As an example, companies can deduct only a portion of the first depreciation annuity for tax purposes (i.e., in proportion to the period of the year during which they have actually held that newly acquired asset).
Write-offs or capital losses on shares	Write-offs on shares are not deductible for Belgian tax purposes. Capital losses on shares are deductible, but only if they are realized at the liquidation of the relevant company, and only up to the amount of the actual loss realized on the capital of that company. In such case, if a (nondeductible) write-off has been booked previously at the level of the

	Belgian parent company, the deductibility of that portion of the loss can still be obtained at the time of the liquidation, but subject to the aforesaid limitation. In addition, if a portion of the capital of the liquidated company has, at some point, been reduced through absorption of losses of that company, that portion of the capital (which is no longer there at the time of liquidation) can, under certain circumstances, still be taken into account for the determination of the deductible loss at the level of the Belgian parent company.
VAT	As a rule, all supplies of goods and services are subject to VAT. The standard Belgian VAT rate is 21%. Reduced rates (of 12% and 6%) and exemptions may apply. Input VAT incurred on supplies constitutes a cost if it is not deductible.
License business tax	N/A
Other taxes	Real estate tax is calculated annually (at the rate determined by local authorities) on the "cadastral value" of any real estate owned by the company (that value being generally much lower than the actual rental value of the property). Any real estate tax paid constitutes a deductible expense for corporate income tax purposes.

2. Distribution of profits

Withholding tax on dividends distributed by a local company	As a rule, withholding tax on dividends is levied at the rate of 30%. Under specific circumstances, SMEs are able to benefit from a reduced 20% or 15% rate. An exemption from withholding tax applies in a number of circumstances, and is subject to certain conditions (such as the absence of tax abuse): • Foreign pension funds: Subject to certain conditions, an exemption applies to distributions to foreign pension funds or other (tax-exempted) not-for-profit organizations, except if these entities are contractually obliged to retrocede that dividend income to another beneficiary that does not qualify for the exemption. Note that a rebuttable presumption of tax abuse applies if the pension fund did not hold the full ownership of the shares for an uninterrupted period of at least 60 days. In such case, the withholding tax exemption will not be applicable with respect to the dividends unless the pension fund can provide counterproof by demonstrating that the situation/transaction was made for sound business reasons. • Parent company in the EU or in a treaty country: Subject to certain conditions of

	minimum holding (10%) and duration of minimum holding (one year), an exemption also applies with respect to distributions to qualifying parent companies established in the EU (list of qualifying companies in the appendix to the Parent-Subsidiary Directive) or parent companies (with a company form similar to the ones included in the aforesaid appendix) established in a country having a tax treaty with Belgium that includes a qualifying exchange of information clause, in each case, provided that such a parent company is: (i) a resident of the relevant country, both according to its national legislation and to the treaties concluded by that country; and (ii) regularly subject to tax in the relevant country without benefitting from any derogatory tax regime. • Domestic distributions: An exemption also applies, subject to the same conditions of minimum holding (10%) and duration of minimum holding (one year), when both the parent company and the subsidiary are Belgian companies. • Qualifying foreign companies with a participation of less than 10%, but with an acquisition value of at least EUR 2.5 million, can also benefit from a full exemption of withholding tax on the

	dividends received from that participation under certain circumstances.
Fairness tax	Up until recently, large Belgian resident companies and nonresident companies with a Belgian establishment could be subject to a so-called "fairness tax" in case of dividend distributions. The fairness tax was a taxation of 5.15% of the part of the dividend distribution deemed to have been insufficiently taxed due to the use of current year NID and tax losses carried forward. The Belgian Constitutional Court, however, annulled the fairness tax as of AY 2019.

Taxation of dividends received by a local company	Both domestic and foreign dividends received by a Belgian company can benefit from a now full exemption (so-called dividend received deduction or DRD) provided that the following conditions apply: • The Belgian company holds a minimum participation of at least 10% in the distributing company, or a minimum participation with an acquisition value of at least EUR 2.5 million. • The shares are held in full ownership for at least one year. • The distributing company (or the distributed income) has been regularly subject to tax (so-called taxation requirement), which is determined by reference to five specific exclusion rules, as well as exceptions thereto. • No tax abuse is present. In respect of foreign dividends, only the net dividend received (i.e., after the deduction of the foreign withholding tax, if any) is included in the taxable basis, and subject to the 100% exemption referred to above. Any foreign withholding tax applied to the dividend received is not creditable against the Belgian tax liability of the receiving company.

III. Selling the investment

1. Asset deal

Capital gain taxation	Any gain realized upon the transfer of assets will normally be subject to tax in the hands of a corporate seller at the standard corporate income tax rate of 25% (as from FY 2020/AY 2021). In certain circumstances, if a reinvestment is made, taxation can be spread over the amortization period of the assets acquired in reinvestment. In addition, in the case of a distribution to the shareholders (of the Belgian company entering into an asset deal), the net gain realized (after a corporate income tax charge) will also be subject to a withholding tax charge of, in general, 30%. However, an exemption applies if the shareholders satisfy the conditions for the parent-subsidiary exemption from withholding tax (or any other exemption of withholding tax on dividends).
Selling costs/transfer taxes	The transfer of assets will be subject to VAT, except if the TOGC exemption applies (see above). It will also be subject to real estate transfer tax if real estate ownership is transferred at the occasion of the transaction.

	Any transfer cost incurred by the seller in relation to the transfer is taken into account when calculating the net gain that is subject to corporate income tax.
Sale by corporate nonresidents	Any gain realized by a foreign corporate seller upon the disposal of assets forming part of a Belgian permanent establishment is taxable in Belgium at the normal corporate income tax rate. The same applies in relation to any gain realized upon the disposal of Belgian real estate property (irrespective of whether the latter is part of — or constitutive of — a permanent establishment). In the case of sale of real estate, a withholding obligation rests with the notary public executing the transaction, whereby the withholding tax (due at the rate of 25%) is to be calculated on the gross gain. That withholding tax can be offset against the final corporate income tax due (and possibly lead to a refund), but it often entails a pre-financing disadvantage for the foreign taxpayer.

2. Share deal

Capital gain taxation	Capital gains on shares realized by a Belgian company are exempt from tax, provided all the DRD conditions (now including the minimum participation condition) are met. If any of these conditions are not satisfied, the standard corporate tax rate of 25% applies

	(as of FY 2020/AY 2021).[7] Capital gains realized by foreign investors upon the disposal of shares of a Belgian company are generally not taxable in Belgium (there are exceptions for individual investors) or exempt based on a tax treaty between Belgium and the country of the investor.
Selling costs/transfer taxes	Generally, no transfer taxes are due at the occasion of the sale of the shares of a Belgian company. Any costs incurred by the seller in relation to the transfer of the shares are taken into account in determining the amount of the net gain (which is taxable or exempted, as the case may be). Hence, these costs are generally not deductible from any other income of the seller.
Sale by corporate nonresidents	This is exempt from Belgian taxation.

IV. Tax regime for restructuring operations

In Belgium, a number of restructuring operations can take place under a tax neutrality regime, often subject to certain conditions (which can include a business motives test).

Specific rules also apply with respect to the transfer or maintenance of the tax loss carryforward of companies (or businesses) involved in a tax-

[7] Prior to FY 2020 linked to AY 2021, if the conditions were generally satisfied but the shares had been held for less than one year at the time of disposal, a 25.5% tax applied instead of the then standard corporate tax rate of 29.58%.

neutral reorganization. Often, these rules lead to a reduction in the amount of losses that can be further carried forward, based on the relative proportion of the fiscal net equity of the company (or business) that has suffered these losses, to the aggregate fiscal net equity of all companies or businesses involved in the tax-neutral reorganization (the losses being only transferred or maintained in that proportion — the so-called loss reduction rule). The same rule applies to the transfer or maintenance of DRD carryforward.

Most tax-neutral restructuring operations are also exempt from VAT (provided, of course, that the conditions for the TOGC exemption are met).

Pre-transaction carve-outs can be contemplated, but a confirmation of their tax neutrality through a ruling is often conditioned by a waiting period (standstill) for the subsequent sale of the shares, the existence of very specific business motives justifying the transaction or certain reinvestment obligations.

Belgium has implemented the so-called exit tax rules under ATAD. As a result, any transfer of assets out of Belgium will normally be taxable, while any transfer of assets to Belgium will normally give rise to a step-up in basis.

Merger or demerger	This can be entirely tax-neutral (rollover regime), subject to a business motives test. An advance decision (ruling) can be sought to obtain confirmation that this test would be considered to be satisfied in the factual circumstances of a particular case. In addition, cross-border mergers or demergers with an EU company can be tax-neutral, provided that (and as long as) the assets and liabilities transferred at the occasion of such merger or demerger are kept in a Belgian

	establishment. If the assets leave Belgium, any capital gain (deemed) realized is or will become subject to tax. The so-called "loss reduction rule" applies to all companies involved in a merger or demerger.
Contribution of universality or business division	This can also be tax-neutral (rollover regime) subject to a business motives test. In the case of a pre-transaction carve-out (where the ultimate intention is to sell the shares), the business motives test is unlikely to be considered satisfied, unless a certain waiting period is taken into account or specific business reasons exist. Subject to a ruling, a subsequent disposal of the shares can also be authorized if certain reinvestment obligations are satisfied. Losses or DRD carryforward incurred by the contributor prior to the contribution are not transferred to the receiving company, while losses or DRD carryforward of the receiving company are to be reduced under the loss reduction rule.
Impact of foreign reorganization transactions on Belgian assets	Specific tax neutrality (rollover regime) and loss reduction rules also apply with respect to Belgian assets transferred at the occasion of a tax-neutral reorganization involving non-Belgian entities (that hold these assets in Belgium).

Filialization of a Belgian establishment	When all the assets and liabilities of the Belgian establishment of a foreign company are contributed into a Belgian company, the gain realized (or crystallized) at that occasion can be rolled over without the transaction having to meet a business motives test. There is discussion as to whether or not any available tax losses carried forward (TLCF) of the Belgian establishment can be carried over to the Belgian company (subject to a loss-limitation rule).
Exchange of shares	If a Belgian company undertakes a share-for-share exchange, the gain realized (or crystallized) at that occasion will either be exempt (in which case, there will be a step-up in the share basis) or, if it is not exempt (among others, because the "taxation requirement" for the participation exemption to apply is not satisfied or because the minimum holding period of one year is not satisfied), the gain can, under certain circumstances, be rolled over.

V. Special holding/investment regimes

Pricaf Privée/Private Privak	A special (favorable) tax regime applies with respect to a specific form of Belgian Private Equity Investment Fund (*Pricaf Privée or Private Privak*), which, as a rule, can invest only in non-listed companies. Under such a favorable tax regime, the taxable basis is limited to the sum of the amount of disallowed expenses of the fund and the amount of abnormal or benevolent advantages received. Specific VAT (exemption) rules apply to limit the amount of unrecoverable VAT at the level of the fund. Such funds normally require at least six unrelated investors, and their investment possibilities are restricted. Only non-listed shares or shares of other similar funds can be held by the fund. Accessory cash investments are authorized (but subject to strict conditions). Loans to non-listed companies are authorized.
Sicafi/Vastgoedbevak SIR/GVV	A tax regime similar to the one applicable to *Pricaf Privée* or *Private Privak* applies to Belgian Real Estate Trusts (*Sicafi/Vastgoedbevak*) and since July 2014 to Regulated Real Estate Companies (*Société Immobilière Réglementée* (SIR)/*Gereglementeerde Vastgoedvennootschap* (GVV)).

FIIS/GVBF	Since 2016, that favorable tax regime also applies to so-called Specialized Real Estate Investment Funds (SREIFs) (*fonds d'investissement immobilier spécialisé* (FIIS)/*gespecialiseerde vastgoedbeleggingsfondsen* (GVBF)). Such fund vehicle (which has to take the form of a fixed capital company) provides asset managers and institutional investors with a flexible and efficient alternative for holding and managing their real estate investments in Belgium and abroad. The tax regime applicable to such SREIFs has been designed to alleviate as much as possible any risk of double taxation or undue leakage (hence, while it is formally not a regime of tax transparency, it comes very close to it).

Czech Republic



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At a glance

Corporate income tax rate (%)	19
Local income tax rate (%)	N/A
Capital gains tax rate (%)	19[1]
Tax losses carryforward (years)	5
Tax losses carryback (years)	2[2]
Limitations to transfer of tax losses	Yes
Domestic withholding tax rate on dividends (%)	15/35[3]
Domestic withholding tax rate on interest (%)	15/35[4]
Capital duty (%)	0
Transfer tax rates (%)	

[1] Capital gains are treated as ordinary income for corporations; certain capital gains on the sale of participations are exempt from corporate income tax under the Czech participation exemption regime.

[2] Tax losses offset against the previous two tax periods cannot exceed CZK 30 million aggregated.

[3] As of 2013, dividends paid to recipients of states with which the Czech Republic does not have any treaty for avoiding double taxation or treaty for the exchange of tax information are subject to a withholding tax of 35%. These are also subject to tax treaty provisions and EU legislation.

[4] As of 2013, the interest paid to recipients of states with which the Czech Republic does not have any treaty for avoiding double taxation or treaty for the exchange of tax information is subject to a withholding tax of 35%. This is also subject to tax treaty provisions and EU legislation.

Sale of movable assets	0
Sale of real estate assets	4[5]
Sale of shares of a real estate oriented company	0
Standard VAT rate (%)	21
Neutral tax regime for restructuring operations	Yes
Tax consolidation	No
VAT grouping	Yes

I. Acquiring the investment

1. Acquisition through an asset deal

1.1 Corporate income tax

In the case of an asset deal, a step-up in basis can be achieved by the acquirer, as the acquirer will receive the assets and liabilities at their acquisition price. Generally, all tangible assets acquired will be revaluated at acquisition price. In the case of the sale of a business or a part thereof, the difference (if any) between the aggregate price paid and the original net book value can be designated as an adjustment to the acquired assets. This adjustment to acquired assets can be depreciated over 15 years, for both Czech accounting and tax purposes.

An asset deal also makes it possible for the financing costs of the acquisition (if any) to be directly offset against the income from the

[5] Real estate transfer tax may be repealed — please see Chapter I.1.3 for more information.

acquired business (which is harder to achieve in the case of a share deal in the Czech Republic). If the acquisition is funded through equity financing, no notional interest deduction will be available.

As proceeds derived from a transfer of assets are normally subject to corporate income tax in the hands of the seller (see below), one can expect that, compared to a share deal, the price due under an asset deal will be higher (as it will take into account the corporate income tax due in the hands of the seller, possibly together with any further tax due upon remittance of the net gain to the ultimate shareholders).

In net present value terms, the advantage of the step-up in basis that will be achieved at the level of the purchaser is not likely to compensate for the higher price that the purchaser will have to pay because of the additional taxation due in the hands of the seller. An exception applies if the latter taxation can be reduced on the basis of existing tax loss carryforward at the level of the selling entity, which would otherwise be lost after the transaction.

1.2 VAT

General comments

In an asset deal, the transfer of the assets is, in principle, regarded as several distinct supplies, each of which triggers its own VAT consequences. The local Czech sale of assets is normally subject to VAT at the standard rate of 21% or a reduced rate of 15% or 10%, which applies to several types of assets. The transfer of certain assets (e.g., receivables) and the transfer of liabilities are, however, not subject to VAT or are VAT-exempt.

The transfer of residential real estate (including residential houses, family houses and flats) qualifying as social housing is subject to 15% VAT. Residential real estate qualifying as social housing is precisely defined in Czech VAT law.

The transfer of nonresidential real estate and residential real estate not qualifying as social housing within five years after the issuance of the first official (real estate) approval is subject to a 21% VAT rate.

The transfer of both residential and nonresidential real estate after a period of five years after the issuance of the first official (real estate) approval is VAT-exempt without the right of VAT deduction (unless the seller and purchaser agree to charge VAT). Such a transaction may therefore negatively influence the entitlement of the seller to recover input VAT.

The transfer of land is exempt from VAT without the right to input VAT deduction, with the exception of land on which a building or infrastructure is or may be erected, which is subject to a 21% VAT rate. In addition, the transfer of land (if not exempt from VAT) can be subject to a reduced VAT rate of 15%, provided that no other building than social housing is part of this land.

Provided that the parties opt to charge VAT on the transfer of immovable property (land or real estate), the transaction will be subject to the local reverse-charge regime (i.e., the purchaser will assess and pay the VAT). At the same time, the purchaser will be entitled to the VAT deduction. Therefore, the transaction will be neutral from a cash flow perspective (provided that the purchaser is entitled to fully deduct the input VAT).

For the sake of completeness, even an in-kind contribution of assets (in respect of which the input VAT was deducted) is generally considered a taxable supply. This does not apply to an in-kind contribution of a "business" or "a part of the business" (see TOGC exemption).

If the local reverse-charge regime does not apply (e.g., in the case of a transfer of real estate within five years after the issuance of the first real estate approval), the VAT due on the transfer is paid by the purchaser to the seller, who will remit such VAT to the authorities. If the purchaser is

entitled to fully deduct input VAT, the payment of VAT on the transfer will merely be a pre-financing cost. However, if the purchaser is not entitled to fully deduct the input VAT, the nondeductible VAT due on the transfer will constitute an actual cost for the purchaser.

Transfer of a going concern (TOGC)

As an exception to the rules above, the transfer of assets and liabilities that qualifies as the sale of "a business" or "a part of the business" is not subject to VAT under the so-called TOGC exemption.

As a matter of law, a TOGC qualifies neither as a supply of goods nor as a supply of services and, hence, falls outside the scope of VAT. VAT is therefore not chargeable at the occasion of such TOGC. If the TOGC relief applies, but VAT is nevertheless invoiced by the seller, this VAT will qualify as "incorrectly charged VAT." This VAT is not recoverable for a buyer and will constitute a cost for them. TOGC is therefore not an optional treatment under Czech VAT law.

Classifying a deal as a TOGC is a complex issue that requires a detailed analysis of individual contractual conditions from the perspective of both Czech and EU VAT laws, including relevant case law (e.g., *C-497/01 Zita Modes Sarl*). In general, to qualify for the TOGC exemption: the transaction must consist of a transfer of an undertaking or a part of an undertaking capable of independent economic activity (i.e., not just a sale of a stock); the buyer must intend to operate the business or the part of the business transferred (i.e., not just liquidate the business); and the transfer must cover all assets related to a particular business.

According to Czech law, it is possible to exclude individual items from the transfer without affecting the classification as a TOGC. However, the functionality of the business must remain the same after such exclusion.

Even though the TOGC itself falls outside the scope of VAT as a matter of law, the costs relating to such TOGC (e.g., consultancy fees) may in principle qualify as VAT-deductible, subject to general rules.

Sale between Czech VAT group members

If the transfer is made between members of a Czech VAT group, the transaction will not be subject to VAT (irrespective of whether the conditions for the TOGC exemption are met).

Summary table

Rate	21% (15% or 10% VAT rate or VAT exemption may apply to certain assets.)
Basis	In general, agreed-upon transfer price for the relevant assets. Special rules could apply to transactions between certain related entities.
Date of payment	A VAT assessment (if relevant) is generally triggered by the date of taxable supply or the date of receipt of payment, whichever occurs earlier. VAT due on the transfer needs to be declared by the seller in its regular VAT return and paid (if not balanced by input VAT) by the deadline for filing the relevant VAT return (i.e., upon the end of the monthly or quarterly taxable period of the seller). The VAT due on the transfer also needs to be reported in the monthly invoice-matching report.

Liable person	Generally the seller, but VAT (if any) is economically borne by the purchaser. The purchaser can become the guarantor for VAT under certain conditions. Under the local reverse-charge regime, the purchaser is liable.
Recoverability	The deductibility of VAT levied on transfer depends on the business activities of the purchaser. Deductible VAT is to be entered as a credit item in the periodic VAT return of the purchaser. If the deductible VAT for the period concerned exceeds the VAT due by the purchaser, a refund can be requested.
Exemption	An exemption applicable to a TOGC or to a specific transferred property (e.g., certain real estate) can be used.

1.3 Transfer tax

Real estate transfer tax is levied on the transfer of the ownership of real estate located in the Czech Republic. The purchaser pays the real estate transfer tax. An increase in the tax rate from 3% to 4% went into effect in 2013. The tax is levied on either the agreed-upon purchase price or the value determined by special calculation, whichever is higher.

There are a number of exemptions from real estate transfer tax, including: (i) the first transfer, as part of the seller's business, of uncompleted construction and completed construction that has not been used; and (ii) the transfer of real estate in the course of a merger and/or demerger of a company.

The transfer of share/quota holding in a Czech real estate company is not subject to real estate transfer tax.

In 2020, new legislation was approved that repealed the real estate transfer tax with the effect of December 2019. As such, transfers of real estate that were registered with the Czech Cadastral Register from 1 December 2019 onwards are not subject to the real estate transfer tax anymore.

Rate	Real estate transfer tax of 4%[6]
Basis	The transfer price or a value determined by special calculation, whichever is higher
Date of payment	Three months from the month of registration of the transfer of ownership in the Real Estate Cadastre
Liable person	The purchaser
Tax deductibility for corporate income tax	Deductible for corporate income tax if paid in the relevant tax period

1.4 Other acquisition costs

Notary fees	Apart from the specific situation where a special company law procedure is being applied to the transfer of a business or part of the business, notary fees are normally not due.
Mortgage registration duties	CZK 1,000 (approximately EUR 40)

[6] May be repealed.

Stamp duties	N/A
Tax deductibility for corporate income tax	Other costs relating to the acquisition of real estate are deductible under the same rules as those for the deductibility of real estate transfer tax (see above). Other acquisition costs are deductible at once for corporate income tax purposes.

1.5 Tax credits

Reinvestment tax credit	Generally, any capital gain realized by a corporate seller at the occasion of a transfer of assets will be taxable at the standard corporate income tax rate. There is no reinvestment relief available in the Czech Republic.
Other tax credits	N/A

1.6 Transfer of tax liabilities

A purchaser of assets and liabilities (even in the case of a sale of business or a part of the business) is not liable for the tax liabilities of the seller.

As an exception, the purchaser of assets might be considered as a guarantor for possibly unpaid VAT in certain cases.

2. Acquisition through a share deal

2.1 Corporate income tax

Unlike in an asset deal, a purchaser cannot benefit from a step-up in basis in the Czech Republic if a business is acquired through a share deal. However, as the seller will usually be exempt from tax on any capital gain realized at the occasion of a share deal (often, also if the seller is an

individual), such share deal will normally result in a lower acquisition price (compared to an asset deal whereby the overall taxation to be borne by the seller is generally taken into account in the determination of the purchase price).

An acquisition through a share deal, however, makes it more difficult for the purchaser to offset any financing costs (if any) against the income from the acquired business. There is indeed no tax consolidation in the Czech Republic, and it is not always easy to implement alternative debt push-down strategies either (see below).

2.2 VAT and transfer tax

The sale of shares is normally exempt from Czech VAT.

The deductibility or recoverability of the input VAT incurred by the seller in the framework of a share deal (e.g., VAT on advisory fees) needs careful examination, since it very much depends on the facts of each individual case and this topic is not very crystallized in case law. For example, the *AB SKF* case of the European Court of Justice (*C-29/08 AB SKF*) implies that the VAT related to "share deal" inputs is recoverable if the inputs constitute a part of general overhead costs for the seller and relevant costs are not included in the price of the shares (but rather in the prices of a company's taxable outputs).

If the seller is a mere holding company, VAT is generally unrecoverable. However, under specific circumstances, even a holding company may qualify for the recovery of certain input VAT.

In general, the recoverability of input VAT incurred by a purchaser in the framework of a share deal (e.g., VAT on advisory fees) will depend on the purchaser's outgoing transactions and the circumstances of the particular deal.

2.3 Tax allowances and other tax benefits

The advantage of a share deal (compared to an asset deal) is that all tax allowances available at the level of the purchased company will normally be maintained after the change of control.

Tax losses carried forward and notional interest deduction carryforward may, however, be forfeited if the revenue structure test is not met.

2.4 Tax losses' preservation

Czech law (created after 2004) generally allows carrying forward tax losses for five years and, from 2020, carrying back tax losses for two years. The maximum amount that can be carried back is limited to CZK 30 million in total for the two preceding tax periods.

However, tax losses may not be carried forward or back if the persons directly participating in the capital or control of the purchased company have substantially changed, as compared with the period for which the tax loss was assessed ("**Substantial Change**"). A Substantial Change is deemed to have occurred if there is a change in shareholders owning more than 25% of the registered capital or voting rights. There is no exemption from the Substantial Change for intragroup transfers or reorganizations.

Despite any Substantial Change, the purchased company would be allowed to carry forward or back its tax losses if it provides evidence that at least 80% of its ordinary income (revenues) achieved in the period following the Substantial Change was generated as part of the same business activity, as conducted by the purchased company in the period in which the tax loss occurred. Rules governing this restriction on losses carried forward are quite complex. It is also possible to ask for a binding ruling in this respect.

2.5 Transfer of tax liabilities

In the case of a share deal, all (including hidden) tax liabilities relating to the past are inherited by the purchaser.

Careful pre-acquisition due diligence in this respect is therefore of utmost importance. Generally, the statute of limitations in the Czech Republic is three years, but may be extended up to 10 years under specific circumstances.

Under current practice, it is quite common to obtain a full indemnity from the seller for any tax liabilities relating to the past.

2.6 Transaction costs

If the purchaser is a Czech company, transaction costs relating to the acquisition of shares (including any irrecoverable VAT cost in relation to such transaction costs — see above) will normally not be deductible at the level of that purchaser, as they will form part of the acquisition value of the shares.

3. Financing the investment

3.1 Deductibility of financing expenses

Generally, financing expenses will be fully tax-deductible in the hands of a Czech purchaser only in the case of an asset deal.

In the case of a share deal, the financing costs will not be tax-deductible if the income from the shares (dividends and possible capital gain upon its disposal) is exempt from the corporate income tax under the participation exemption regime.

Interest and other financing expenses on credits and loans from related persons exceeding six times the debtor's own equity (for banks and insurance companies), or four times the debtor's own equity (for other entities), are not tax-deductible. The same treatment also applies to interest and other financing costs on loans provided by a third party but refinanced by a related party (back-to-back loans).

Obviously, the financing expenses need to meet the general deductibility conditions that apply to any expense, which in essence require that such expenses be incurred in order to generate, maintain or secure taxable income.

The interest expenses paid to related parties also need to meet the arm's length test.

Thin capitalization rules	A 4:1 debt/equity ratio applies if the interest expenses are paid on loans provided by related parties or on loans provided by a third party but refinanced by a related party (back-to-back loans).
Arm's length principle	To be deductible, the applicable interest rate on loans provided by related parties must follow an arm's length standard.
Other limitations on the deductibility	As indicated above, in order for the financing expenses to be deductible, such expenses must be incurred in order to generate, maintain or secure taxable income. Under the case law of the Czech Supreme Administrative Court, in order to reduce the tax base, expenses must be incurred for the purpose of earning a profit, and further, there must be a direct and immediate connection between such expenses and anticipated income. Such a direct and immediate relationship implies that without incurring these expenses, the taxpayer would not earn or would not have an opportunity to earn the anticipated income.

	It is always necessary to consider whether or not an expense incurred will generate income (profit), secure such income in the future or, at least, help maintain income obtained as a result of previous activities of the company.

Additional restrictions on tax deductibility of interest are effective as of 1 January 2020 in connection with the implementation of the Anti-Tax Avoidance Directive (ATAD).

3.2 Withholding tax on interest

Generally, a 15% withholding tax applies to any interest paid, subject to possible tax treaty exemptions or reductions. As of 2013, the interest paid to recipients of states with which the Czech Republic does not have any treaty for avoiding double taxation or treaty for the exchange of tax information is subject to a withholding tax of 35%.

Moreover, there are a number of specific domestic exemptions from withholding tax, including (among others):

- an exemption for interest paid to a related EU company (application of the Interest and-Royalties Directive)
- an exemption for interest paid on bonds issued outside the Czech Republic

3.3 Debt push-down

In the absence of any tax consolidation regime in the Czech Republic, debt push-down is more difficult to achieve than in many other countries.

A merger of a target company into a (highly) leveraged acquisition vehicle is frequently used to obtain a consolidation of interest expense and profits of the acquired company.

The tax deductibility of interest incurred on loans used to finance dividend distributions has been subject to discussions in the Czech Republic. In a recent decision, the Czech Supreme Administrative Court confirmed the tax deductibility of interest incurred on loans used to finance dividend distributions and, thus, opened new possibilities for recapitalization by way of dividend distribution.

II. Holding the investment

1. Main tax costs to be considered

Taxable income	Net income less deductible expenses (i.e., interest expenses, depreciations, etc.) is subject to corporate income tax at the standard rate of 19%.
Depreciation	Depreciation is allowed in respect of all tangible fixed assets (except land), as well as intangible fixed assets, on the basis of fixed depreciation periods and depreciation rates.
Write-offs or capital losses on shares	Write-offs on shares are not deductible for Czech tax purposes. Capital losses on shares are generally not tax-deductible (with the exception of certain portfolio investments).
VAT	Generally, all supplies of goods and services carried out in the course of business activities are subject to VAT. The standard

	Czech VAT rate is 21%. A reduced rate of 15% or 10% and exemptions may apply. Input VAT incurred on purchased supplies generally constitutes a cost if it is not deductible. Input tax may be deducted depending on the activities of the entrepreneur. Transactions between entities of the same VAT group are disregarded for VAT.
License business tax	N/A
Other taxes	Real estate tax, road tax and other minor duties may apply depending on the nature of the business.

2. Distribution of profits

Withholding tax on dividends distributed by a local company	Generally, withholding tax on dividends is levied at a rate of 15%. This withholding tax is also subject to relief under the relevant tax treaty. As of 2013, dividends paid to the recipients of states with which the Czech Republic does not have any treaty for avoiding double taxation or treaty for the exchange of tax information are subject to a withholding tax of 35%. Under the Czech implementation of the Parent-Subsidiary Directive, a 0% tax on dividends will apply if: (i) the receiver is a tax resident within the EU; (ii) the payer and the receiver have legal forms enlisted in the

	Parent-Subsidiary Directive; (iii) the receiver holds the Czech payer for at least 12 months (either retrospectively or prospectively); and (iv) the receiver holds at least a 10% stake in the payer. The exemption does not apply if these conditions are not met by the beneficial owner of dividends.
Taxation of dividends received by a local company	Generally, withholding tax on dividends is levied at a rate of 15%. Under Czech tax law, 0% tax on dividends will apply if: (i) the receiver is a Czech tax resident; (ii) the payer and the receiver have the legal form of a limited liability company, joint stock company or cooperative; (iii) the receiver holds a stake in the Czech payer for at least 12 months (either retrospectively or prospectively); and (iv) the receiver holds at least a 10% stake in the payer. The exemption does not apply if these conditions are not met by the beneficial owner of dividends.

III. Selling the investment

1. Asset deal

Capital gain taxation	Any gain realized upon the transfer of assets will normally be subject to tax in the hands of a corporate seller at the standard corporate income tax rate (19%). If the net gain is to be distributed to the shareholders of the Czech company entering

	into an asset deal, one should also take into account a withholding tax charge of generally 15% (in the case of dividend distribution or liquidation surplus). As of 2013, dividends paid to the recipients of states with which the Czech Republic does not have any treaty for avoiding double taxation or treaty for the exchange of tax information are subject to a withholding tax of 35%. An exemption, however, applies if the shareholders satisfy the conditions for the Parent-Subsidiary exemption from the withholding tax (or any other exemption from withholding tax on dividends).
Selling costs/Transfer taxes	The transfer of assets will be subject to VAT, except if the TOGC or another exemption applies (see above). It will also be subject to real estate transfer tax if real estate ownership is transferred. Any such costs incurred by the seller in relation to the transfer are taken into account when calculating the net gain that will be subject to corporate income tax.
Sale by corporate nonresidents	Any gain realized by a foreign corporate seller upon the disposal of assets forming part of a Czech permanent establishment is taxable in the Czech Republic at the normal corporate income tax rate of 19%. The same applies in relation to any gain realized upon the disposal of Czech real estate property (irrespective of whether the latter is part of

	— or constitutive of — a permanent establishment).

2. Share deal

Capital gain taxation	Capital gains on shares realized by a Czech company are generally subject to tax, unless the participation exemption applies. Similarly, a capital gain realized by a foreign company upon the disposal of shares of a Czech company is generally subject to tax unless the participation exemption applies, or such capital gain is protected by a particular tax treaty.
Selling costs/Transfer taxes	Generally, no transfer taxes are due upon the sale of the shares of a Czech company. Any costs incurred by the seller in relation to the transfer of the shares are taken into account to determine the net gain (that is frequently) to be exempted. Hence, these costs are generally not deductible from any other income of the seller.
Sale by corporate nonresidents	The capital gain realized by a foreign company, upon the disposal of shares of a Czech company, is generally subject to tax unless the participation exemption applies, or such capital gain is protected by a particular tax treaty.

IV. Tax regime for restructuring operations

A number of restructuring operations can take place under a tax neutrality regime, subject to certain conditions.

Specific rules also apply with respect to the transfer of the carried-forward tax losses of companies or businesses involved in a tax-neutral reorganization. Such transfer is, however, not possible if the principal objective, or one of the principal objectives, for the reorganization is the reduction or avoidance of tax liability. This is especially the case if it is obvious that the reorganization is not carried out for proper economic reasons (e.g., restructuring or rationalization of activities of the participating companies). If any of the involved entities has not engaged in business activity for a period longer than 12 months before the reorganization, it will be deemed that there are no due economic reasons for the reorganization, unless some of the involved entities provide evidence to the contrary.

Most tax-neutral restructuring operations are also not subject to VAT.

Merger or demerger	This can be entirely tax-neutral (rollover regime), subject to a business motives test. In addition, cross-border mergers or demergers with an EU company can be tax-neutral, provided that (and as long as) the assets and liabilities transferred at the occasion of such a merger or demerger are kept in a Czech establishment. The loss reduction rule applies to all companies involved.

Contribution of business or part of business	This can also be tax-neutral (rollover), subject to a business motives test. Losses incurred by the contributor prior to the contribution may be transferred to the receiving company, while various restrictions apply (business motivation test, ring-fencing rules, etc.).
Impact of foreign reorganization transactions on Czech assets	Specific tax neutrality (rollover) and loss reduction rules also apply with respect to Czech assets transferred at the occasion of a tax-neutral reorganization involving non-Czech entities (that hold these assets in the Czech Republic).
Exchange of shares	If a Czech company undertakes a share-for-share exchange, the gain realized (or crystallized) at that occasion will either be exempt (in which case, there will be a step-up in the share basis) or, if it is not exempt (because the minimum taxation test is not satisfied), the gain can, under the circumstances, be rolled over.

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At a glance

Corporate income tax rate (%)	28 31 for companies with total revenue exceeding EUR 250 million,[1] to be progressively reduced to 25 for all companies by 2022. Additional contribution of 3.3 assessed on corporate income tax after tax allowance of EUR 763,000 (maximum effective corporate income tax rate increased to 28.92/25.825 by 2022).
Local income tax rate (%)	N/A
Capital gains tax rate (%)	3.36/19/31 (to be progressively reduced to 25 by 2022)[2]

[1] Article 39 of the Finance Act for 2020 modifies the trajectory of corporate income tax rate reductions in 2020 and 2021 for companies with a turnover of EUR 250 million or more. For these companies, the standard corporate income tax rate is raised to 31% in 2020 (fraction of profits above EUR 500,000), instead of the 28% initially planned, and to 27.5% in 2021, instead of 26.5%.

[2] 3.72% is applicable to long-term capital gains on the sale of controlling shares held for more than two years in companies that are not real estate-oriented or are not located in Non-Cooperative Countries or Territories (NCCT) (see the list in 2.2 below). 19% is applicable to long-term capital gains on the sale of controlling shares held for more than two years in listed real estate-oriented companies that are not located in NCCT (see the list in 2.2 below). The standard corporate income tax rate of 28% (progressively reduced to 25% by 2022) is applicable to short-term capital gains and to long-term capital gains on the sale of other assets (including controlling shares held for more than two years in non-listed real estate-oriented companies). An additional contribution of 3.3% assessed on corporate income tax charge may apply on top of these rates.

Tax losses carryforward	No time limit; annual limit of EUR 1 million, plus 50% of the current year taxable profit exceeding EUR 1 million.[3]
Tax losses carryback	1 year for a limited amount of EUR 1 million.[4]
Domestic withholding tax rate on dividends (%)	28 (rate equivalent to French standard corporate income tax rate — to be progressively reduced to 25 by 2022)/0/75[5]
Domestic withholding tax rate on interest (%)	0/75[6]
Domestic withholding tax on royalties (%)	28 (to be progressively reduced to 25 by 2022)/0/75[7]
Transfer tax rates (%)	

[3] Except in the case of change of activity/restructuring operations under certain circumstances.

[4] According to the draft-amended finance bill for 2020, as a COVID-19 specific measure, French companies may request immediate repayment in 2020 of their carryback receivables as of 2020. The draft law also provides for an accelerated repayment in early 2021 of carryback receivables relating to losses incurred in respect of FY 20.

[5] The 28% withholding tax may be reduced/eliminated subject to tax treaty provisions and EU legislation. Dividends paid to NCCT (see the list in 2.2 below) are subject to a 75% withholding tax.

[6] No withholding tax applies except to interest paid to NCCT (see the list in 2.2 below), which is subject to a 75% withholding tax.

[7] The 28% withholding tax may be reduced/eliminated subject to tax treaty provisions and EU legislation. Royalties paid to NCCT (see the list in 2.2 below) are subject to a 75% withholding tax.

Sale of an ongoing business/activity (*convention de successeur*)	Three for the portion of the price between EUR 23,000 and EUR 200,000 and five for the portion of the price exceeding EUR 200,000. Transferred liabilities do not reduce the taxable basis to the business transfer tax.
Sale of shares	For sales of stocks of *sociétés anonymes* (SA)/*sociétés par actions simplifiées* (SAS): 0.1 on the transfer price. For sales of shares of *sociétés à responsabilité limitée* (SARL)/*sociétés en nom collectif* (SNC): three on the transfer price of shares after a rebate equal to EUR 23,000, multiplied by the percentage of shares transferred. Exceptions apply to transfers made within related entities. For sales of shares in real estate-oriented companies: 5 on the transfer price of the shares.
Standard VAT rate (%)	20
Neutral tax regime for restructuring operations	Yes
VAT grouping	No
Tax consolidation regime	Yes

I. Acquiring the investment

1. Acquisition through an asset deal

1.1 Corporate income tax

At the level of the selling company

Capital gains realized upon the sale of assets are equal to the difference between the book value (or the tax value if different) and the sale price of the assets. The sale price must be determined on an arm's length basis.

In the case of a sale of assets other than shares, capital gains are subject to corporate income tax at a standard rate of 28%, to be increased by a supplementary tax of 3.3% based on corporate income tax exceeding EUR 763,000, leading to a 28.92% aggregate rate or 31%/32.02% with the supplementary 3.3% tax for companies with total revenue exceeding EUR 250 million. The standard corporate income tax rate is to be progressively reduced to 25% (or 25.825% including supplementary tax of 3.3%) over the period 2020 to 2022.

The sale of certain IP rights may benefit, under certain conditions, from a reduced corporate income tax rate of 10% on the capital gain deriving from their disposal, their licensing or their sublicensing.[8]

[8] The regime is optional. Patents, utility certificates, copyrighted software and patentable inventions under certain conditions are eligible for the "patent box" regime, which has been amended in 2018 to comply with the OECD "Nexus" approach. For the purposes of this new approach, the net income of each eligible asset (or group of assets) must first be calculated. Then, in order to determine the "patent box" taxable base, the enterprise will have to weigh the net income calculated with the "Nexus" ratio. The numerator of the "Nexus" ratio takes into account the enterprise's R&D expenses directly related to the creation and development of the asset (or group of assets), carried out directly or by non-related enterprises. The denominator of the "Nexus" ratio includes all the

The seller can use existing tax losses to offset any net gains arising from the sale of assets within the annual limit of EUR 1 million plus 50% of the taxable profits exceeding EUR 1 million. In an asset purchase, it is not possible to offset losses of the selling company against profits of the acquiring company.

At the level of the acquiring company

A step-up in basis of the assets can be achieved by the purchaser as it receives assets and liabilities at fair market value. As a general rule, all tangible assets acquired will be revaluated at fair market value (and can thus be further depreciated on that revaluated basis). The difference (if any) between the total price paid and the revaluated net asset basis of the acquired assets can be activated as goodwill.

Acquisition costs related to fixed assets (i.e., including transfer duties, notarial fees and costs) may be: (i) added to the assets value booked in the balance sheet and thereafter depreciated annually in accordance with the depreciation plan of the asset; or (ii) treated as an immediate, deductible expense.

Tangible assets are generally amortizable using quite favorable amortization rules. Intangible assets are, in most cases, not amortizable, with few exceptions, such as those for patents.

The tax losses of the acquiring company realized before the acquisition may be carried forward with no time limit, provided that the company maintains the same activity and remains subject to the same tax regime before and after the acquisition.

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enterprise's R&D or acquisition expenses directly related to the creation, acquisition and development of the asset (or group of assets).

1.2 VAT

Transactions on fixed assets, tangible or intangible, are, in principle, subject to French VAT under the general conditions and at the standard rate of 20%. The transfer of certain assets (e.g., receivables) and the transfer of liabilities are VAT-exempt.

France has implemented a transfer of going concern (TOGC) or of activity VAT relief, under which VAT is neither applicable nor regularized in the case where the transferee continues the activity of the transferor. Transfers of assets that qualify as a TOGC for VAT purposes are very often subject to specific transfer taxes. Therefore, attention must be paid when a transfer qualifies as such.

Input VAT in relation to acquisition or selling expenses is generally recoverable so long as the purchase carries out a taxable activity for VAT purposes, except for VAT-exempt acquisitions.

Transactions on real estate properties are subject to VAT under certain conditions. Some are always subject to VAT (buildings that have been constructed for less than five years and lands available for building), while others are exempt and taxable on option.

A regularization procedure has also been implemented, according to which part of the VAT recovered by businesses has to be repaid in the case where the sale of the assets is VAT-exempt.

Rate	20%
Basis	Sale price
Date of payment	Depends on the situation of the seller: generally on a monthly (or quarterly) basis. The VAT tax return has to be filed within a

	monthly date established by the French tax administration.
Liable person	The seller is generally liable, but VAT is borne by the purchaser.
Recoverability	The deductibility of VAT will depend on the activities and source of income of the purchaser. Deductible VAT is to be entered as a credit item in the periodical VAT return. If the deductible VAT for the period concerned exceeds the VAT due, a refund can be requested. The refund is normally made on an annual basis, but under certain conditions can be claimed on a monthly or quarterly basis.
Exemption	TOGC qualifying as a "universality of goods."

1.3 Transfer tax

Apart from VAT, transfer tax may apply as a result of the transfer of certain assets that are part of the business acquired.

The transfer of assets separately can trigger transfer tax, depending on the nature of the asset transferred (in particular, trademarks or patents registered and exploited in France). The transfer of buildings will be subject to transfer tax at a rate of 5.81% (or 5.09% depending on the buildings' location). VAT may also apply to transactions concerning buildings (see Section 1.2).

In the event an isolated transfer of assets results in the transfer of a French clientele, the transfer tax treatment is the same as that for the transfer of an ongoing business.

If no clientele is attached to the transferred assets, the sale of assets may qualify as a transfer of activity (*convention de successeur)*, subject to transfer tax in France at the same rate as the transfer of an ongoing business (see chart below). A transfer of activity subject to transfer tax can be identified when: (i) the transfer is made for a consideration; and (ii) the transfer allows the purchaser to carry out the same activity as that previously carried out by the seller, even if no clientele is transferred.

The sale of goodwill alone is subject to the same transfer tax as the sale of a going concern or of an activity (see chart below).

Transfer taxes are usually borne by the purchaser but parties can agree otherwise. However, both the seller and the purchaser remain jointly liable toward the French tax authorities for the payment of the transfer taxes. Transfer taxes are a deductible expense for corporate income tax purposes.

Rate	Building transfer: 5.81% or 5.09% depending on the building's location. Transfer of ongoing business/clientele/activity/trademarks and patents registered and exploited in France: 0% rate on the portion of the value between EUR 0 and EUR 23,000; 3% rate for the portion between EUR 23,000 and EUR 200,000; and 5% rate for the portion above EUR 200,000.
Basis	Transfer price or fair market value, if higher. For transfers of ongoing businesses, it is possible to allocate a portion of the purchase price to certain nontaxable assets (e.g., inventories and receivables) in order to minimize the taxable basis.

	Transferred debts do not reduce the taxable basis to the business transfer tax.
Date of payment	One-month period as of the transfer of assets/conclusion of the transfer of assets agreement.
Liable person	Normally the purchaser, unless parties provide for a different allocation (yet purchaser and seller always remain jointly liable toward the French tax authorities).
Tax deductibility for corporate income tax	Yes

1.4 Other acquisition costs (sale of buildings)

Notary fees	Decreasing scale with a 0.814% (0.799% as from 1 January 2021)[9] minimum rate when real estate asset value exceeds EUR 60,000.
Mortgage registration duties	0.715% on the value of the real estate.
Real estate security contribution	0.1% on the value of the real estate.
Stamp duties	N/A
Tax deductibility for corporate income tax	Immediate in the fiscal year of acquisition or depreciation in accordance with the amortization plan of the concerned asset.

[9] A decree dated 28 April 2020 postpones until 1 January 2021 the entry into force of the new notarial fees for the period from 1 March 2020 to 28 February 2022. As a result, the fees remain the same until 31 December 2020.

1.5 Tax credits

The transfer of assets does not lead to the granting of any specific tax credit, neither at the level of the selling French company nor at that of the acquiring French company.

1.6 Transfer of tax liabilities

Under certain circumstances (e.g., the transfer of an ongoing business or transfer of activity), the purchaser of assets and liabilities can be held jointly liable for the corporate income tax liabilities of the seller. However, the purchaser cannot be held liable for more than the purchase price of assets.

Liabilities generated before the transfer of assets can be assumed by the purchaser if such a provision is included in the business transfer agreement. Tax liabilities can fall within the scope of such a provision. In this case, assumed liabilities may be considered part of the purchase price from a transfer tax standpoint.

2. Acquisition through a share deal

2.1 Corporate income tax

For the seller

(i) The seller is a French tax resident.

The seller is subject to corporate income tax on the capital gain realized, which amounts to the difference between the net book value (or the tax value, if different) and the sale price of the shares.

Capital gain is categorized as follows:

- A short-term capital gain is realized if the seller held the shares for less than two years. Such gain is taxable at the rate of 28% or

28.92% (progressively reduced to 25% or 25.825% by 2022). Capital losses on transactions involving the sale of shares between affiliated companies are deferred.[10] Besides, in the case of a dividend distribution by a company followed by the sale of its shares or its merger in another company within a two-year period from its acquisition, the taxable base of the corresponding gain may be increased by the dividend amount.

- A long-term capital gain is realized if the seller held the shares for more than two years. Under the long-term regime, capital gains are taxed as follows:
    - The shares qualify as "controlling interest," as opposed to shares held as a portfolio investment and shares of real estate-oriented companies[11]/*société à prépondérance immobilière*. The gross capital gain on the controlling interest is exempt from corporate income tax, except for 12%, which remains subject to the corporate income tax at the standard rate. The effective tax burden on the capital gain is from 3.72% to 3.84% (to be progressively reduced to 3% or 3.10% by 2022).[12] The reduced taxation regime will not apply to the sale of shares of companies located in Non-Cooperative Countries or Territories (NCCT), unless it can be demonstrated that operations realized by the paying company do not have the intention nor the effect of locating profits in NCCT. The current list of NCCT consists of Anguilla, the Bahamas, the British Virgin Islands, Seychelles, Vanuatu, Fiji, Guam, the US

[10] Deferral implies mandatory filings. It does not apply to capital gains realized on such transactions. Deferrals do not apply to transactions on shares in non-listed real estate-oriented companies.

[11] Real estate-oriented companies are those whose assets comprise more than 50% of real estate assets in France.

[12] Including the 3.3% social contribution based on corporate income tax (see above).

Virgin Islands, Oman, US Samoa, Samoa, Trinidad and Tobago and Panama.[13]

- The shares qualify as controlling shares of listed real estate-oriented companies (*société à prépondérance immobilière cotée*). The yearly net gain is subject to a reduced 19% corporate income tax rate.
- The shares are those of non-listed real estate-oriented companies (*société à prépondérance immobilière non cotée*). The yearly net gain is subject to the standard rate of 28% or 28.92% (to be progressively reduced to 25% or 25.825% by 2022).

The seller can use existing tax losses to offset any gains realized upon the sale of shares, within annual limits applicable to the use of carryforward losses.

Reserves booked regarding shares benefiting from the long-term regime that qualify as controlling interest are not deductible at the time of their booking. Their recapture will not be taxable at the time of the sale of shares. Specific rules apply to the deduction of reserves booked on real estate-oriented controlling shares.

If the company was part of a French tax group, the sale of its shares outside the group entails its exit from the tax group. If the tax group was composed of only one other company, it will entail the termination of the tax group. As a result of the exit/termination of the tax group, the head company may be obliged to de-neutralize certain intragroup operations previously neutralized for the purpose of determining the tax group result.

[13] As from 1 December 2018, the French list of NCCT was extended to include the EU's blacklist with variable effects depending on the motive for inclusion in the EU list (tax regimes that facilitate **offshore** structures or tax transparency deficiency).

In addition, depending on the existence of an intragroup agreement and its provisions, indemnifications may arise.

(ii) The seller is a foreign tax resident.

Capital gains on the sale of shares are generally not taxable in France. However, taxation in France may arise in any of the following situations:

- If the seller owns at least 25% of the shares in the sold French company and does not benefit from an income tax treaty protection, or the applicable tax treaty allows France to levy capital gains tax, such capital gains are subject to taxation in France at the rate of 28% for companies (to be reduced to 25% by 2022) and 12.8% for individuals. However, for controlling shares that are eligible for the long-term regime (see Section 2.1 (i)), binding guidelines of the French tax authorities allow an EU or a European Economic Area seller to not to be treated differently from a seller established in France. A maximum of 3.84% (3.10% by 2022) taxation would then be due on the capital gains if a number of conditions are fulfilled. In particular, the foreign company: (i) must have its effective seat of management in the EU or in a country that is part of the EEA and that has concluded with France a tax treaty containing an administrative assistance clause aimed at avoiding tax fraud and evasion; and (ii) must be subject to taxation on profits in its country that is equivalent to the French corporate income tax. A 75% withholding tax applies to capital gains made by investors in an NCCT, whatever the holding percentage in the French company is.

  Tax treaties can limit the impact of the substantial shareholding rules, as capital gains realized on shares are generally attributed to the jurisdiction of the investor.

- If the shares are those of a real estate-oriented company, such capital gains are subject in France to: (i) a 28% withholding tax

(progressively reduced to 25% by 2022); and (ii) a corporate income tax at the rate of 28% or 28.92% (progressively reduced to 25% or 25.825% by 2022), after offsetting the 28% withholding tax. Tax treaties may allow for the avoidance of such taxation. This is generally the case when they do not contain a definition of shares of real estate-oriented companies.

For the purchaser

The French purchaser must book the acquired shares at their purchase price.

As a general rule, the value of shares in a company may not be depreciated. As a consequence, the purchaser may not directly depreciate the value of the shares. However, it may, under certain conditions, book a reserve in its accounts if the shares lose value. The reserve booked on shares, which are controlling interests, will not be tax-deductible.

Expenses related to the acquisition of controlling shares

Acquisition expenses must be incorporated into the acquisition price of the shares and tax depreciated over a five-year period. These acquisition expenses include transfer taxes, fees, commissions and other expenses linked to the acquisition of the shares.

Formation of a tax group

A French acquiring company may form, under certain conditions, a tax group with a French-acquired company. The tax group regime allows for the determination of the payable corporate income tax at the group level. In the frame of a shares deal, it allows the French acquiring company to offset acquisition and interest expenses related to acquisition financing against the taxable income of the target company. However, group expense deductions can be limited in the case of acquisition of shares from an entity of the same group if the acquired entity enters an existing tax

group or a tax group formed with those entities in the eight years following the acquisition.

2.2 VAT and transfer tax

VAT

VAT on the transaction — The sale of shares is normally exempt from French VAT.

VAT on costs — Investors are entitled to recover the main part of the input VAT on their acquisition costs, except if they are pure holding companies. For this reason, it is often required, from a VAT perspective, to locate acquisition costs in a non-pure holding company that is running a business subject to VAT.

For the seller, said VAT exemption may impact its right to recover the VAT incurred on the various costs relating to the sale of the shares.

Transfer tax

Purchase of shares of SA or SAS

- The purchase of shares of non-listed companies is subject to registration duties at a rate of 0.1% applied to the transfer price of the shares.
- The purchase of shares of listed companies is exempt from transfer tax if the transfer is not formalized in a document. However, if the transfer is formalized in a document, the above-mentioned rate will apply.

Purchase of shares of SARL, SNC, *société en commandite simple* (SCS) and *sociétés civiles* (SC)

- A 3% transfer tax on the transfer price applies, after a rebate equal to EUR 23,000 multiplied by the percentage of shares transferred.

Irrespective of its legal form, the purchase of shares of real estate-oriented companies is subject to a 5% transfer tax applied on the higher of the purchase price or the fair market value of the shares.

Certain transfers of shares in non-real estate-oriented companies may be exempt from transfer tax, as follows:

- the transfer takes place between companies of the same group (within the meaning of Article L. 233-3 of the French Commercial Code, which defines control conditions) or between member companies of the same tax consolidated group
- in the case of acquisition of shares of companies that are under a safeguard procedure or judicial reorganization
- when a transfer results from transactions subject to the special tax regime for mergers
- in the case of acquisition of shares resulting from a repurchase by a company of its own shares, in view of selling those to participants in company employee savings plans or a capital increase
- when the transfer is subject to financial transaction tax (*Taxe sur les transactions financières*) (see section immediately below)

Financial transaction tax

France introduced the following three taxes:

- a tax on the acquisition of equity securities

- a tax on high-frequency trading
- a tax on naked sovereign credit default swaps

The tax on the acquisition of equity securities has to be paid on any acquisition of French equity securities in French companies whose market capitalization exceeds EUR 1 billion. The tax rate is 0.3% and a decree provides the list of concerned companies.

This tax only applies to acquisitions of securities for consideration, including the purchase, exchange or allotment of equity securities in consideration for contributions, giving rise to a transfer of ownership. It is based on the acquisition value of the securities.

Exceptions exist, such as for employee savings' transactions, swaps of convertible bonds for shares and intragroup transactions that are excluded from the scope of this tax. Acquisitions performed in mergers, partial assets contributions, split-ups and acquisitions performed in employee buy-outs are also excluded.

2.3 Tax credits and other tax benefits

All tax credits available at the level of the purchased company will normally be maintained after the change of control.

2.4 Tax losses' preservation

The tax losses of the acquired company may still be carried back and forward under the standard regime referred to above, unless its activity or its tax regime is modified following the acquisition.

2.5 Transfer of tax liabilities

In the case of a share deal, all (hidden) tax liabilities in the past will be inherited by the purchaser. The due diligence exercise is therefore of utmost importance. The statute of limitations in France is generally three

years (VAT, corporate income tax). It is generally six years for transfer taxes purposes and 10 years in the case of hidden activity. Specific representations and indemnities can often be agreed upon for specific tax risks identified during the due diligence.

2.6 Transaction costs

Acquisition expenses must be incorporated into the acquisition price of the shares. They are therefore not immediately deductible, but may be tax-depreciated over a five-year period. These acquisition expenses include transfer taxes, fees, commissions and other expenses linked to the acquisition of the participation.

Debt-issuing costs are immediately deductible under standard conditions. Specific debt-issuing costs (*frais d'émission d'emprunt*) may be depreciated over the duration of the loan.

As indicated above, if the purchaser is a holding company (with no activities subject to VAT), the deductibility of the input VAT on these transaction costs is likely to become an issue, and planning may be needed to avoid or reduce the extra cost.

3. Financing the investment

3.1 Deductibility of financing expenses

Financing expenses need to meet the general deductibility conditions that apply to any expense, which, in essence, requires that such expenses (and therefore the transaction) fit within the corporate purpose and interest of the acquiring company.

In addition, the deduction of interest must comply with certain French tax law requirements.

In this respect, the Finance Law for 2019 provided for an in-depth reform of the rules governing the tax-deductibility of financial charges in France,

due to the implementation into French tax law of the general limitation set forth in the Anti-Tax Avoidance Directive (ATAD).

As a result, the deductibility of net financial charges is now capped to the higher of 30% of the adjusted EBITDA (earnings before interest, depreciation, provisions and gains or losses subject to reduced tax rates) or EUR 3 million per FY (possibly prorated if the FY is less than 12 months). The EUR 3 million threshold has, de facto, the effect of excluding from the limitation rule companies bearing interest for an amount lower than this figure. The new rule provides for an exhaustive list of net financial charges falling within its scope. A catch-up deduction of 75% of the net financial charges non-deductible under the above-mentioned 30% EBITDA or EUR 3 million threshold is available when the equity/assets ratio of the company is higher than that of its consolidated group (as determined under accounting consolidation rules).

By way of exception, when the borrower is "thin-capitalized" (i.e., should the average amount of related party debt exceed 1.5 times the net equity of the company), the deduction limitation is reduced to the following: (i) for third-party debt and related party debts up to 1.5 times the net equity of the company: the higher of 30% EBITDA or EUR 3 million adjusted on a pro rata basis; and (ii) for related party debts above 1.5 times the net equity of the company: the higher of 10% EBITDA or EUR 1 million adjusted on a pro rata basis, and the 75% catch-up rule is not applicable.

For tax-consolidated groups, the limitation applies to the sum of the net financial charges incurred by all the group member companies, and is assessed taking into account the overall adjusted EBITDA of the group. The 75% catch-up rule is applicable at the level of the group under similar conditions. The reduced limitation of 10% of adjusted EBITDA or EUR 1 million applies when the average amount of related party debt made available to the group by lenders that are not group members is higher than 1.5 times the net equity determined at group's level (based on consolidated accounts).

Finally, non-deductible financial charges may be deducted in subsequent years within the limits referred to above (after the application of a two-third rebate on the amount of financial charges allocated to excess related party debts), whereas unused deduction capacities may be deferred over the next five years.

Specific rules further apply to related-party debt:

- First limitation: Share capital — The deduction of interest on shareholders' loans is possible only if the share capital of the debtor is fully paid up.
- Second limitation: Interest rate — Interest relating to loans granted by a related company is tax-deductible only in the limit of:
    - those computed with reference to the average variable rate applied to credit institutions for loans granted to companies that have a term of more than two years (rates published on a quarterly basis by the French tax authorities, e.g., 1.16% for second quarter 2020 and 1.32% for FY closed on 31 December 2019)
    - a market rate, if higher (i.e., the rate that the borrower would have obtained from independent financial institutions under the same conditions)
- Third limitation: Thin capitalization rules — This may result in a lower deduction cap under the tax EBITDA limitation (see above).
- Fourth limitation: Rules related to hybrid mismatch arrangements. As from 1 January 2020, new rules implemented from ATAD 2 Directive apply to tackle tax mismatches resulting from hybrid

arrangements or dual tax residence situations.[14] Hybrid mismatches are characterized by a tax mismatch and are between related companies. The mismatch may result either from a tax deduction of a payment without tax inclusion by the beneficiary or from a double tax deduction. As a general rule, the state of the debtor must reject the tax deduction as a matter of priority. Otherwise, it is the state of the beneficiary that must tax the income. In situations of double tax deduction, it is the state of residence of the investor that must reject the tax deduction. Otherwise, it is the state of the debtor that rejects it.

- Finally, the "*amendement Charasse*" rule provides that when: (i) the shares of a target company are transferred against payment to a company controlled directly or indirectly by the seller (or placed under common control with the seller); and (ii) the transferred company become members of the same tax consolidated group as the acquiring company (or is merged/dissolved without liquidation into the tax group), then a fraction of the financial expenses recognized by the tax group (on both third-party bank debt and related party debt, whether related to the acquisition or not) shall be considered non-deductible and is therefore added back to the tax consolidated income. This add-back of financial costs is applicable over a maximum period of nine years.

Corporate interest	In order for financing expenses to be deductible, the transaction must be aligned with the corporate interest of the acquiring company; otherwise, deductibility could potentially be denied.

[14] The Finance Act for 2020 transposed the EU/2017/952 directive dated 29 May 2017 known as "ATAD 2," by adopting the new sections 205 B, 205 C and 205 D of the French Tax Code.

Arm's length principle	The interest rate must not exceed a market rate, taking into account the specific situation at hand, and in particular, the duration of the loan and the financial condition of the borrower. If the lender is a related entity, interest paid is deductible when it does not exceed the quarterly published rate or a market rate if higher (1.16% for second quarter 2020 and 1.32% for FY closed on 31 December 2019) or if higher, at a rate that the debtor could have obtained from independent financial establishments under similar conditions. An interest rate that would be considered too low (i.e., below market rate) could, if the lender is a related party, lead to actual taxation at the level of the French lender based on the "abnormal act of management" theory. The same rule can apply to the case of funding through an interest-free loan.
General limitation rule on the deductibility of net financial expenses (under EU ATAD 1 Directive)	The tax deduction of net financial charges is limited to either: • The higher of 30% of the borrowers' adjusted EBITDA and EUR 3 million. • If the company is thin-capitalized then two different bases of net financial interest must be determined: (i) for the portion of interest paid to non-related companies and to related

	companies up to 1.5 times the equity, the tax deduction is limited to the higher of 30% of the borrowers' adjusted EBITDA and EUR 3 million (adjusted on a pro rata basis); and (ii) for the portion of interest paid to related-companies above 1.5 the equity, the tax deduction is limited to the higher of 10% of the borrowers' adjusted EBITDA and EUR 1 million (adjusted on a pro rata basis). The adjusted EBITDA is equal to the net taxable income increased by said net financial charges, depreciation and amortizations, and gains and losses subject to reduced taxation. The EUR 3 million (or EUR 1 million) fixed limit applies as a minimum threshold. In practice, companies with net financial charges lower than EUR 3 million (or EUR 1 million) are entitled to full deduction. Carry forward rules are available for both non-deducted net financial charges and unused deduction capacities. A catch-up provision allows the deduction of 75% of the non-deductible interest under the above-mentioned limits if the ratio of net equity over total asset of the borrower is equal to or higher than that of its group (as determined under accounting consolidation rules). The catch-up deduction

	is permissible only to the extent that the company is not thin-capitalized. In tax-consolidated groups, the above-mentioned rules apply on a consolidated basis, i.e., at the level of the group. Consequently, interest paid to other tax group members are fully tax-deductible (the net amount at the level of the group being nil). In the meantime, the above-mentioned EUR 3 million (or EUR 1 million) minimum threshold applies only once at the level of the group (instead of an assessment company by company).
Rules related to hybrid mismatch arrangements (under EU ATAD 1 Directive).	Hybrid mismatches are characterized by a tax mismatch and are between related companies. The mismatch may result either from a tax deduction of a payment without tax inclusion by the beneficiary or from a double tax deduction. As a general rule, the state of the debtor must reject the tax deduction as a matter of priority. Otherwise, it is the state of the beneficiary that must tax the income. In situations of double tax deduction, it is the state of residence of the investor that must reject the tax deduction. Otherwise, it is the state of the debtor that rejects it.

3.2 Withholding tax on interest

No French withholding tax applies to interest paid to non-French residents, except if the payment is made in an NCCT. In the latter case, a 75%

withholding tax will apply to the interest paid, except if the applicable tax treaty signed by France provides otherwise.

3.3 Debt push-down

Debt push-down can be achieved when the purchaser is a French company.

Debt push-down strategy is typically performed through tax grouping. Indeed, under the French group tax regime, all taxable results of the group entities are pooled at the level of the head company. When the purchaser and the target company belong to the same tax group, taxable income generated by the target company can be offset against losses generated by the purchaser, resulting from interest expenses and amortization of acquisition costs.

Debt push-down could also be achieved by merging the target company with the purchasing entity. It may allow an offsetting between the profits generated by the target company and the interest expenses borne by the holding company. However, acquisition costs borne for the acquisition of the target company would cease to be amortizable once the merger becomes effective (with no possible further deduction). Note also that in situations where the merger is performed shortly after the acquisition, the French tax administration tends to adopt a strict position against such operations that it views as "artificial." It attempts to challenge in those situations the deduction of interest expenses on the grounds of abuse of law, or of the concept of abnormal act of management.

French tax authorities may challenge the refinancing of an entity if it is not made in the borrower's best corporate interest. The practical consequence should be the disallowance of part or all of the interest deduction at the level of the borrower. Subject to specific facts and circumstances, debt funded distributions should generally not be considered as being performed in the best corporate interest of the borrower.

II. Holding the investment

1. Main tax aspects

Taxable income	Net income less deductible expenses (i.e., interest expenses, depreciation, etc.) is subject to corporate income tax at the rate of 28% or 28.92%/31% or 32.02% for companies with total revenue exceeding EUR 250 million (to be progressively reduced to 25% or 25.825% by 2022). See above.
Depreciation	Depreciation is allowed in respect of all tangible fixed assets (except land), as well as certain IP rights under strict conditions, on the basis of their normal life. As a general rule, depreciation booked for accounting purposes is also accepted for tax purposes, but in a number of cases, specific tax rules differ from the accounting depreciation rules.
Capital losses on shares	Capital loss on controlling shares cannot be offset against capital gain of the same nature (see above for long-/short-term taxation).

Tax group regime	A French company subject to corporate income tax in France may form a tax group with French subsidiaries in which more than 95% of the share capital is held directly or indirectly. A horizontal tax group can also be formed between French sister companies when a common EU parent company holds more than 95% of their share capital. The tax group regime leads to the determination of the payable corporate income tax at the group level. It offers tax neutrality on certain intragroup transactions.[15]
VAT	As a general rule, all supplies of goods and services are subject to VAT. The standard French VAT rate is 20%, with reduced rates (applicable to a limited list of goods and services) as follows: 5.5% (on foodstuffs, for example); 10% (on takeaway food, for example); and 2.1% (on medical products, for example). Exemptions may apply. Input VAT incurred on supplies constitutes a cost if it is not deductible.

[15] To be noted that the list of neutralizations available to intragroup transactions, for the determination of the group's overall taxable income, has been substantially shortened by the Finance Law for 2019 which notably excluded intragroup subsidies, waivers of debts and sales of substantial shareholdings eligible to participation-exemption under the long-term regime.

Business tax	Business tax has been replaced by the Territorial Economic Contribution (*Contribution économique territoriale* or CET), which is composed of the Business Contribution on Lands (*Cotisation foncière des entreprises*) and of the Business Contribution on Added Value (*Cotisation sur la valeur ajoutée des entreprises*). CET is an annual tax based on the turnover and added value produced by companies that conduct business activities, and on the value of the real estate assets used for carrying out such business.

2. Distribution of profits

Withholding tax on dividends distributed by a local company[16]	As a general rule, a domestic withholding tax at a rate equivalent to French standard corporate income tax rate, i.e., 28% for 2020, is levied on dividends paid by a French resident to a foreign resident. The rate will be progressively reduced to 25% over the period 2020 to 2022.

[16] As a specific COVID-19 measure for 2020, a restriction applies to dividend distributions made by large companies (5,000 employees or consolidated turnover greater than EUR 1.5 billion in France) benefiting from a deferral or rebate of social security or tax charges or a state-guaranteed loan. Any dividend distribution decision made from 27 March 2020 to 31 December 2020 (date to be confirmed) will deprive the large company of such measures. All distributions, whether to French or foreign shareholders, are concerned.

	However, a withholding tax exemption regime applies to dividends distributed by a French company, subject to corporate income tax under the standard rate, to an EU or EEA parent company that satisfies the following conditions: • It holds, directly or indirectly, for an uninterrupted period of at least two years, a minimum holding of 10% in the French distributing company's share capital (including shares held in bare ownership). • It has its place of effective management in an EU or EEA member state. • It is incorporated under one of the corporate forms listed in the appendix of the Parent-Subsidiary Directive. • It is subject to corporate income tax in the country of its effective place of management. The exemption cannot apply to distributions resulting from a scheme or series of schemes put in place to obtain, as a main objective or as one of the main objectives, a tax benefit that is contrary to the purposes of the Parent-Subsidiary Directive and that is not genuinely based on the applicable facts and circumstances (under the anti-avoidance provision).

	The minimum shareholding threshold is reduced from 10% to 5% in the event that the tax credit corresponding to the withholding tax paid in France cannot be used by the EU parent (when dividends are not subject to tax in the country of the EU parent).
Taxation of dividends received by a local company	Both domestic and foreign dividends received by a French company can be exempt from corporate income tax, except for a 5% portion of the net gain, which remains taxable at the standard corporate income tax rate, provided that: • There is a minimum shareholding of at least 5% (including shares held in bare ownership). • This shareholding is ultimately held for at least two years. • The paying company is not located in an NCCT, unless it can be demonstrated that operations realized by the paying company do not have the intention to locate nor the effect of locating profits in NCCT. • The dividends have not been deducted from the taxable income of the paying company. It should be noted that, based on new general anti-avoidance provision included in the Finance Law for 2019, tax authorities can

	disregard the corporate income tax effects of any arrangement, or series of arrangements, (i) which has been set up for obtaining, as a main purpose or one of the main purposes, a tax advantage that defeats the object or purpose of applicable tax law; and (ii) which is not regarded as genuine. The taxable portion of the dividend is reduced to 1% for dividends received: (i) by a member company of a tax-consolidated group from another member company of the same tax-consolidated group as the distribution recipient; (ii) by a member company of a tax-consolidated group from an EU or EEA resident companies, which, if established in France, would have met the necessary conditions to be part of the same tax-consolidated group as the distribution recipient; or (iii) by a company that is not a member of a tax-consolidated group from EU or EEA resident companies, which, if established in France, would have met the necessary conditions to be part of the same tax-consolidated group as the distribution recipient.

III. Selling the investment

1. Asset deal

Capital gain taxation	Any gain realized upon the transfer of assets will normally be subject to tax in the hands

	of a corporate seller at the standard corporate income tax rate (28% or 28.92%/31% or 32.02% for companies with total revenue exceeding EUR 250 million, to be progressively reduced to 25% or 25.825% by 2022) after offsetting existing carryforward losses, if any, and within the applicable offsetting limits. An optional reduced corporate income tax rate of 10% on capital gain may be derived from the sale of specific IP rights (please see Section 2.1).
Selling costs/Transfer taxes	The transfer of assets will be subject to VAT, except if the TOGC exemption applies (see Section 2.2). It will also be subject to transfer tax depending on the nature of the assets sold. Real estate transfer tax may apply if real estate is transferred (see Section 2.2). Any cost incurred by the seller in relation to the transfer is taken into account to compute the net gain that will be subject to corporate income tax.
Sale by corporate nonresidents	Capital gains generated on the sale of buildings are subject to a 28% withholding tax and to corporate income tax at the rate of 28% or 28.92%/31% or 32.02% for companies with a total revenue exceeding EUR 250 million (after offsetting the 28% withholding tax) in France. The rates will be

	progressively reduced to 25% and 25.825% over the period 2020 to 2022. As a general rule, tax treaties confirm the right of France to tax the sale of buildings located in France.

2. Share deal

Capital gain taxation	Capital gains realized by French companies are subject to corporate income tax at the standard rate (28% or 28.92%/31% or 32.02% for companies with total revenue exceeding EUR 250 million, to be progressively reduced to 25% or 25.825% by 2022). However, capital gains on shares may be exempt from corporate income tax, except for 12% of the gross capital gain that remains taxable if the transferred shares qualify as "controlling interest" and are held for at least two years (see Section 2.2). A reduced corporate income tax rate of 19% also applies to capital gains derived from the sale of shares in listed real estate-oriented companies held for at least two years (see above).
Selling costs/Transfer taxes	As a general principle, the purchaser is liable for the payment of transfer tax. However, the tax burden can be allocated differently among the parties, but the purchaser and seller remain jointly liable to the French tax authorities (see Section 1.3). • Sale of shares of SA or SAS:

	A fixed and uncapped rate of 0.1% will apply to the transfer price. • The transfer of shares of listed companies is exempt if not formalized in a document. Otherwise, a 0.1% transfer tax will apply to the transfer price. • Sale of shares of SARL, SNC, SCS and SC: The transfer is subject to a 3% transfer tax that applies to the sale price after a rebate of EUR 23,000 multiplied by the percentage of shares transferred (e.g., a transfer of 25% of the shares of a company gives rise to a rebate of EUR 23,000 x 25% = EUR 5,750 on the transfer price). • Shares of real estate companies (e.g., *Société Civile Immobilière*): A 5% transfer tax applies to the sale price.
Tax on acquisition of equity securities (FTT)	FTT applies to the acquisition of shares in French companies with market capitalizations that exceed EUR 1 billion, at the rate of 0.3%.
Sale by corporate nonresidents	Any capital gains realized by foreign investors upon the disposal of shares of a French company are often not taxable in France, except for the following:

	• Capital gains generated in the sale of substantial interests (direct or indirect shareholding of 25% or more) — These are subject to French withholding tax at the rate of 28% for companies (progressively reduced to 25% by 2022) and 12.8% for individuals (or 75% if the seller is located in an NCCT). • If the seller's effective seat of management is in the EU or an EEA country that has concluded with France a tax treaty containing an administrative assistance clause aiming at avoiding tax fraud and evasion, the seller should not be treated differently than a seller established in France. Based on binding guidelines of the French tax authorities, a maximum of 3.84% (progressively reduced to 3.10% by 2022) taxation would then be due on such capital gain if a number of conditions are fulfilled, in particular: o The seller is subject to a corporate income tax in its country of residence. o The transferred shares were directly and continuously held by the seller for at least two years.

	○ The French company is not real estate-oriented. Tax treaties can avoid such taxation in France, as capital gains realized on shareholdings are generally attributed to the jurisdiction of the investor. • Capital gains generated in the sale of non-listed real estate-oriented companies' shares (i.e., companies with total asset comprising more than 50% of the market value of real estate assets located in France) — These are subject, in France, to a 28% withholding tax and to corporate income tax at the rate of 28% or 28.92%/31% or 32.02% for companies with total revenue exceeding EUR 250 million (after offsetting the 28% withholding tax) in France. The 28% and 28.92% rates will be progressively reduced to 25% and 25.825% over the period 2020 to 2022. These taxes may be avoided through tax treaties.

IV. Tax regime for restructuring operations

Merger and contribution operations are eligible for specific tax exemption regimes, both for corporate income tax and transfer tax purposes.

These favorable regimes are not compulsory and companies are free to apply for corporate income tax or transfer tax, or for both.

In order to benefit from the favorable regime, the companies involved in these restructuring operations must be subject to corporate income tax. In addition, the benefiting company must make a number of commitments in the merger/contribution agreement.

Even though all the conditions required to benefit from the favorable tax regime have not been met (e.g., in the absence of a transfer of a complete line of business), the favorable regime may still apply pursuant to a prior-approval procedure with the French tax authorities.

The general anti-abuse provision denies the application of the tax neutrality regime to merger and contribution operations that are not justified by sound business reasons, such as the restructuring or rationalization of the activities of the interested companies (subject to any proof to the contrary).

Merger or demerger	It can be entirely tax-neutral if the absorbing company makes specific commitments in the merger agreement, such as: • assuming all deferred tax liabilities of the absorbed company • computing gains on any subsequent sale of assets by referring to their value in the books of the absorbed company Tax losses of the absorbed company realized prior to the merger may not be set off against future profits of the absorbing company, unless a preliminary ruling is granted by the French tax authorities, subject to the fulfillment of a number of

	conditions, in particular, the maintenance of the activity of the absorbing company for at least three years. However, an exemption from such a ruling is provided for mergers carried out as of 1 January 2020, particularly when the amount of the previous tax losses of the absorbed company is less than EUR 200,000 (subject to other conditions being met). Tax credits existing at the level of the absorbed company at the time of the merger are automatically transferred to the absorbing entity (e.g., VAT credit, research and development tax credit or carryback of losses receivable).
Contribution of universality or business division	It can be entirely tax-neutral, provided that the transferred assets and liabilities form a complete line of business. Future capital gains derived from the disposal of the shares received in exchange for the contribution will be computed with reference to the value that the contributed assets had in its own books. Transfer of tax losses to the beneficiary are subject to the same rule that applies to mergers. The allocation by the contributor to its parent of the shares received in exchange for the contribution may benefit from the

	tax neutrality regime in France, subject to certain conditions being met.
Impact of foreign reorganization transactions on French assets	It can be entirely tax-neutral, subject to, in addition to other standard conditions: (i) the allocation of the transferred assets and liabilities to a French permanent establishment of the non-French entity; and (ii) the *ex-post* filing of a specific declaration explaining the motives and consequences of the operation.
Transformation of a French establishment into a subsidiary	The contribution by a foreign company of its French establishment to a French company may benefit from the favorable regime if the contributed assets represent a complete line of business.
Exchange of shares	If a French company realizes a share-for-share exchange, the gain realized (or crystallized) on that occasion may, under certain conditions, be rolled over until the future sale of the shares are received in compensation for the exchange. Specific rules apply to exchanges of shares resulting from mergers or demergers, allowing a rollover of the capital gain taxation until the future sale of the shares received in the framework of the merger/demerger.

V. Special holding/investment regimes

Risk funds/Risk companies (*Fonds Professionnel de Capital Investissement* (FPCI)/*Société de Capital Risque* (SCR))	A special (favorable) tax regime applies to risk funds/risk companies (FPCI and SCR) that, as a general rule, can invest only in non-listed companies. Under that favorable tax regime, FPCI/SCR are exempt from corporate income tax. Such funds/companies normally require eligible qualified investors, and their investment opportunities are restricted to non-quoted shares or shares of other similar funds. It may allow eligible investors to benefit from a favorable tax regime on distributions and capital gains if certain conditions are fulfilled. In particular, it may offer a capital gains tax exemption upon the sale of FPCI/SCR shares that have been previously held for more than five years.

Germany



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At a glance

Corporate income tax rate (%)	15
Individual income tax (IT) (%)	14-45
Solidarity surcharge (% of corporate income tax or IT)	5.5
Trade tax (TT) (%)	7-17.5[1]
Tax loss carryforward (years)	Indefinite[2]
Tax loss carryback (years)	1 (maximum of EUR 1 million)[3]
Limitations on transfer of tax losses	Yes
Domestic withholding tax rate on dividends, including solidarity surcharge (%)	26.375
Domestic withholding tax rate on interest (%)	N/A
Capital duty (%)	N/A

[1] This depends on the municipality in which the company is based. Some municipalities provide for a trade tax (TT) rate, which is leveled below 10% (minimum is 7%). There is no maximum rate, but virtually no municipality has a TT rate higher than 17.5%.
[2] Set-off of profits against loss carryforwards is limited by the so-called minimum taxation regime.
[3] No tax loss carryback is available for TT. For corporate income tax, the tax loss carryback has been increased to EUR 5 million for the assessment period 2020 due to the impact of COVID-19.

Transfer tax rates (%)	
Sale of movable assets	N/A
Sale of real estate assets	3.5-6.5[4]
Sale of shares of real estate holding company	3.5-6.5[5]
Standard VAT rate (%)	19
Neutral tax regime for restructuring operations	Yes
Tax consolidation	Yes[6]
VAT grouping	Yes

I. Acquiring the investment

When buying a business in Germany, it is necessary to distinguish between two groups of businesses: corporations on the one side, and partnerships (including sole proprietorships) on the other. German limited liability companies (*Gesellschaft mit beschränkter Haftung* or GmbH) and German stock corporations (*Aktiengesellschaft* or AG) are the predominant legal forms of corporations. Non-corporate businesses are mostly structured as sole proprietorships (*Einzelunternehmen*), general partnerships (*Offene Handelsgesellschaft* or OHG), limited partnerships (*Kommanditgesellschaft*

[4] This depends on the state where the real estate is located; for details, see Section 1.3.

[5] Rates in each state are the same for the direct sale of real estate.

[6] There is no technical consolidation but a pooling of income at the parent company level (*Organschaft*).

or KG), or limited partnerships with corporate general partners (GmbH & Co. KG).

1. Acquisition through an asset deal

1.1 Corporate income tax/IT

For the purchaser, the acquired tangible and intangible assets, including goodwill, are capitalized at acquisition costs (usually determined by the purchase price paid). For this purpose, the parties should agree on a detailed allocation of the purchase price for the individual assets purchased. According to recent case law, the allocation agreed on by the parties is principally binding for tax purposes, provided that the values are not clearly inappropriate or fictitious and abusive. The capitalization of the assets at acquisition costs will usually allow the purchaser to step up the tax basis of the acquired assets. Consequently, by way of an increased depreciation/amortization basis, the purchaser can reduce taxable income in the periods following the acquisition by non-cash deductibles.

If the acquisition costs of the entire business exceed the fair market value of the individual assets, the excess purchase price is reflected as goodwill in the tax balance sheet of the purchaser. Goodwill has to be amortized on a straight-line basis over a 15-year period. Except for land and shares in corporations, all other assets are depreciated over their expected period of useful life. Tax authorities regularly publish depreciation tables, which give an indication of which periods of useful life are usually accepted. Land and shareholdings are non-depreciable.

If the asset deal comprises the transfer of liabilities for which special tax valuation or accounting rules exist (such as pension provisions), the acquirer of a business has to reduce the liabilities to their lower special tax value. Such a step-down of liabilities, in principle, results in the recognition of a taxable capital gain at the level of the acquirer. The acquirer can,

however, accrue 14/15 of such a capital gain as a tax-neutral reserve, which then has to be dissolved in the following 14 years.

1.2 VAT

A sale of assets located in Germany is generally subject to VAT at the standard rate of 19%. However, an asset deal may be outside the scope of VAT if the transaction qualifies as a transfer of a going concern (TOGC). This relief applies if the transferred assets enable the purchaser to resume the purchaser's taxable business (i.e., without having to make significant additions or alterations) and if the purchaser actually intends to resume this very business activity. This is true regardless of whether or not the seller continues to conduct a business activity.

A sale of real estate as a single asset is generally VAT-exempt if the sale is subject to real estate transfer tax (RETT). The seller, in most cases, may opt for VAT in order to be eligible for a refund of the input VAT that the seller incurred in connection with the property. The purchaser may or may not be eligible for a refund of such input VAT depending on the kind of supplies rendered with the real estate.

Rate	19% (reduced rate: 7%)
Basis	VAT is levied on the agreed net purchase price; assumed liabilities or supplies made as a consideration (barter transaction) may form part of the tax base.
Date of payment	VAT arises at the time of the transfer of the asset. The time of the payment by the purchaser is generally irrelevant (unless prepayments are being made). Purchase price adjustments lead to an obligation to amend the VAT reporting.

	Most registered businesses are required to submit VAT returns on a monthly or quarterly basis (depending on the amount of VAT payables).
Liable person	Generally, the seller; the purchaser in the case supplies are subject to the reverse charge scheme (i.e., for a transfer of real estate)
Recoverability	Input VAT can be recovered only if incurred by a taxable person for business-related supplies. If recoverable, input VAT is to be included in the periodical VAT return. If the input VAT exceeds the VAT due, a refund can be claimed. For a business not established in Germany, a special refund procedure applies.
Exemption	If a transaction does not qualify for the TOGC relief, the transfer of single assets may be subject to separate VAT exemptions (e.g., real estate; cross-border supplies; items exclusively used for VAT-exempt businesses).
VAT grouping	Obligatory VAT grouping applies if subordinate companies are sufficiently integrated into a head company in terms of financial, economic and organizational links (no opt-in or opt-out). A partnership can be integrated as a subordinate company in a VAT group under certain conditions as well. Supplies of goods or services within a VAT group do not trigger VAT. The effect of a VAT group is limited to companies and fixed establishments in Germany (no cross-border VAT grouping).

1.3 RETT

The direct sale and acquisition of real estate in Germany or of similar rights regarding real estate in Germany (such as hereditary building rights) is subject to RETT, as are other direct transfers of real estate such as transfers as a result of a merger, spin-off or asset contribution.

Certain transfers of real estate between a partnership and its partners and certain intragroup transactions are, however, tax-exempt. For intragroup transactions, statute limits the type of transactions privileged to those conducted among parties within a group dominated by one common 95% shareholder. The common shareholder needs to fulfill the criteria for an entrepreneur (i.e., they need to operate a trade or business of their own, for VAT purposes under German law). This requirement limits the intragroup restructuring privilege significantly, as mere holding companies typically do not qualify.

Even if the common shareholder test is passed, the rules provide relief in certain limited circumstances only. Reorganizations based on universal succession rules under German or European merger law are exempt (e.g., merger, spin-off and drop-down), as well as share or asset contributions, provided that the transaction only involves entities with a common shareholder holding at least 95% of shares, and provided further that the minimum 95% shareholding had existed for five years prior to the reorganization and will persist for five years following the reorganization. The privilege does not distinguish between corporate entities and partnerships so that reorganizations involving partnerships that own real estate are equally privileged. While guidance from German tax authorities on the intragroup privilege exists, the details regarding its application are still disputed and subject to several pending court cases. In December 2018, the CJEU ruled that exemption does not constitute unlawful state aid.

Rate	3.5% in Bavaria and Saxony 4.5% in Hamburg 5% in Baden-Wuerttemberg, Bremen, Lower Saxony, Rhineland-Palatinate and Saxony-Anhalt 6% in Berlin, Mecklenburg-West Pomerania and Hessen 6.5% in Schleswig-Holstein, Saarland, Brandenburg, North Rhine-Westphalia and Thuringia
Basis	Generally, the purchase price If there is no direct consideration paid for the acquisition of the real estate (e.g., a transfer as a result of a reorganization measure), the tax base is determined on the basis of special real estate valuation rules set out in the Valuation Act.
Date of payment	Two weeks after the assessment of tax Payment of RETT may be a precondition for the registration of the sale in the land register.
Liable person	Transferor and transferee are jointly and severally liable. Usually, the contract specifies which party will pay the tax. Generally, the tax office demands the tax from the person specified in the contract. However, this agreement is not binding for the tax authorities. The respective tax office may, in

	the event of insolvency of one party, demand payment from the other party. The above is true for an asset deal and a transfer of at least 95% of shares in a real estate-owning company only. In the case of RETT being triggered because at least 95% of the shares are consolidated in the hands of one shareholder, this shareholder will be liable for the tax. The 95% threshold for share and interest transfers is expected to be reduced to 90% in the course of 2021.
Tax deductibility for corporate income tax and income tax	Transfer tax is not deductible from personal tax or corporate income tax, but is capitalized as part of the purchase price in the case of an asset deal.
Exemption	An exemption is available for certain intragroup transactions. This either relates to transactions between partnerships and its partners, certain intragroup reorganizations, or to certain types of transactions among entities with a common 95% shareholder (or the affiliate and the shareholder).

1.4 Other acquisition costs

Notary fees	The sale and transfer of real estate must be recorded by a notary public. The fees depend on the value of the transaction. As ancillary costs of the acquisition of land and/or building, the notary fees are regarded as part of the acquisition costs for tax purposes.

	Therefore, the notary fees have to be capitalized and depreciated over the same period as the building itself, to the extent they are attributable to the building.
Mortgage registration duties	In general, the transfer of a mortgage needs to be recorded in the land register. This will also trigger fees depending on the value of the mortgage.
Transfer of leases	N/A
Stamp duties	N/A
Tax deductibility for corporate income tax	All expenses related to the acquisition of assets/real estate or shares are treated as ancillary costs and have to be capitalized and amortized if the asset purchased is subject to amortization.

1.5 Tax credits

As a general rule, any capital gain realized by a corporate seller from the sale or transfer of assets is taxable. In the case of sale of land or buildings, the seller can transfer built-in gains to certain reinvestments (rollover) and thereby protect the gains from immediate taxation. If reinvestment is not made immediately, a reserve for reinvestment can be established. This tax benefit is granted only if the reinvestment is carried out within the next four (and in exceptional cases, six) tax years following the tax year in which the capital gain was realized.

The rollover relief also applies to comparable assets located in the EU/EEA. However, for assets, only a deferral and spread of tax over five years — and not a full exemption — are available. This applies to corporations as well as sole proprietorships and partnerships of individuals.

Reinvestment tax credit	Yes, in the form of a reinvestment reserve; however, this applies on very limited occasions only.
Other tax credits	N/A

1.6 Transfer of tax liabilities

In the case of an asset deal, tax liabilities generally remain with the seller. However, there are some exceptions. The General Tax Act provides that the purchaser of an entire business or a separate business unit is, within certain limitations, secondarily liable for all tax liabilities that stem from the activity of the business or the separate business unit and that have arisen since the beginning of the calendar year preceding the calendar year in which the business was acquired.

If the purchaser uses the legal business name (*firma*) of the acquired business, the purchaser is also secondarily liable for all liabilities stemming from the acquired business. This liability may, however, be excluded by contract. In order to be binding on third parties, the exclusion must be recorded with the commercial register.

2. Acquisition through a share deal

2.1 Corporate income tax/IT

Due to the "transparency" of German partnerships for direct tax purposes, the acquisition of an interest in a partnership is treated for corporate income tax/IT and TT purposes like a sale of the partnership's assets. Correspondingly, the acquisition of an interest in a partnership is treated like an asset deal (see Section I.1.1, "Corporate income tax/IT").

For the purchaser, the acquisition of shares in a corporate entity is less favorable than an asset deal. In principle, the acquisition costs of shares can neither be deducted as a whole nor depreciated over time. In certain

situations, a write-down on shares is allowed (e.g., if the market value of the shares is expected to have fallen permanently below their book value). This write-down is partially deductible (60%) for individuals holding shares as business assets and not deductible at all for corporate shareholders.

Business expenses related to the acquisition of the shares (for example, notarial fees) generally have to be capitalized as ancillary acquisition costs and are therefore not deductible. Business expenses related to the holding of the shares are, in turn, fully deductible at the level of corporate shareholders and partially deductible (60%) at the level of individual shareholders holding the shares as a business asset. This also includes financing costs whereby interest deductibility limitations may apply. Due to strict limitations, loss carryforwards of corporations, the shares of which are transferred, can be utilized by the purchaser only if certain requirements are met.

2.2 VAT

The sale and acquisition of shares is exempt from VAT, unless the parties waive the VAT exemption and opt for a taxation of the share transfer (to enable the seller to deduct input VAT incurred with respect to expenses in relation to the share transfer such as advisory or notary services). A TOGC relief may apply in principle if the resumed taxable activity relates to the shares and requires the transferee to hold the relevant shares.

2.3 RETT

If shares or interests in a company owning real estate (be it a corporation or a partnership) are transferred (directly or indirectly), this transaction may also be subject to RETT. There is no regime for real estate-oriented companies determined on the value of real estate owned (in total or in relation to other assets). All transfers of shares/interests in companies holding real estate in Germany are principally treated the same.

The acquisition of shares/interests may, in particular, trigger RETT if the purchaser acquires, directly or indirectly, at least 95% of a company that owns real estate located in Germany. The 95% ownership test for share transactions is applied on the basis of an economic participation in the real estate-owning company. As of June 2013, RETT blocker structures involving minority shareholders with economically eroded interest in real estate are no longer possible. It is expected that the 95%-threshold will be reduced to 90% in the course of 2021.

Certain share transfers (e.g., those resulting from mergers, spin-offs or drop-downs) that result from reorganization measures within a group of affiliates, with a common shareholder of at least 95%, may be tax-exempt.

2.4 Tax credits and other tax benefits

For corporate shareholders, there is generally no tax credit for reinvestments in connection with the sale of shares in a corporation. However, if the seller is an individual (i.e., neither a corporation nor a partnership of individuals), the rollover regime applies up to EUR 500,000 of sale of shares if a reinvestment is carried out in the succeeding two financial years (see Section I.1.5, "Tax credits"). The privileged reinvestment is not limited to shares, but also includes tangible assets and buildings.

2.5 Tax losses' preservation

Minimum taxation

Losses can be carried back for one year, although this facility is limited to a total of EUR 1 million.[7]

There is no time limitation on the loss carryforward facility. However, the utilization of loss carryforwards to eliminate the profit of a given tax year

[7] The tax loss carryback for corporate income tax has been increased to EUR 5 million for the assessment period 2020 due to the impact of COVID-19.

is limited. The first EUR 1 million of any profit for the year can be fully set off against the loss carried forward, as can 60% of any excess profit. The residual 40% of profits above EUR 1 million will become subject to tax, irrespective of the amount of a tax loss carried forward available.

In terms of TT, a carryback of losses is not possible. Offsetting trade income with loss carryforwards is allowed under the limitations outlined above.

Change in ownership

The survival of loss carryforwards in the event of a share transfer is limited in a "detrimental change of ownership."

A detrimental change of ownership occurs if more than 50% of the share capital, voting rights or similar forms of participation in a corporate entity is directly or indirectly transferred to an acquirer within a period of five years. An acquirer may be a single person, partnership or corporation, or an affiliate of the above or a group of acquirers with converging interests. The change of ownership may happen by way of transfer of existing shares or similar forms of participation, irrespective of whether this happens at the level of the direct participant in the loss-suffering company, or indirectly at a higher level of ownership.

A detrimental change of ownership may also occur as a result of similar transactions, such as: pooling of voting rights; commitment to the exercise of voting rights; the waiver of voting rights; a merger into a loss-suffering company by which the ownership is changed; the contribution of a business, part of a business or participation in a partnership, provided that a detrimental change of ownership is triggered directly or indirectly by the issuance or redemption of shares; or an increase or decrease of share capital. A combination of different scenarios, as described above, may also lead to a detrimental change in ownership.

Such change in ownership may be triggered by a change in the direct ownership or by a change of indirect ownership at a higher level in the corporate holding chain. An indirect change in ownership remains detrimental even if it does not lead to a change in the effective participation held in the loss-suffering company.

If there is a detrimental change in ownership, all existing tax loss carryforwards (and the current loss of the year at issue through the date of change of control) are cancelled. The loss cancellation is triggered for the fiscal year in which the change of ownership occurs. The rules regarding the forfeiture of tax losses similarly apply to certain other tax attributes, such as interest carryforwards.

The time of the change in ownership is determined by the transfer of beneficial entitlement to the respective participation. Capital increases become effective upon their registration in the commercial register and therefore, new shares come into existence at this time. The possibility of effecting certain corporate transactions retroactively for tax purposes (e.g., a retroactive merger) is not applicable to matters of loss utilization.

There are four separate instances where the absolute cancellation rules are mitigated, as follows:

- Group transactions among 100% affiliates – Whenever shares in a loss-suffering company are transferred from one wholly owned affiliate to another wholly owned affiliate, this transfer no longer results in the cancellation of the loss carryforward. As of 2016 (and retroactively, for share acquisitions that took place after 31 December 2009), transactions where shares are transferred or received by the ultimate parent itself are no longer excluded from the intragroup exemption. The new rule basically covers all share transfers within a wholly owned group of companies (including the ultimate parent as acquirer or seller), provided that there is no change in the ultimate ownership of the shareholding rights. The

exemption also includes groups of companies held by commercial partnerships.

- Retention of tax loss carryforwards in the amount of unrealized gains – The rules provide that the loss carryforward of a company will not be cancelled in an otherwise harmful transaction to the extent that the loss-suffering company has unrealized gains, which, if realized, would be taxable in Germany. Generally, unrealized gains are determined by the excess of the fair market value of the shares transferred over the equity (under tax accounting) of the company transferred. In the event the equity of the company transferred is negative, the unrealized gains are determined by the excess of the fair market value of all assets (less liabilities) over the equity. This calculation will ensure that the value of the loss carryforward itself is not used to increase the benefit of this exemption. The "unrealized reserves" exemption will need careful structuring. In many instances, German group companies will have a reduced functional profile, resulting in a correspondingly reduced goodwill. Valuations for German entities transferred will often be required.

- Restructuring exemption – Whenever a business is purchased for the purposes of its restructuring, the loss carryforwards remain intact provided one of following restructuring scenarios is fulfilled:

    - The target concludes a works agreement with its works council providing for the protection of jobs.

    - The annual wages bill of the target, taken cumulatively over five years from the date of purchase of its shares, is no less than 400% of the wages bill prior to the restructuring operation.

    - The target receives substantial fresh assets (minimum of 25% of previously existing assets) by way of contribution. The

new rules provide that any distributions or repayments made by the target for a period of three years from the addition of the fresh assets will reduce the value of the contributed assets retroactively.

The application of the restructuring exemption had been suspended because the European Commission found it infringed EU state aid rules. However, in June 2018, the CJEU ruled that the restructuring exemption does not constitute unlawful state aid.

- Business continuation loss carryforwards – It is possible to retain, upon application, the interest and loss carryforwards and current year losses even in case of an otherwise harmful change of control. The basic requirement for the preservation of the losses is that the loss-suffering company has continued its business unchanged since its incorporation or at least for the last three years, and no harmful events occurred during this period of time and in the future for so long as the losses are utilized. Harmful events are, for example: discontinuation of the business operation; leaving the business operation dormant; changing the purpose of the business operation; opening of additional business operations; investment into a partnership; establishment of a fiscal unity as the controlling entity; or a transfer of assets to the loss-suffering company below fair market value. The losses benefiting from the carryover will be reclassified and separately assessed as "business continuation loss carryforwards." For the purposes of applying for relief, it will have to be carefully reviewed and considered if there has been or will be any harmful events that may jeopardize the relief, thus canceling the loss carryforwards by means of the change of ownership.

The Federal Constitutional Court recently ruled that the former cancellation of the loss provision that provided for a *pro rata* cancellation if more than 25% but not more than 50% of the shares are transferred is in violation of the German constitution. The Federal Constitutional Court expressly left

open whether the provision according to which in the event of a transfer of more than 50% of the shares the entire unused tax losses and tax loss carryforwards become forfeited is also unconstitutional. The same applies to the question of whether — as of 1 January 2016 — the unconstitutional condition was remedied as a consequence of the introduction of business continuation loss carryforwards.

Another preliminary ruling regarding the question whether the cancellation of loss provision is in violation of the German constitution to the extent that a transfer of more than 50% occurs is currently pending at the Federal Constitutional Court.

The merger of a loss-suffering company into another company — whether intragroup or not — will always result in a loss of the loss carryforwards of the merged company (i.e., the losses will not be transferred to the surviving entity under the merger). Care should be taken in upstream or downstream mergers so as not to endanger a loss carryforward of a subsidiary in a situation where the loss carryforward could be preserved under new rules. The loss carryforwards of the company being liquidated in the merger are cancelled at any rate.

2.6 Transfer of tax liabilities

In the case of a share deal, the legal person of the transferred company remains unaffected by the change of shareholders. Tax liabilities are attached to the company and therefore indirectly transferred to the acquirer with the company. The purchaser therefore assumes (indirect) responsibility for all known and unknown tax liabilities.

Tax liabilities are restricted by the statute of limitations. The general statute of limitations regarding the assessment of tax liabilities is four years — 10 years in the case of tax fraud — basically running from the end of the year in which the tax return was filed. Once assessed, the payment of tax liabilities becomes statute-barred after five years.

2.7 Transaction costs

The sale and transfer of shares in a limited liability company require an agreement that must be recorded before a public notary. This will trigger statutory notary fees depending on the value of the transaction.

3. Financing the investment

3.1 Deductibility of financing expenses

Germany operates an interest barrier, which limits the deductibility of interest and certain interest equivalent to 30% of the taxable earnings before interest, tax, depreciation and amortization (EBITDA). Generally, the identity and residence of the creditor to whom interest is paid does not matter. Any interest that cannot be deducted in a given fiscal year due to the interest barrier can be carried forward, subject to the carryforward cancellation rules generally applicable to loss carryforwards. A carryforward is available for any unused EBITDA volume as well.

Interest includes commissions, early repayment compensation, and other fees and expenses that are normally paid to a creditor. This interpretation, to give but one example, is contentious since the statute uses the narrow term "interest" in Section 8a of the Corporate Income Tax Act, which itself is based on Section 4h of the German Income Tax Act.

For the purpose of assessing the impact of the 30% of taxable EBITDA limitation, it is the net interest expense after deduction of interest income that counts. Therefore, a taxpayer not only has to structure the interest payable in their books, it may also be useful to have as much interest income earned as possible in order to reduce the net interest payable to a manageable amount in view of the 30% limit.

Taxable EBITDA can deviate substantially from financial EBITDA. This applies in particular to the receipt of tax-exempt income, such as dividends, which are part of financial EBITDA but not of taxable EBITDA.

The same applies to income or loss from permanent establishments, which is exempt under an applicable double tax treaty.

A general exemption is available for all businesses with a net interest below EUR 3 million per annum. This exemption amount can be used in a situation where investment, such as in real estate, is split between various entities so as to benefit up to a EUR 60 million leverage facility (assumed interest rate at 5% per annum) in each individual case.

Whenever a company is not part of an affiliated group (neither being a parent nor a subsidiary), the interest barrier is not applicable. This would apply to any company that does not have a majority shareholder or that is not affiliated for other reasons and thus stands alone. The non-affiliation also applies to companies under common control to the extent they are only partly to be included in group accounts.

A German company may also avoid the application of the interest barrier by showing that its debt-to-equity ratio is no worse than the group debt-to-equity ratio (with a 2% margin), using consolidated International Financial Reporting Standards or United States Generally Accepted Accounting Principles accounts. It is the debt-to-equity ratio at the end of the preceding fiscal year that determines the applicability of the interest barrier in the following year. There are a number of special rules applicable to the determination of equity for the accounts of a German company.

The Federal Tax Court recently argued that the interest barrier is in violation of the German constitution and submitted this question to the Federal Constitutional Court for a final decision.

3.2 Deductibility of royalty payments

Germany introduced a so-called royalty barrier as of 2018. Accordingly, German-based licensees are unable to deduct royalties paid to affiliates to the extent that the licensor's royalty income is not subject to the regular tax regime (e.g., IP box regime) and taxed at a low rate within the meaning

of the royalty barrier (effective tax rate of less than 25%). This limitation on deductions does not apply, however, if the royalty income benefits from a preferential arrangement that is in line with the OECD's so-called Nexus Approach. The new rule focuses on foreign IP boxes incompatible with the OECD nexus approach, and intends to make their use unattractive.

The deductibility of royalties paid by a German corporation or a permanent establishment to related parties is limited in the following circumstances:

- License income is subject to preferential, low taxation, meaning taxation below 25%.
- Such low taxation results from a preferential regime that is not in line with the OECD nexus approach as laid out in Chapter 4 of the final report on action item 5 of the OECD BEPS Project.

The royalty barrier particularly limits the deduction of royalties on intellectual property acquired by the licensor or developed for the licensor by related contract developers. In case license payments relate to trademarks, the deduction of license payments is limited regardless of whether using the foreign IP box requires substantial business activities or not.

Where the captured license income is taxed at a rate of less than 25%, the deduction of corresponding license charges is denied in proportion to the low taxation. The foreign income tax burden is calculated based on gross license income. Any actually incurred operating expenses of the licensor (e.g., depreciations after on-shoring) that reduce the effective tax burden below 25% should not constitute low taxation within the meaning of the royalty barrier.

3.3 Withholding tax on interest

Germany does not levy a general withholding tax on interest paid by German debtors. Interest payments are only subject to a "classical" withholding tax at an aggregate rate of 26.375%: if the interest is paid by a German bank or other financial institutions to a creditor; if the interest-bearing instrument is held at a deposit of securities at a German bank or other financial institutions; or in the case of profit-participating loans.

Interest paid to a nonresident is not subject to source taxation, unless the principal for which the interest paid is secured by German real estate. In this case, the applicable double tax treaty normally provides full relief.

3.4 Debt push-down

Organschaft

The establishment of a tax group (*Organschaft*) between the acquiring entity and the target company may achieve deductibility of interest expenses incurred for the acquisition of shares in a corporation at the level of the acquisition vehicle and offset such financing expenses against the positive income of the target company. By doing so, the income of the German target company may be offset against any expenses at the level of the parent company. However, as a drawback, pre-existing tax loss carryforwards at the level of the acquired subsidiary and new member of the *Organschaft* may not be used as long as the tax group exists ("frozen" loss carryforwards).

The *Organschaft* is, in principle, open to German and foreign companies. In order for a foreign company to qualify as a parent in such a group, it is required that shares in the controlled entity be functionally attributable to a permanent establishment of the controlling company in Germany. This requirement must also be met where a commercial partnership will serve as parents in the *Organschaft.* Mere asset managing partnerships do not qualify as parents in an *Organschaft*.

In order to establish an *Organschaft*, it is required that the parent in the group hold a majority interest in each subsidiary to be included in the *Organschaft*. Furthermore, the parent company and the controlled subsidiary have to conclude a profit-and-loss pooling agreement with a minimum term of five years, which has to be actually implemented. In such an agreement, the subsidiary undertakes to transfer all of its annual profits to the parent, and the parent undertakes to compensate all losses of the subsidiary incurred during the effectivity of the profit-and-loss pooling agreement. Tax authorities and courts take a very formalistic approach toward the fulfillment of the obligations under the profit-and-loss pooling agreement. If not fulfilled, the *Organschaft* will not be accepted for tax purposes.

Merger of target and purchaser

Another way to offset the business expenses of the acquiring company against the positive income of the target company is through a merger of the target company and the acquiring company. Such a merger not only achieves the consolidation of operating profits and interest expenses for tax purposes, but also results in a legal integration.

The merger brings in another structuring alternative known as a "leveraged recapitalization," under which the target is integrated into the acquiring company. Upon the merger, the acquiring company opts for a step-up in the basis for financial accounting purposes. By doing so, the distributable equity of the acquiring company is raised. The distribution of this equity may then be funded with debt, which further increases the leverage.

II. Holding the investment

Corporations are subject to corporate income tax and TT. In addition, a solidarity surcharge (*Solidaritätszuschlag*) of 5.5% is levied on the assessed amount of corporate income tax.

TT is a municipal IT. Effective tax rates may vary from 7% to approximately 17.5%, depending on the multiplier determined by the municipality in which the activity is carried out (e.g., Munich, 17.15%; Hamburg, 16.45%; Frankfurt, 16.10%). TT is not a deductible business expense for IT purposes.

Most commercial or industrial activities are subject to TT. This is true regardless of the legal format in which the activities are carried out. It applies to sole proprietorships and partnerships as well as to corporations. Individuals may credit TT from their business activities in the form of a sole proprietorship or a partnership against their personal IT, and are thus at least partially exempt from paying TT.

Partnerships are considered "transparent" for IT purposes. Profits and losses are directly attributed to the partners and taxed at the partner level. However, they are subject to TT; to this extent, they are not tax-transparent.

1. Main tax costs to be considered

Taxable income	Net income after deduction of business expenses (interest expenses, depreciations, etc.) is subject to corporate income tax at a standard rate of 15% (plus solidarity surcharge) in the case of a corporation. Profits of a partnership are directly attributed to the partners and taxed at the partner level at each individual tax rate (14% to 45%) or the corporate income tax rate

	(plus solidarity surcharge). In addition, TT is levied on the trade income of the corporation or partnership. In the case of partnerships with individuals as partners TT may, within certain limitations, be credited against the personal IT of the partner.
Deduction for risk capital invested/Notional interest deduction	N/A
Depreciation	All tangible and intangible assets (except land and participations) can be depreciated or amortized over the period of their expected useful life. Goodwill can be amortized if capitalized; the amortization period is 15 years on a straight-line basis.
Write-offs or capital losses on shares	For tax purposes, shares cannot be depreciated or amortized, as they do not have a limited period of useful life. A write-down is allowed only in exceptional cases and under restricted conditions (e.g., market value of shares is expected to have fallen permanently below book value). In the case of a write-down by an individual or a partnership of individuals, only 60% is recognized as tax-deductible; in the case of corporate shareholders, the write-down is not tax deductible (see Section I.2.1, "Corporate income tax/IT" and solidarity surcharge).

VAT	All supplies of goods and services are generally subject to VAT. The standard German VAT rate is 19%. For some goods and services, reduced rates of 7% or other exemptions apply (see Section I.1.2, "VAT").
License business tax	There is a 15.825% withholding tax on royalty income (e.g., copyright licenses and industrial property rights) of nonresidents (subject to nonresident taxation in Germany). A German debtor of royalty payments must withhold the tax for the account of the licensor and pay the tax directly to the German tax authorities. This tax is normally reduced or even eliminated by tax treaties. If the companies involved are EU-based and one company holds at least 25% of the other, no withholding tax is due on the royalty income if an exemption certificate was obtained. The deductibility of royalty payments made by German corporations and German permanent establishments to related parties might be restricted by the royalty barrier from 2018 onward.
Other taxes	Real estate tax in Germany is an annual municipal tax. The tax basis is determined on the special real estate valuation rules set out in the Valuation Act. The valuation rules as of 2016 (with retroactive effect as of 31 December 2009) lead to a substitute assessment basis close to the fair market

	value of the real estate. Real estate tax is a deductible expense.

2. Distribution of profits

Withholding tax on dividends distributed by a local company	Dividends distributed by a corporation that is a resident of Germany are subject to 25% withholding tax (*Kapitalertragsteuer*). In addition, a solidarity surcharge of 5.5% is levied on the dividend withholding tax. A total of 26.375% must be withheld by the corporation and paid directly to the German tax authorities for the account of the shareholders. There are only very limited exemptions from withholding tax for dividends distributed to corporations, although dividends received by corporate shareholders are generally 95% tax-exempt. However, corporations are, in principle, entitled to a credit for the withheld tax against their corporate income tax. An exemption from dividend withholding tax is available for profits distributed to nonresident parent corporations if these hold at least a 10% capital interest and are domiciled in an EU member state, and provided that the shares have been held uninterruptedly for at least one year, domestic substance requirements have been met, and the distributing company obtained a dividend withholding tax exemption certificate.

Taxation of dividends received by a local company	Dividends received by a corporation are tax-exempt. However, 5% of the dividends are deemed to be a nondeductible business expense, thus effectively reducing the 100% exemption to 95%. Exceptions from the participation exemption apply to dividends received from portfolio shareholdings (less than 10% ownership); in the event the distributed amounts reduced the tax basis of the distributing entity (e.g., if they are deducted as a business expense for tax purposes); and in certain situations for banks, other financial institutions, insurance companies and pension funds as shareholders. For TT purposes, a special exemption regime applies, under which the shareholder has to own 15% (10% if the distributing entity meets the requirements under the Parent-Subsidiary Directive) of the share capital of the distributing entity at the beginning of the tax year. A special regime applies to the taxation of dividends received by German-resident individuals holding shares as private assets. The withholding tax of 25% plus a solidarity surcharge (i.e., 26.375% in total) settles their personal tax liability. The shareholder may apply for an individual tax assessment of the dividends on the basis of their personal IT rate, if such a rate is lower. No expenses, however, can be deducted from investment

	incomes except for a lump sum savings allowance of EUR 801. This does not apply to partnerships of individuals and individuals holding shares as business assets. These dividends are taxed at the individual tax rate for individuals (14% to 45% plus a solidarity surcharge). Due to the fact that the profits underlying the dividends have already been taxed at the corporation level, only 60% of the dividends received from a resident or nonresident corporation constitute taxable income. In return, only 60% of the related expenses are deductible. Generally, 60% of the dividends are also subject to TT, unless the shareholder holds at least 15% (10% if the distributing entity meets the requirements under the Parent-Subsidiary Directive) of the share capital of the corporation at the beginning of the tax year and in case the distributing entity is a foreign entity, such entity meets certain activity requirements.

III. Selling the investment

1. Asset deal

Capital gain taxation	Gains realized upon the sale of assets by a corporate seller will be subject to corporate income tax at the standard rate of 15% (plus a solidarity surcharge), as well as TT.

	Gain from the sale by a partnership (with individuals as partner) or an individual will be subject to IT (14% to 45%), plus a solidarity surcharge. The sale of assets is generally also subject to TT. However, in the case of the sale of assets by an individual or a partnership of individuals, a limited tax exemption may apply. Selling costs will reduce the capital gain.
Selling cost/Transfer taxes	The sale of assets located in Germany is generally subject to VAT at the rate of 19%. However, VAT relief might apply if the sale constitutes a TOGC (see Section I.1.2, "VAT"). In the case of a transfer of real estate, RETT will be due.
Sale by nonresidents	In general, the sale of assets by nonresidents is taxed the same way as the sale of assets by residents, provided that Germany has the taxation right with respect to the capital gain. Gains realized by a foreign corporation upon the disposal of assets are subject to German corporate income tax if the seller is subject to German-sourced taxation in respect of the sold assets, for example, because the assets sold formed part of a permanent establishment in Germany.

2. Share deal

Capital gain taxation	Capital gains from the sale of shares by German resident corporate shareholders are generally exempt from corporate income tax. In addition, 5% of the capital gain is treated as nondeductible business expenses, which will be subject to corporate income tax, thus reducing the 100% exemption to 95%. Exceptions from the participation exemption apply in certain situations for banks, other financial institutions, insurance companies and pension funds as shareholders. Capital losses from the disposal of shares by a corporate shareholder are, in general, nondeductible. The gain from the sale of shares by a partnership (with individuals as partners) or an individual is subject to individual IT. If an individual holds the shares as a private asset and does not own (or has owned in the last five years) more than 1% of the share capital of the corporation at hand, the capital gain is taxed at a special rate (25% plus solidarity surcharge). If the individual holds shares as a business asset or owns more than 1%, 60% of the gain is taxed at the individual IT rate (partial exemption procedure for individuals) and the other 40% of the capital gain is tax-exempt.

Selling costs/Transfer taxes	The sale of shares is generally VAT-exempt. In order to be eligible for an input VAT recovery, the seller may voluntarily subject the sale of the shares to VAT if certain requirements are met. In the case of direct or indirect sale of shares in a corporation owning real estate, RETT may be triggered. This will generally apply if at least 95% of the shares are transferred to one acquirer. The sale and transfer of shares in a limited liability company require an agreement that must be recorded by a qualified notary. This will trigger notary fees. Any costs incurred by the seller regarding the transfer are deducted from the selling price of the shares for determining the capital gain.
Sale by nonresidents	In general, the sale of shares of a resident corporation by nonresidents is subject to IT if the nonresident shareholder owns (or has owned in the last five years) more than 1% of the share capital of the corporation at hand, or if the shares form part of a domestic trade or business. The domestic tax treatment of gains from the disposal of shares for nonresident shareholders is basically the same as that for resident shareholders (participation exemption for corporate shareholders, partial exemption procedure for individuals). For corporate shareholders, however, the

	participation exemption applies without the addition of 5% nondeductible expenses according to a recent decision of the Federal Tax Court, provided that the shares disposed of are not attributable to a German permanent establishment of the selling shareholder. A new rule was introduced according to which gains derived by nonresidents from the sale of a substantial shareholding in non-German corporations are also taxable in Germany if the shares derive (or have derived) more than 50% of their value from German real estate at any point in time during the last 365 days before the disposal. Most applicable tax treaties attribute the right of taxation to the state of residency of the shareholder as long as the participation is not allocated to a German permanent establishment and the company whose shares were sold does not qualify as real estate rich.

IV. Tax regime for restructuring operations

Merger or demerger	Under certain conditions, a merger can be tax-neutral for IT purposes. Although, as a general rule, Germany's Reorganization Tax Act will require taxation of unrealized reserves, assets can be transferred at book value for as long as future German taxation of the transferred unrealized reserves in the

	assets is ensured. In such a case, assets can also be transferred at an interim value (between book value and market value), thus giving the involved companies the choice as to the extent a taxable capital gain will arise. The requirements for a demerger at book values are far more restrictive than that for a merger. In the case of a merger, neither loss carryforwards nor current year losses premerger are transferred to the receiving company, and such losses can only be offset against any merger profit. Only current losses post the effective date for tax purposes may — within certain limitations — be utilized by the receiving company. Thus, the companies involved may choose to transfer assets at market or interim value in order to use any remaining loss of the transferring company. However, the set-off of tax loss carryforwards is further restricted by the minimum taxation rules (see Section II.2.5, "Tax losses' preservation"). These principles also apply to changes of legal format (i.e., if a corporation is converted into a partnership).

Contribution of a business, business division or a share in a partnership	The contribution of a business, a business division or an interest in a partnership can be tax-neutral under certain conditions. However, the contribution may lead to a partial retroactive taxation if, within seven years following the contribution, either the shares granted in exchange or the contributed shares themselves are sold.
Impact of foreign reorganization transactions on German assets	The German Reorganization Tax Act also applies to reorganizations carried out under another EU jurisdiction if the reorganization is comparable to reorganizations under German law. However, a transfer of assets or shares below market value is possible only if German taxation of the transferred assets of shares is ensured. Transactions involving companies from third countries usually lead to immediate taxation of the unrealized gains in the transferred assets, although exceptions for certain transactions apply.
Exchange of shares	In the case of a share-for-share exchange, the shares are transferred at market value, thus generally realizing a capital gain. However, if the receiving company acquires the majority of the shares of the transferred company, the shares may be transferred at book or interim value (the so-called qualified change of shares).

Hungary



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At a glance

Corporate income tax rate (%)	9
Local business tax rate (%)	Up to 2
Capital gains tax rate (%)	9
Tax losses carryforward (years)	Five years for tax years commencing on or after 1 January 2015 Losses that had arisen prior to 2015 can be carried forward and must be written off at the latest in the tax year covering 31 December 2030. Carryforward losses can be deducted at maximum up to 50% of the tax base of the given tax year.
Tax losses carryback (years)	Taxpayers in the agricultural sector can carry back losses for two tax years prior to the subject year at maximum up to 30% of the pre-tax profit.
Domestic withholding tax rate on dividends (%)	No
Domestic withholding tax rate on interest (%)	No
Tax consolidation regime	Yes

Transfer tax rates (%)	
Sale of movable assets	Generally 0, except for motor vehicles (see Section 1.3 below)
Sale of real estate assets	4 (up to a market value of HUF 1 billion, approximately EUR 3.18 million), 2 (on the excess above this value), with the payable tax capped at HUF 200 million (approximately EUR 637,000) per real estate asset A special regime applies to the acquisition of residential property and to the acquisition of property by real estate agents and financial lease companies.
Sale of shares of a real estate-oriented company	Transfer tax applies only if at least a 75% holding is acquired in a "company holding Hungarian real estate" (close relatives, companies of close relatives and related parties have to be taken into account when calculating the 75% holding). A company qualifies as a "company holding Hungarian real estate" if it owns more than 75% of Hungary-located real estate out of its total assets (less any liquid assets, pecuniary

	claims, loans, prepayments and accrued income) or holds a minimum of 75% holding in such a company. However, if the transfer is made between related parties, a transfer tax exemption applies. 4 (up to a market value of HUF 1 billion, approximately EUR 3.18 million), 2 (on the excess above this value), with the payable tax capped at HUF 200 million (approximately EUR 637,000) per real estate asset The tax rate is proportionate to the percentage of shares held in the "company holding Hungarian real estate."
Standard VAT rate (%)	27
Neutral tax regime for restructuring operations	Yes
VAT grouping	Yes

I. Acquiring the investment

1. Acquisition through an asset deal

1.1 Corporate income tax

A Hungarian purchaser of assets is generally allowed to depreciate the assets acquired, subject to certain requirements. Depreciation may be

accounted for in respect of all tangible fixed assets (except building sites) and intangible fixed assets at rates defined by the Corporate Income Tax Act. The depreciation rate accounted for on buildings for corporate income tax purposes depends on the type of the building; the general rate is 2%.

In an asset deal, goodwill can only be accounted for a line of business. A line of business is an independent business unit of an entity that is capable of operating autonomously thanks to its own resources. If goodwill can be accounted for, it is calculated as the difference between the consideration for the acquisition of the line of business and the market value of the assets, less the value of liabilities assumed.

1.2 VAT

The sale of assets is generally subject to VAT at a standard rate of 27%. As far as real estate is concerned, the following real estate transactions are subject to VAT:

- building sites and sites with ongoing construction
- developed areas (including buildings and apartments) if the sale occurs prior to the issuance of the occupancy permit (in practice, the occupancy permit is generally issued shortly after the completion of the construction) or where the occupancy permit is already binding, but is not older than two years at the time of the sale

The transfer of certain assets (e.g., receivables) and the transfer of liabilities are VAT-exempt. Under certain conditions, the transfer of a going concern (TOGC) is VAT-exempt.

TOGC relief applies if a line of business is transferred. The "line of business" means:

- an existing unit of a company to which assets and liabilities pertain
- it is capable of functioning independently

- it is capable of carrying out economic activity on a long-term basis using its own assets

In addition to the above, for TOGC relief to apply, the following additional requirements must be met:

- The purchaser will be a VAT-registered entity in Hungary.
- The purchaser assumes all rights and obligations stemming from the VAT Act in connection with the acquisition or the acquired assets from the time of the transfer.
- The purchaser does not and will not have any special VAT status that hinders or prevents the fulfillment of VAT obligations in relation to the acquired assets.
- The purchaser continues to perform business activity that is subject to VAT with regard to the transferred business.
- If real estate is involved and either (i) the transferor chose to treat the sale of "old" real estate and developed areas (apart from building sites) and the leasing of real estate as subject to VAT, or (ii) if the real estate at the time of transfer qualifies as a "new" real estate or building site, the purchaser must elect the vatable treatment of real estate sale or leasing.

The transferor and the purchaser have joint and several liability within the statute of limitations for the obligations in the VAT Act that arose prior to the transfer in relation to the assets transferred.

Rate	27%
Basis	Selling price (special rules apply with respect to transactions between related parties)

Date of payment	Date of performance or date of the issuance of the invoice, whichever is earlier (a special rule applies to the installment purchase and to the advance payment)
Liable person	Generally the seller, but in some special cases, the purchaser (reverse charge) The sale of the following real estate assets would be subject to VAT, to be charged by the seller: • newly developed areas (including buildings and apartments) where the sale occurs prior to the issuance of the occupancy permit (in practice, the occupancy permit is generally issued shortly after the completion of the construction) or where the occupancy permit is already binding, but is not older than two years at the time of the sale • building sites and sites with ongoing construction As far as other real estate assets (including buildings with an occupancy permit older than two years and undeveloped areas, apart from building sites) are concerned, the general rule is that the sale of such other real estate is exempted from VAT, but the seller can opt to treat the sale of the real estate as a transaction subject to VAT. If the seller opts to treat the real estate sale as

	being subject to VAT, then VAT is due on the sale but this VAT can be subject to the reverse charge mechanism where the buyer must assess the VAT (this is subject to further conditions such as a notification and a binding period of five years).
Recoverability	A taxable person can recover VAT if the recoverable VAT exceeds a certain threshold at the time the recovery application is submitted to the tax authority. The recovery threshold is HUF 50,000 (approximately EUR 160) if the taxable person is obliged to submit an annual VAT return; HUF 250,000 (approximately EUR 800) if the taxable person is obliged to submit a quarterly VAT return; and HUF 1 million (approximately EUR 3,180) if the taxable person is obliged to submit a monthly VAT return.

Special rules apply regarding the VAT base if the transaction is concluded between non-independent parties. Such non-independent parties are those parties that, although legally independent, possess any of the following characteristics:

- They are related parties.
- They hold shares in each other.
- One is the executive officer or a supervisory board member of the other.
- There is an employment or a similar relationship between them.

- They are closely related or they are the close relatives of the persons specified above.

In a transaction between non-independent parties, the special rule applies if:

- the consideration is unreasonably higher than the open market value of the goods or services in question and the supplier does not have a full right of deduction
- the consideration is unreasonably lower than the open market value of the goods or services in question and the recipient of the supply does not have a full right of deduction
- the consideration is unreasonably lower than the open market value of the goods or services in question and the supplier does not have a full right of deduction, and the supply is subject to certain exemptions

In this case, the VAT base is:

- the fair market value that under fair competition and comparable circumstances the transferee would pay to the independent transferor at the time of the supply
- if no comparable circumstances exist:
    - in the case of supply of goods, at least the purchase/cost price of the goods
    - in the case of supply of goods, at least the costs incurred by the supplier for the provision of the service

1.3 Transfer tax

Apart from VAT, transfer tax may apply to some of the transferred assets, especially on the transfer of real estate, the transfer of pecuniary rights attached to real estates (e.g., usufruct) and the transfer of motor vehicles.

Rates	The general rate of the transfer tax for real estate is 4% (up to a market value of HUF 1 billion, approximately EUR 3.18 million) and 2% (on the excess above this value), with tax payable capped at HUF 200 million (approximately EUR 636,000) per real estate asset. A special 2% regime is applicable if real estate agents and financial lease companies acquire a piece of real property. In the case of pecuniary rights attached to real estate, the basis of transfer tax is 1/20th of the market value (not reduced by any encumbrances on the real property) multiplied by the number of years of the right (e.g., usufruct). The transfer tax payable on the transfer of motor vehicles depends on the age and the performance of the motor vehicle. The transfer tax rate is from HUF 300 (approximately EUR 1) to HUF 850 (approximately EUR 2.70) per kilowatt.
Basis	Market value in the case of real estate — for motor vehicles, it is determined by the age and the performance of the motor vehicle.

Date of payment	Date of the signing of the agreement (the tax is levied by the tax authority — in case of motor vehicles, the regime is closer to self-taxation).
Liable person	Purchaser
Tax deductibility for income tax purposes	Deductible for corporate income tax purposes

Commonly used transfer tax exemptions are as follows:

- The preferential transfer of assets means a transaction whereby a company (transferor) transfers, without being dissolved, one or more independent branches of its activity to another company (transferee) in exchange for the transfer of quotas or securities representing the capital of the transferee, provided that the transaction is based on genuine economic and commercial reasons. Under Hungarian law, the transfer of real estate in the context of a preferential transfer of assets is exempted from transfer tax if the following conditions are met:
    - The seller did not claim the reduced transfer tax rate (2%) available to real estate agents and financial lease companies in the year of transfer and during the preceding two calendar years, and the seller has no suspended transfer tax obligation.
    - The value of the real estate does not exceed 50% of the value of all transferred assets (exclusive of monetary assets and monetary claims) at the time of transfer and on the last day of the last tax year closed at least six months before the time of transfer.

- The seller has at least two business divisions that have functioned as independent divisions for two full 12-month tax years prior to the transfer.
- The buyer agrees to refrain from claiming the reduced transfer tax rate (2%) available to real estate agents and financial lease companies by the end of the second calendar year following the year of transfer.

- Transfer of real estate and a share in a "company holding Hungarian real estate" between related parties, in the case of real estate only if the purchaser's main activity is the leasing and operation of own or leased real estate or the sale of own real estate.
- Transfer of eco-friendly motor vehicles or pecuniary rights attached thereto. A motor vehicle qualifies as an eco-friendly vehicle if it is either an electric car or a zero emission car.
- Transfer of lorries and buses between companies. A lorry is neither a passenger car nor a vehicle that serves passenger transport purposes. An autobus is not a trolley bus, but it serves passenger transport purposes, and has more than nine permanent seats (including that of the driver).

1.4 Other acquisition costs

Notary fees	Variable: • If the purchase price is between HUF 5 million (approximately EUR 15,900) and HUF 10 million (approximately EUR 31,800), the fee is HUF 61,200 (approximately EUR 195) plus 0.5% of the amount exceeding HUF 5 million.

	• If the purchase price is between HUF 10 million and HUF 200 million (approximately EUR 636,000), the fee is HUF 86,200 (approximately EUR 275) and 0.25% of the amount exceeding HUF 10 million. • If the purchase price is between HUF 200 million and HUF 500 million (approximately EUR 1.6 million), the fee is HUF 561,200 (approximately EUR 1,790) and 0.2% of the amount exceeding HUF 200 million. • If the purchase price is more than HUF 500 million, the fee is HUF 1,161,200 (approximately EUR 3,700) and 0.1% of the amount exceeding HUF 500 million. • The notary fee may not exceed HUF 1 billion (approximately EUR 3,185,000).
Mortgage registration fees	Notary fees are calculated based on the above.
Stamp duty	For real estate, a land registration fee of HUF 6,600 (approximately EUR 21) per property is payable.
Tax deductibility for corporate income tax	Deductible for corporate income tax purposes

1.5 Transfer of tax liabilities

Under certain circumstances, the tax liabilities of the seller can be transferred to the buyer of the assets. In this case, the seller and the buyer will remain jointly liable for the tax obligations.

Further, under certain circumstances, the buyer and the seller of the assets can be jointly held liable for VAT obligations even if no transfer of tax liabilities takes place. The statutory limitation period in Hungary is five years, commencing on the last day of the year in which a certain tax return had to be filed.

2. Acquisition through a share deal

2.1 Corporate income tax

If a share sale yields the Hungarian seller a profit, the profit is accounted for as part of the corporate tax base. If the tax base is positive, it is subject to corporate income tax at the rate of 9%. However, upon the sale of qualifying shares (participation exemption), the capital gains can be deducted from the pre-tax profit.

2.2 VAT and transfer tax

As a general rule, the transfer of shares is exempt from transfer tax and VAT, except for the disposal of shares of a company holding real estate, which is subject to transfer tax under certain conditions.

Definition (for transfer tax purposes)	Transfer tax is payable if the acquirer of the shares owns, directly or indirectly, 75% of the total of the shares of a "company holding Hungarian real estate." The total number of shares includes shares held by related parties and close relatives of the

	acquirer, as well as close relatives of those related parties. A company qualifies as a "company holding Hungarian real estate" if it owns more than 75% Hungary-located real estate out of its total assets (less any liquid assets, pecuniary claims, loans, prepayments and accrued income) or holds a minimum of 75% holding in such a company.
Rate	4% (up to a market value of HUF 1 billion, approximately EUR 3.18 million), 2% (on the excess above this value), with tax payable capped at HUF 200 million (approximately EUR 636,000) per property
Basis	Proportional part of the market value of Hungarian real estate held by the company holding real estate
Discount granted by the vendor	Negotiable

Other commonly used transfer tax exemptions are as follows:

- The preferential exchange of shares is a transaction where: (i) the acquiring company acquires a holding in the registered capital of the acquired company; (ii) the acquiring company either obtains a majority of voting rights in the acquired company or further increases its majority of voting rights; (iii) the shareholders of the acquired company receive a share in the acquiring company (and, if needed, a cash payment capped at 10% of nominal value or, in the absence of a nominal value, the accounting par value of the shares);

and (iv) the transaction is based on genuine economic and/or commercial reasons (if the acquiring company is a non-Hungarian resident company that is considered as a CFC, the taxpayer must evidence the genuine economic and/or commercial reasons behind the transaction).

- Preferential transformation: a transformation involving certain legal entities (such as companies), provided that it is based on genuine economic and commercial reasons, where: (i) the predecessor's shareholder acquires a holding in the successor and cash up to 10% of the nominal value of the holding acquired; (ii) in a demerger the shareholders of the predecessor acquire a proportionate holding in the successors; or (iii) a single-member company is merged into its single member.

- Transfer of real estate and a share in a "company holding Hungarian real estate" between related parties, in the case of real estate only if the purchaser's main activity is the leasing and operation of own or leased real estate or the sale of own real estate.

2.3 Tax loss preservation

If the buyer is deemed a related party of the acquired company with regard to a two-year period prior to the acquisition, or if the buyer or the acquired company is listed on a stock exchange, the preservation of tax losses is unconditional. In other cases, the preservation of tax losses is conditional and only applies if the acquired company carries out its activity for at least two years after the deal, provided that the business activity is not altered materially and the activity yields income for both years.

2.4 Transfer of tax liabilities

In a share deal, the buyer indirectly inherits tax liabilities of the acquired company. The statutory limitation period in Hungary is five years,

commencing on the last day of the year in which a certain tax return had to be filed.

2.5 Transaction costs

If the buyer is a company that qualifies as a Hungarian resident taxpayer for corporate income tax purposes, it will normally be able to deduct the transaction costs from its taxable profits.

3. Financing the investment

3.1 Deductibility of financing expenses

As a general rule, financial expenses of debts owed to companies and financial institutions are subject to interest limitation rules. Related debt is subject to the arm's length principle in any case.

Interest limitation rules	Interest limitation rules apply if financing costs exceed the interest revenues of the company (the difference is the net financing costs). Net financing costs exceeding 30% of the EBITDA or HUF 939,810,000 (EUR 3 million), whichever is higher, increase the corporate tax base. However, unused interest deduction capacity from previous tax years can be used to entirely offset this tax base increase. It is important to note that bank interests are no longer treated as an exception. Nevertheless, these rules do not apply to certain taxpayers, such as financial institutions, insurance and reinsurance companies.

Arm's length principle	The arm's length principle should be respected if the lender and the borrower are related parties for Hungarian tax purposes.
Other limitations on the deducibility	Interest paid to controlled foreign corporations (CFCs) is deductible for Hungarian corporate income tax purposes only if the taxpayer can prove that such cost serves and suits the business purposes of the taxpayer.

Hungarian transfer pricing regulations require that transfer prices applied in transactions between related parties be established at arm's length.

The taxpayer is obliged to: (a) report the related party to the tax authority; and (b) prepare transfer pricing documentation for all controlled transactions between the taxpayer and a related party. As to the reporting obligation, taxpayers must report to the tax authority the name, registered office and tax number of the related party of the taxpayer within 15 days of having executed the first contract between the parties. If related parties have no transactions with each other and they do not conclude agreements, no reporting obligation exists.

Pursuant to the Corporate Income Tax Act, for transfer pricing purposes, the term "related parties" pertains to any of the following:

- a company and another company in which the first company has direct or indirect majority control
- a company and another company that has direct or indirect majority control in the first company

- a company and another company, both in which a third party has direct or indirect majority control
- a foreign entity and its Hungarian branch office or a Hungarian entity and its foreign branch office (in both cases, the branch office and the person who maintains any of the above relationships with the company)
- a Hungarian entity and its foreign permanent establishment, and the foreign permanent establishment and a person who maintains any of the first three relationships with the Hungarian entity
- a company and another company, if their management is the same and therefore dominating influence is exercised between them in the business and financial policy
- independently of the relationships described in the first three points above, a related party relationship is deemed to exist in the case of controlled foreign companies (including tax base increases due to dividends derived from controlled foreign companies' non-genuine arrangements) and so-called separate taxpayers for taxation purposes, if the company holds in another company: (i) at least 25% voting rights directly or indirectly; (ii) at least a 25% holding directly or indirectly; or (iii) rights to at least 25% of gains

Hungary has CFC rules. A foreign company qualifies as a CFC if a Hungarian taxpayer and its related party hold directly or indirectly more than 50% of the voting rights or capital, or are directly or indirectly entitled to receive more than 50% of the profits of the foreign company, provided that the foreign company paid lower foreign corporate tax than the difference between the corporate tax that would have been charged under the Hungarian corporate tax system and the actual paid foreign corporate tax. Furthermore, the foreign establishment of a Hungarian resident taxpayer qualifies as a CFC in the tax year when the tax equivalent to corporate tax

actually paid by the foreign establishment is less than the sum by which the corporate tax that it should have paid under the presumption of the foreign establishment being established in Hungary exceeds the tax equivalent to corporate tax paid by the foreign establishment.

On the other hand, an entity does not qualify as a CFC if it obtains in the tax year income only from genuine arrangements or a series thereof, provided that the taxpayer provides evidence for this. Also, an entity or permanent establishment does not qualify as a CFC: (i) if its pre-tax profits do not exceed HUF 243,952,500 (EUR 750,000) and its non-trading income does not exceed HUF 23,495,250 (EUR 75,000); or (ii) if its pre-tax profits do not exceed 10% of its operating costs. Furthermore, a foreign establishment will not be deemed a CFC if it is located in a non-EU/European Economic Area country and Hungary has an agreement on the avoidance of double taxation with the country that provides an exemption from Hungarian corporate taxation if the establishment qualifies as a permanent establishment as per the said agreement.

3.2 Withholding tax on interest

No withholding tax applies to any interest paid to a resident or nonresident lender.

3.3 Tax consolidation regime

As of 2019, Hungary recognizes a tax consolidation regime. Corporate group taxation allows several taxpayers to be represented by only one of them vis-a-vis the tax authority. The group representative acts for the group in front of the tax authority and, among other things, files group tax returns.

The following criteria must be met for the establishment of a group:

- At least two Hungarian resident taxpayers (companies, grouping, European public limited liability company, cooperative society,

European cooperative society, sole proprietorship, foreign person considered a resident taxpayer due to the location of the head office and a nonresident entrepreneur via its Hungarian branch) are needed.

- In line with accounting requirements, the members must have uniform balance sheet dates and formats, and bookkeeping currencies.
- A taxpayer cannot belong to multiple groups at the same time.
- There must be a direct or indirect majority control between the members. As a general rule, this can be achieved by one member holding 75% of the voting rights in the other member or a third person holding such majority control with regard to both members. Special rules apply in the case of indirect majority control.

The group's positive tax base is subject to corporate income tax at a flat 9% rate. Tax base increases and reductions between related parties are not applicable to transactions between members, while transfer pricing documentation is only required on a group level.

II. Holding the investment

1. Main tax costs to be considered

Taxable income	Net income less deductible expenses (i.e., interest expenses, depreciation, etc.) is subject to corporate income tax at a standard rate of 9%.
Depreciation	Depreciation may be accounted for in respect of all tangible fixed assets (except building sites) and intangible fixed assets at rates defined by the Corporate Income Tax

	Act. The depreciation rate accounted for on buildings for corporate income tax purposes depends on the type of building; the general rate is 2%.
Write-offs of shares	Generally, write-offs on shares are deductible for Hungarian corporate income tax purposes.
VAT	As a general rule, all supplies of goods or services carried out by entrepreneurs or professionals in the course of their business activities are subject to VAT at a general rate of 27%. Reduced rates (18% and 5%) and exemptions may also apply.
License business tax	N/A
Other taxes	Local business tax A Hungarian-registered company is subject to local business tax based on its business activity. The tax rate is determined by the local municipalities and may not exceed 2% of the adjusted turnover. Other local taxes Local municipalities are entitled to levy a tax on buildings ("**Building Tax**") and on plots ("**Plot Tax**"). • The maximum amount for the Building Tax is:

	(i) HUF 1,100 per square meter (approximately EUR 3.50 per square meter) (ii) 3.6% of 50% of the market value of the building • The amount of the Plot Tax is: (i) HUF 200 per square meter (approximately EUR 0.64) (ii) 3% of 50% of the market value of the building • Local municipalities have annual indexation rights with respect to these maximum rates.

Local business tax liabilities are established on the day the business activity is commenced on the territory of the local municipality and they cease to exist on the last day of the business activity. The tax base in the case of permanent business activities is the net turnover less: (i) the costs of goods sold; (ii) the sums paid to subcontractors; (iii) material costs; and (iv) the costs of certain R&D activities. Self-taxation applies. The costs of goods sold can be deducted gradually depending on the net turnover of the taxpayer as follows:

- If the net turnover does not exceed HUF 500 million, the deduction for this bracket is the entire amount.
- If the net turnover is between HUF 500 million and HUF 20 billion, the deduction for this bracket is maximum 85% of the turnover pertaining to this bracket.

- If the net turnover is between HUF 20 billion and HUF 80 billion, the deduction for this bracket is maximum 75% of the turnover pertaining to this bracket.
- If the net turnover exceeds HUF 80 billion, the deduction for this bracket is maximum 70% of the turnover pertaining to this bracket.

Concerning the local Building Tax, the tax can be levied on buildings located on the territory of the municipality. The person liable to pay the local Building Tax is the owner of the building on the first day of the calendar year. If there is a pecuniary right registered in the real estate register on the building, the holder of such right is liable to pay local Building Tax.

Local Plot Tax is levied on plots located on the territory of the municipality. The person liable to pay the local Plot Tax is the owner of the plot on the first day of the calendar year. If there is a pecuniary right registered in the real estate register on the plot, the holder of such right is liable to pay local Plot Tax.

2. Distribution of profits

Withholding tax on dividends distributed by a local company to a foreign shareholder	Dividends distributed by a local company to a foreign corporation are not subject to withholding tax.
Taxation of domestic dividends received by a local corporation	The Hungarian resident company can deduct the amount of the received dividend from its pre-tax profit base.
Taxation of foreign dividends received by a local company	The Hungarian resident company can deduct the amount of the received dividend from its pre-tax profit base. However, if the dividends are distributed by a CFC arising

	from non-genuine arrangements, the dividends received are considered taxable income for Hungarian corporate income tax purposes.

III. Selling the investment

1. Asset deal

Selling costs	See Section I.
Capital gain taxation	Standard corporate income tax rate: 9%
Sale by corporate nonresidents	As a main rule, any gain realized by a corporate nonresident upon the disposal of assets forming part of a Hungarian permanent establishment is taxable in Hungary at a normal rate of 9%. The same applies in relation to any gain realized upon the disposal of Hungarian real estate. There is no withholding tax on the sale of assets by a corporate nonresident.

2. Share deal

Selling costs	See Section I above.
Capital gain taxation	Standard corporate income tax rate: 9%
Sale of qualifying shares	Qualifying shares (participation exemption) are shares representing participation in a Hungarian company, reported to the tax authority (within 75 days from the acquisition of such shares) and held for more

	than one year by the seller. A Hungarian resident seller can deduct the profit on the sale of qualifying shares from its pre-tax profit base.
Sale by corporate nonresidents	As a general rule, there is no withholding tax on the sale of shares by a corporate nonresident. If a nonresident person sells the shares of a Hungarian company that qualifies as a "company holding real estate," the capital gains realized by this foreign resident person through the sale of the shares is subject to corporate income tax in Hungary at a rate of 9%. A Hungarian company qualifies as a "company holding real estate" if: • on the balance sheet of the company and those of its related parties having a Hungarian permanent establishment ("Group"), the value of real estate located in Hungary relative to the total value of assets is 75% • a shareholder of the company (or a shareholder of a member of the group) is a resident, on at least one day of the tax year, in a country with which Hungary does not have a double taxation treaty, or a relevant double taxation treaty makes the taxation of capital gains in Hungary possible

	A company traded on a regulated stock exchange does not qualify as a "company holding real estate."

Due to COVID-19, a new foreign investment screening regime has been introduced in Hungary. Under the new legislation, the acquisition of participation in Hungarian companies operating in strategic industries, including pharma, energy, telecommunications, transportation, etc., by non-European investors (and in case of the acquisition of majority control in strategic companies by European investors) is subject to the approval of the Hungarian Ministry of Innovation and Technology. The ministry may reject the approval for limited reasons of public interest, including a threat to public order. As of now, the legislation is applicable until the end of 2020 but it may be extended if the pandemic situation continues. The acquisition transaction cannot be closed prior to the issuance of the approval. The clearance process takes 45 days, which may be extended by 15 days.

IV. Tax regime for restructuring operations

This is an optional tax regime that is made available to allow for tax-neutral corporate reorganizations.

Eligible restructuring operations	**Merger**	Through a takeover
		Through the creation of a new company
		Upstream merger
	Demerger	Total demerger

		Partial demerger
	Contribution of assets/transfer of business	Transfer of business (branches of activity)
	Preferential exchange of shares	The preferential exchange of shares in a restructuring transaction whereby: (i) a company acquires a stake in the share capital of another, obtaining the majority of the voting rights in that company; or (ii) holding this majority, a company acquires a further holding in it and the shareholder of the acquired company receives shares or financial assets in the value not exceeding 10% of the name value of the shares in the acquirer company, provided that the exchange is based

		on genuine economic and commercial reasons.
Direct taxation	• Capital gains or losses derived from the transfer of assets are not included in the tax base of the personal income tax and corporate income tax of taxpayers. • The acquirer values the assets received in accordance with their value before the date of the transfer for tax purposes. • Specific rules are in place to avoid double taxation.	
Indirect taxation	• Most of the transactions derived from these reorganizations are not subject to VAT, regardless of whether the special regime would be applicable or not. If certain conditions are met, the VAT exemption is applicable for the TOGC. • The related transactions are exempt from transfer tax but, in certain cases, special conditions must be fulfilled for the transfer tax exemption on the transfer of real estate.	

Anti-avoidance rules	Business purpose test: This special tax regime is applicable when the reorganizations are made to commit tax fraud or evade tax. Any rule or tax advantage that affects the tax liability or the amount of taxes, or that results in the reduction of taxes, can only be used to the extent that the underlying arrangement or a series thereof is in line with the purpose of the rule or tax advantage and is based on genuine economic and commercial reasons.
Preservation of tax losses	The successor entity is only entitled to use the transferred deferred losses if: • during the transformation/merger/demerger such shareholder acquires majority control in the successor company, which, or the related party of which, held a majority control in the predecessor company the day preceding the transformation/merger/demerger • the successor company must record income from at least one activity conducted by the predecessor company before the transformation/merger/demerger However, this does not need to be met if the taxpayer is dissolved within two years from the transformation/merger/demerger or if

	the predecessor company's only activity was holding.
Merger goodwill/step-up	See Section 2.1, "Corporate income tax."
Pre-transaction carve-outs	It is possible to make pre-transaction carve-outs under the special tax regime under one of the following alternatives: • Total demerger: A company splits up all its net assets into two or more portions. Two or more preexisting or new companies will inherit such assets. • Partial demerger: A company spins off one or several parts of its net assets corresponding to branches of activity (i.e., groups of elements that comprise a single autonomous business unit) and transfers them *en bloc* to one or several preexisting or new companies, leaving at least one branch of activity in the transferring company.

Italy



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At a glance

Corporate income tax (*Imposta sul Reddito delle Società* or IRES) rate (%)	24[1]
Local income tax (*Imposta Regionale sulle Attività Produtive* or IRAP) rate (%)	3.9[2]
Capital gains tax rate (%)	24[3]

[1] A surcharge rate of 3.5% applies to banks and other financial institutions (as a matter of fact, for these entities, the standard rate is 27.5%).
A surcharge rate applies to "non-operating" companies (i.e., companies showing average, non-extraordinary revenues and increases in inventory that are lower than the sum of the average amounts resulting from the application of specific parameters to tangible and intangible assets, financial assets and real estate assets) and to companies in a permanent loss position (i.e., companies that show a tax loss in the five preceding consecutive fiscal years, or a tax loss in four preceding years and a tax income lower than the one resulting from non-operating companies' provisions in the fifth one). For these companies, the rate is increased by 10.5%, thus resulting in a final corporate income tax rate of 34.5%.
Pursuant to the enactment of Law Decree No. 34 dated 30 April 2019, a reduced corporate income tax rate of 22.5% for FY 2019, 21.5% for FY 2020, 21% for FY 2021 and 20.5% from FY 2022 onward should have applied with respect to the amount of the yearly profits allocated to available equity reserves (i.e., that are kept within the company), up to the limit of the yearly net equity increase. Law Decree No. 34 has been repealed by the Budget Law for FY 2020 and, therefore, such tax provision never entered into force.
[2] Different rates apply on a regional basis and quite often vary with respect to the type of company (e.g., holdings, banks and financial entities are usually subject to an increased rate of 5.57%).
[3] Capital gains realized by resident companies or permanent establishments (PEs) of non-Italian resident entities fall within the application of IRES; the same capital gains are subject to IRAP, with the exception of capital gains arising from the transfer of a going concern (TOGC). A 95% exemption applies to capital gains

Tax losses carryforward (years)	Indefinitely[4]
Tax losses carryback (years)	N/A
Limitations on transfer of tax losses	Yes

realized by Italian entities or permanent establishments of non-Italian resident entities arising from the disposal of shares (of Italian and non-Italian entities) falling within the scope of the participation exemption (participation exemption) regime, thus resulting in an overall tax burden of 1.2% (i.e., 24% multiplied by 5%). The same capital gains are outside of the application of IRAP. The participation exemption regime does not apply to the disposal of shares of real estate-oriented companies and of companies residing in tax-privileged jurisdictions.
For non-Italian resident entities, save the application of a tax treaty if more favorable, from FY 2019, capital gains are subject to a 26% substitutive tax, irrespective of whether they relate to qualified or nonqualified participations.
Up to FY 2018, only 58.14% of capital gains arising from the sale of a "qualified participation" (i.e., a participation exceeding 20% of the voting rights or 25% of the capital of an unlisted investee company, or 2% and 5%, respectively, in the case of a listed company) was included in the taxable income, thus resulting in an overall tax burden of 13.954% (i.e., 24% multiplied by 58.14%). In order to assess whether a participation was "qualified," all the disposals made in the preceding 12-month period had to be taken into account. On the contrary, for "nonqualified participations," a substitute tax was levied at a rate of 26%. An exemption still applies (i) to capital gains on nonqualified participations in listed companies, and (ii) to capital gains on nonqualified participations, irrespective of whether listed or non-listed, derived by non-Italian resident entities of states ensuring an effective exchange of information.

[4] However, tax losses, except for those incurred in the first three fiscal years and arising from a new business activity that are not subject to any restriction, cannot be used to offset more than 80% of the taxable income in any fiscal year (unless they are transferred and used in the same year under the domestic tax consolidation regime, in which case the 80% limit does not apply).

Domestic withholding tax rate on dividends (%)	26,[5] 1.2[6] or 0[7]
Domestic withholding tax rate on interest (%)	26, 5[8] or 0[9]
Capital duty (%)	N/A
Transfer tax rates (%)	
Sale of movable assets	0[10]

[5] Provided that some conditions are met, nonresidents are entitled to claim the refund of 11/26th of the withholding tax levied.

[6] The 1.2% rate applies, provided that the recipient of the dividends is a company residing in and subject to corporate income tax in another European member state or in a state of the European Economic Area (EEA) that grants an adequate exchange of information with the Italian tax authorities.

[7] The withholding tax is not levied where the Parent-Subsidiary Directive (90/435) applies.

[8] The 5% applies to the payment of interest accrued under an intercompany loan and paid by Italian residents in favor of EU-related companies that, although meeting all the other requirements to benefit from the withholding tax exemption under the Interest and Royalties Directive (2003/49), cannot be considered the beneficial owners of the interest income received. Indeed, the provision applies where the domestic source interest is used to pay the interest connected with bonds: (i) issued by the related EU company; (ii) traded in a qualifying regulated stock market within the EU or the EEA; and (iii) guaranteed by the Italian company or other qualifying members of the same group.

[9] The withholding tax is not levied if the Interest and Royalties Directive (2003/49) applies.

[10] As a general rule, the transfer of movable assets is subject to VAT (at the 22% standard rate, but 10% and 4% reduced rates may apply depending on the nature of the goods), unless the assets form part of a going concern.

Sale of real estate assets	EUR 200[11] + 3%[12] + 1%[13]
Sale of shares of a real estate-oriented company	EUR 200
Standard VAT rate (%)	22
Neutral tax regime for restructuring operations	Yes
Tax consolidation	Yes
VAT grouping	Yes

If the movable assets form part of a going concern, VAT does not apply and the transfer is subject to registration tax levied at a 3% rate on the portion of the purchase price allocated to such assets.

[11] The transfer of instrumental real estate is, as a general rule, VAT-exempt, unless the seller decides to pursue the application of the tax.
The amount of EUR 200 applies in the case of instrumental real estate transferred on a stand-alone basis by corporate entities. If the same premises form part of a going concern, registration tax is levied at a 9% rate on the portion of the purchase price attributable to such premises.

[12] As mortgage tax for instrumental real estate transferred on a stand-alone basis by corporate entities (if the instrumental real estate is transferred in the framework of a TOGC, the mortgage tax is levied at the negligible amount of EUR 50).

[13] As cadastral tax for instrumental real estate transferred by corporate entities on a stand-alone basis (if the instrumental real estate is transferred in the framework of a TOGC, the cadastral tax is levied at the negligible amount of EUR 50).

I. Acquiring the investment

1. Acquisition through an asset deal

1.1 Corporate income tax

In a share deal, a post-acquisition merger is required to achieve the step-up for tax purposes. In an asset deal, the purchaser automatically gets a step-up in basis as a result of its entitlement to apportion the higher values paid as purchase price to the assets received. In fact, all tangible and intangible assets acquired will be revalued to a value not exceeding the fair market value (and may thus be further depreciated on that revalued basis), and the difference (if any) between the total price paid and the revalued net asset basis acquired, which may not be allocated to the assets, will be residually treated as goodwill.

From an accounting standpoint, this goodwill must be depreciated over its expected useful lifetime, not exceeding in any event 20 years (if the useful life cannot be reliably identified, the goodwill is depreciated over 10 years). For tax purposes, however, it must be depreciated between 18 years and the length identified for accounting purposes, whichever of the two is longer.

As the transfer of assets will normally be subject to tax in the hands of the seller, it may be expected that, compared to a share deal, the price due under an asset deal will be higher, as it will take into account the corporate income tax due in the hands of the selling entity (possibly together with any further tax due upon remittance of the net gain to the ultimate shareholders).

In net present value terms, the value of the step-up in basis that will be achieved at the level of the purchaser will unlikely be sufficient to compensate the purchaser for the higher price resulting from the additional tax in the hands of the seller, unless that tax can be reduced on the basis of existing tax loss carryforward at the level of the selling entity.

1.2 VAT

An exception is made in a case where the transfer of the business qualifies as a TOGC and the sale of assets on a stand-alone basis is normally subject to VAT at the standard rate of 22% (10% and 4% reduced rates apply with reference to certain goods). The transfer of certain assets (e.g., receivables) and the transfer of liabilities are out of the scope of VAT. The sale of instrumental real estate is, in principle, VAT-exempt, but the seller may opt to apply VAT.

VAT due on the transfer is paid by the purchaser to the seller, which will then remit such VAT to the authorities (however, in specific cases of the transfer of an instrumental real estate between enterprises and other VAT subjects and in a number of other cases, VAT is accounted for by the purchaser through the reverse charge mechanism). If the purchaser is entitled to deduct input VAT in full, payment of VAT upon the transfer will merely be a pre-financing cost. However, if the purchaser is not entitled to deduct the input VAT in full, the nondeductible VAT due on the transfer will constitute an actual cost.

As an exception to the above rules, the transfer of assets and liabilities under an asset deal will be fully out of the scope of VAT if it relates to an "entire business" or a "branch of activity" (i.e., a TOGC). Whether the transferred items constitute an "entire business" or a "branch of activity" is a matter of factual analysis. Under the Italian Civil Code, a "going concern" is "a set of assets organized by the entrepreneur for the purpose of carrying out a business" (Article 2555 of the Italian Civil Code). However, the Italian Supreme Court has clarified that the key element to qualify a transaction as a sale of a going concern lies in the organization of the assets used in carrying out the business. A TOGC occurs when the transfer refers to a set of assets that are functionally related to each other and may be jointly considered as an organic and unitary whole, allowing complete succession of the business carried out by the seller to the purchaser.

Rate	22%[14]
Basis	Agreed-upon transfer price[15]
Date of payment	This depends on the turnover of the seller: • generally, on a monthly basis falling due within 16 days after the end of the month • on a quarterly basis for companies with an annual turnover lower than EUR 400,000 (with regard to the provision of services) and EUR 700,000 (for the sale of goods) — within 16 days after the end of the second month following the end of the quarter
Liable person	The seller, but the financial burden is borne by the purchaser (in specific cases of the transfer of instrumental real estate between VAT-identified subjects, and in a number of other cases, the VAT is accounted for by the purchaser through the reverse charge mechanism).
Recoverability	Deductibility of VAT will depend on the activity of the purchaser and on its pro rata deduction ratio.

[14] Reduced rates (4% to 10%) may apply with respect to specific categories of goods.

[15] In specific cases, fair market value, if higher than the sale price, may apply with respect to transactions undertaken between related entities.

	Deductible VAT is to be entered as a credit item in the annual VAT return. If the deductible VAT for the period concerned exceeds the VAT due, such excess VAT may be requested as a refund under certain circumstances or can be carried forward. The refund may also be claimed on a quarterly basis if the specific conditions are met.
Out of scope	TOGCs (as discussed above)

In other words, a transfer of assets has to be regarded as a TOGC when the assets transferred may be considered, in principle, functionally linked with each other and capable of operating as an ongoing entity (i.e., in principle, able to earn profits), allowing the purchaser to continue an economic activity autonomously.

This exception applies irrespective of whether the parties are members of a VAT group. The transfer of assets within a VAT group does not benefit from any VAT rate decrease.[16]

If the asset deal transaction is entered into with the aim of transferring an economic activity between the parties, in most cases, it will likely be that the assets and liabilities being transferred in relation to the purchased

[16] The Italian Budget Law for FY 2017 introduced new VAT Unit rules. In particular, effective from 1 January 2019, taxable persons established in Italy are able to set up a VAT Unit pursuant to Article 11 of the Council Directive 2006/112/EU (EU VAT Directive). Under the new VAT Unit regime, supplies of goods and services carried out between members of the VAT Unit are outside the scope of Italian VAT. In addition, the Italian Budget Law for FY 2018 introduced the relevance for VAT purposes of the transactions between a PE and a home office if one of them has joined a VAT Unit.

business will qualify as a going concern. In such case, as mentioned above, no VAT will be due on such transfer.

Where the transferred assets do not qualify as a going concern, VAT will be due as follows:

Rate	22%[17]
Basis	Agreed-upon transfer price[18]
Date of payment	This depends on the turnover of the seller: • generally, on a monthly basis, falling due within 16 days after the end of the month • on a quarterly basis for companies with an annual turnover lower than EUR 400,000 (with regard to the provision of services) and EUR 700,000 (for the sale of goods) — within 16 days after the end of the second month following the end of the quarter
Liable person	The seller, but the financial burden is borne by the purchaser (in specific cases of the transfer of instrumental real estate between VAT-identified subjects, and in a number of other cases, the VAT is accounted for by the

[17] Reduced rates (4% to 10%) may apply with respect to specific categories of goods.

[18] In specific cases, fair market value, if higher than the sale price, may apply with respect to transactions undertaken between related entities.

	purchaser through the reverse charge mechanism).
Recoverability	Deductibility of VAT will depend on the activity of the purchaser and on its pro rata deduction ratio. Deductible VAT is to be entered as a credit item in the annual VAT return. If the deductible VAT for the period concerned exceeds the VAT due, such excess VAT may be requested as a refund under certain circumstances or can be carried forward. The refund may also be claimed on a quarterly basis if the specific conditions are met.
Out of scope	TOGCs (as discussed above)

1.3 Transfer tax

If the business being transferred qualifies as a going concern, the transfer is subject to registration tax levied at the standard rate of 3% (a higher rate of 9% applies to real estate and a reduced rate of 0.5% may apply to the transfer of receivables). If the assets that are part of the going concern are subject to different tax rates (e.g., real estate and receivables), the transfer tax is levied, in principle, at the higher applicable tax rate (e.g., 9% in the presence of real estate) unless the purchase price is separately apportioned to the categories of assets being transferred that are subject to different tax rates. Registration tax is levied at the higher of the fair market value of the going concern and the purchase price reflected in the transfer deed.

On the other hand, if the business being transferred does not qualify as a going concern, the sale of the assets on a stand-alone basis will generally

be subject to VAT, except for real estate, the transfer of which is, in principle, tax-exempt (but the seller may opt for the application of VAT).

Rate	In the case of a TOGC, 3% (it is increased to 9% when there is instrumental real estate; however, if the price is separately apportioned to the categories of assets subject to different rates, the registration tax will be levied at the applicable rate related to each category).
Basis	In the case of a TOGC, the higher between the agreed-upon transfer price and the fair market value of the going concern
Date of payment	Upon registration of the acquisition (i.e., payment via a notary public) and at the latest within 20 days after the conclusion of the private deed of sale
Liable person	Customarily, transfer tax is borne by the purchaser (with the seller being jointly liable) and carried out by a payment being made to the revenue by the notary public notarizing the transfer deed, who in turn collects the payment from the purchaser.
Tax deductibility for corporate income tax	Registration tax paid upon a TOGC is deductible for IRES and IRAP purposes.

1.4 Other acquisition costs

Notary fees	Variable percentage of the selling price
Mortgage registration duties	Mortgage tax of 3% of the debt guaranteed by the mortgage[19]
Transfer of leases	Any transfer of a lease agreement related to an instrumental real estate, irrespective of whether the transfer is subject to VAT, is subject to registration tax at a rate of 4% on the purchase price agreed upon for the transfer (if any) and the total amount of the remaining lease payments at the time of the transfer plus the exercise price. The 4% registration tax does not apply if the transfer of the lease agreement takes place within a restructuring process (i.e., merger, demerger and contribution in kind of a going concern).
Stamp duties	N/A
Tax deductibility for corporate income tax	All expenses related to the acquisition of assets/real estate are treated, in principle, as ancillary costs and have to be capitalized and depreciated according to the amortization rules of the asset concerned.

[19] Mortgage tax related to instrumental real estate included in a TOGC is reduced to EUR 50.

1.5 Tax credits

Reinvestment tax credit	N/A
Other tax credits	An incentive is granted to taxpayers investing in innovative startup companies (i.e., companies whose sole or main objective is the development, production and trade of high-technology products or services, and that meet several requirements, among which research and development expenses amount to at least 15% of the higher between the value of production and the total costs, or at least one-third of the employees is composed of highly qualified individuals). The incentive grants a deduction from the taxable income equal to 40% (30% up to FY 2018) of the amount invested (starting in FY 2019, 50% if the purchaser buys the whole share capital and keeps it for almost three years) up to the amount of EUR 1.8 million per year. A recapture of the incentive applies in the case of a disposal of the investment within a certain time frame. In addition, from May 2020, an incentive — as provided by EU Regulation No. 1407/2013 (equal to 50% of the amount invested that cannot exceed the amount of EUR 100,000) — is granted to taxpayers investing in innovative startup companies registered in

	the specific register of the Chamber of Commerce.

1.6 Transfer of tax liabilities

The purchaser of a going concern is jointly liable with the seller for the payment of any unpaid taxes and penalties charged by the tax administration for violations of tax provisions committed by the seller in either:

- the year in which the transfer of the business takes place and in the two preceding years to the transfer ("**Critical Period**")
- the period prior to the Critical Period, provided that they were assessed by the tax administration during the Critical Period

The purchaser is liable only for those tax liabilities disclosed in the records of the tax authorities on the date of the transfer and, in any event, up to the value of the going concern. Italian law allows the parties to request an official certificate from the tax authorities setting out the tax claims against the seller or the unsettled tax liabilities of the seller, as shown in their records.

The joint tax liability of the purchaser is not enforceable if the tax certificate is "clean" or if the certificate is not issued by the tax office within 40 days from the request. However, the purchaser cannot benefit from the protection of the tax certificate in the case of tax fraud. Tax fraud is presumed if the seller commits a criminal violation during the six months preceding the TOGC.

2. Acquisition through a share deal

2.1 Corporate income tax

Unlike an asset deal, a purchaser does not benefit from a step-up in basis in Italy if a business is acquired through a share deal. However, since the Italian seller will usually be 95% exempt from tax on any capital gain realized on the occasion of a share deal, due to the application of participation exemption provisions, a share deal will normally result in a lower acquisition price (compared to an asset deal whereby the overall taxation to be incurred by the seller is generally taken into account in determining the purchase price).

However, the step-up of tangible and intangible assets may be achieved through the acquisition of shares by an Italian special purpose vehicle (SPV) followed by the merger of the target into the SPV (or, alternatively, through a reverse merger of the SPV into the target). Indeed, taxpayers may opt to step up the higher values of the tangible and intangible assets received upon a merger/demerger transaction or a going concern contribution by paying a substitute tax at the following rates:

- 12% for the amount of revaluation up to EUR 5 million
- 14% for the amount of revaluation between EUR 5 million and EUR 10 million
- 16% for the amount of revaluation exceeding EUR 10 million

The substitute tax must be paid in three annual installments (30%, 40% and 30% plus interest of 2.5% starting in the second year).

The step-up is granted up to the fair market value of the assets, but within the limit of their book value accounted for in the balance sheet of the beneficiary.

The step-up has to be claimed either in the tax return of the fiscal year during which the transaction takes place or in the tax return of the following fiscal year, and it is effective for depreciation purposes starting in the fiscal year during which the option is exercised.

As an alternative, the higher values attributable only to goodwill and trademarks can be stepped up by the payment of a substitute tax at a 16% rate. This step-up has to be claimed in the tax return related to the fiscal year in which the transaction takes place and it is effective for depreciation purposes starting from the fiscal year following the one in which the option is made. The entire amount of the substitute tax must be paid in the year in which the option is made.

Following the exercise of this latter option, the higher value allocated to goodwill and/or trademarks can be depreciated for tax purposes over a period not less than five years (rather than 18 years).

For both options, the benefit resulting from the step-up can be evaluated by taking into account the following parameters:

(i) the difference in basis points between the ordinary tax rate (i.e., 27.9% — as the aggregate rate of IRES and IRAP) and the substitute tax rate

(ii) the timing for the stepped-up values to release tax savings, which is typically linked to the duration of depreciation (in brief, the shorter the depreciation period, the higher the tax benefit achieved through the step-up election)

In the event that the stepped-up assets are disposed of before the fourth fiscal year following the year in which the election is made, the assets are considered to have a tax value net of the step-up, but a tax credit equal to the substitute tax paid is granted to the taxpayer.

Pursuant to the enactment of Law Decree No. 34 dated 30 April 2019, a free step-up is available, up to the value of EUR 5 million, with respect to the goodwill or the higher value allocated to tangible and intangible assets resulting from restructuring transactions (i.e., mergers, demergers and contribution in kind of going concerns) realized up to 31 December 2022. This tax incentive applies by operation of law provided that certain conditions are met, among which that the companies taking part in the reorganization are unrelated (i.e., do not belong to the same group) and have been incorporated for more than two years.

Financing costs (if any) can be offset against the income generated by the acquired company if that company joins a tax consolidation group with the purchaser (see below).

2.2 VAT and transfer tax

The transfer of shares is exempt from VAT while a negligible registration tax amounting to EUR 200 will fall due.

2.3 Tax credits and other tax benefits

One advantage of a share deal compared to an asset deal is that all tax credits and other tax attributes available at the level of the purchased company (i.e., the target) will normally be kept after the change of control.

A specific rule applies, however, with respect to tax loss carryforward, net interest expenses carried forward and the excess of notional interest deduction carried forward if the change of control is considered as not meeting the legitimate needs of a financial or economic nature (see below).

2.4 Tax loss preservation

Under the change of control limitation rule, losses may not be carried forward when:

- the majority of the voting rights of the transferred company are transferred
- in the financial year in which the transfer occurs or in the two preceding or following periods, the activity undertaken by the transferred company has changed from that which was carried out at the time in which the losses originated

This limitation does not apply if the transferred company (i.e., the target) meets the following survival test (cumulative requirements):

- It had at least 10 employees in the two financial years preceding the change of control.
- Its gross proceeds from the business activity and its employment costs in the financial year preceding the change of control were more than 40% of the average proceeds and employment costs in the two preceding financial years.

The limitation only applies to losses generated by the company whose shares have been transferred. Therefore, in the case of a transfer of control in a holding company, losses generated at the level of the controlled subsidiaries of the holding company should not be affected.

2.5 Transfer of tax liabilities

In the case of a share deal, the purchaser will inherit all (hidden) tax liabilities for the past. Therefore, the due diligence exercise is of the utmost importance. The statutory limitation period for the assessment of violations is five calendar years (four calendar years before FY 2016) following the calendar year in which the relevant tax return is filed. The

statute of limitation is increased by two years (from one year before FY 2016) where a tax return has not been filed. With respect to fiscal years up to FY 2015, the statute of limitations could be doubled if violations punishable under criminal tax law were committed and certain conditions were met.

In current practice, it is unusual (but not impossible) to obtain full indemnity from the seller for any tax liabilities of the past. Instead, specific indemnities are often agreed upon for specific tax risks identified during the due diligence.

2.6 Transaction costs

If the acquirer is an Italian company, transaction costs relating to the acquisition of shares will normally be deductible at the level of that company from its taxable profits. An exception is made for those costs that, under the applicable accounting principles, must be treated for accounting purposes as an increase in the book value of the acquired share participation.

If the acquirer is a pure holding company (with no activities subject to VAT), the deductibility of the input VAT on the transaction costs is likely to become an issue and planning may be needed to prevent or reduce the additional cost.

3. Financing the investment

3.1 Deductibility of financing expenses

As a general rule, financing expenses will be tax-deductible in the hands of an Italian acquirer, irrespective of whether the transaction is structured as an asset or share deal.

Restrictions on interest deduction, however, will apply to the excess of interest expenses over interest income, including interest income carried

forward from the previous fiscal years ("**Net Interest**"). Net Interest is then deductible within a threshold represented by 30% of the company's earnings before interest, taxes, depreciation and amortization or EBITDA ("**Gross Profit**") calculated based on corporate income tax rules (tax-adjusted EBITDA). Net Interest exceeding the 30% threshold may be carried forward and deducted in the following tax periods without a time limit, to the extent that the Net Interest accrued in such tax periods is less than 30% of the Gross Profit. Similarly, any excess of interest income over interest expenses in a given fiscal year can be carried forward in subsequent fiscal years without a time limitation. Any unused part of the 30% threshold may be utilized to increase the threshold of the five tax periods that follow. If a company is part of a domestic tax consolidation regime, any excess of the Net Interest over 30% of the Gross Profit — and any Net Interest carried forward after inclusion in the tax consolidation — may be used to offset the taxable income of the fiscal unit up to the limit of (i) any excess of interest income, even carried forward from the previous fiscal years, of another company, and (ii) 30% of another company's Gross Profit to the extent that the latter has not been entirely used to deduct its own Net Interest during the same tax periods.

The computation of Gross Profit is made in accordance with corporate income tax rules. More precisely, Gross Profit is calculated as the difference between gross revenues and production costs — per letters A and B, respectively, of the profit and loss accounts model set out in Article 2425 of the Italian Civil Code — before the depreciation and amortization of intangible and tangible assets (letters 10(B)(a) and 10(B)(b) of Article 2425 of the Italian Civil Code) and expenses related to the financial leasing of tangible assets (per letter 8(B) of Article 2425) as they result after the adjustments that have to be made pursuant to the application of corporate income tax provisions. The statutory financial statements are prepared in accordance with Italian accounting principles. Corporations applying International Accounting Standards or International Financing

Reporting Standards to their annual statutory accounts must consider the guidelines of these international accounting principles.

For the purposes of applying restrictions on interest deduction, the definition of "interest" is made in accordance with the accounting principles adopted by the company and derived from a transaction or contractual relationship with a financial scope (e.g., interest income or expenses relating to loans, financial leasing, bonds and similar securities, as well as any other interests or expenses originating from financial relationships that entail the borrowing of funds).

In addition to the above tax deduction rules, the Italian tax authorities argue that interest expenses need to meet the arm's length test, that is, the applicable interest rate must be equal to the market rate, taking into account the specific circumstances of the case, particularly the duration of the loan and the financial condition of the borrower.

Specific transfer pricing rules apply if the lender is a related entity.

3.2 Withholding tax on interest

Interest withholding tax at a 26% rate applies to interest paid to nonresident entities on any financial instruments involving the borrowing of funds.

Residents of a state engaging in an adequate exchange of information with the Italian tax authorities may be exempt from paying withholding tax on bonds issued by companies listed on an EEA stock exchange market, as well as by unlisted companies, provided that specific conditions are met. The same exemption does not apply to other financial instruments involving the borrowing of funds.

Double tax treaties usually provide for reduced withholding tax rates if certain conditions are met.

No withholding tax is levied on interest paid to an entity resident of an EU member state where the Interest-and Royalties Directive applies. However, withholding tax is increased to 5% on interest accrued under an intercompany loan and paid by Italian resident companies in favor of an EU-related company that, although meeting all the other requirements to benefit from the withholding tax exemption under the Interest and Royalties Directive, cannot be considered the beneficial owner of the interest income received. Indeed, the provision applies where the domestic source interest is used to pay interest connected with bonds: (i) issued by the related EU company; (ii) traded in a qualifying regulated market within the EU or the EEA; and (iii) guaranteed by the Italian company or other qualifying members of the same group.

3.3 Debt push-down

Debt push-down is usually achieved in Italy through the election for the domestic tax consolidation regime by the purchaser and the target. If a company joins a domestic consolidation, any Net Interest exceeding 30% of the Gross Profit limit may be offset against the taxable income of another company within the consolidation group, up to the limit of: (i) any excess of interest income, even carried forward from the previous fiscal years, of another company; and (ii) 30% of the unused company's Gross Profit. The offsetting is only available with regard to interest expenses and interest income accrued after the inclusion in the consolidated group. The same rules apply with respect to the excess of interest expenses and interest income carried forward, which have been generated after inclusion in the tax consolidation.

Timing is the main downside of this technique, since the consolidation regime is effective from the fiscal year following the one in which the "control relationship" requirement is met (as long as the control relationship exists from the beginning of any financial year for which the controlling company and the controlled company make use of the option

for tax consolidation). This means that the benefit arising from the tax consolidation regime is usually delayed by up to one year.

Otherwise, debt push-down could be achieved by a merger of the target into a (highly) leveraged acquisition vehicle or into the purchaser itself. This technique would be tax-efficient in principle since the merger is tax-neutral. However, it should be considered that the merger could have several drawbacks due to: (i) the loss of the target's net operating losses (NOLs) as a consequence of the "change of control" provision; and (ii) the loss of NOLs, Net Interest carried forward and the excess of notional interest deduction (NID) (in Italian, *Aiuto alla Crescita Economica*) if the "vitality test" is not passed (i.e., if the profit and loss account of the company shows, for the financial year prior to the merger resolution, gross proceeds and labor costs higher than 40% of the average of the two prior financial years). If the effects of the merger are backdated for tax purposes to the beginning of the fiscal year in which the merger is executed, the vitality test also applies to interim NOLs, Net Interest and NID accrued from the beginning of such financial year up to the date in which the merger is executed.

An alternative technique with which to achieve debt push-down is to have the target borrow the funds needed to finance a capital reduction or a distribution of retained earnings that will serve to repay the acquisition debt at the level of the acquiring entity. In this context, specific issues may arise under both the legal and tax perspectives. From a legal point of view, it is worth considering that: (i) interim dividend distribution is not allowed (except for listed companies and banks); (ii) share capital distribution is subject to a 90-day waiting period for creditors' claims; and (iii) distribution of share premium/equity reserves is subject to legal reserve constraints. From a tax perspective, in the case of retained earning distributions, withholding tax (ranging from 1.2% to 26%, unless the Parent-Subsidiary Directive or a different withholding tax rate provided in a tax treaty applies) could be levied on the payment, while no withholding

tax is levied on equity reimbursement (up to the cost of investment). In this respect, it should also be considered that in Italy, as a general rule and from a tax perspective only, earnings are deemed to be distributed before equity reserves (irrespective of the shareholders' decision). However, this alternative should be carefully considered because the Italian tax authorities are increasingly challenging it.

3.4 Capital injections

As an alternative to financing with debt, or in parallel with debt, the acquisition could also be funded through an equity injection to the benefit of the Italian corporate SPV setup for acquisition or directly into the target company.[20]

In this respect, capital contributions in cash allowed the recipient (i.e., the Italian acquirer) to benefit from the so-called NID. This was an incentive introduced with the aim of encouraging Italian companies to strengthen their capital structure while mitigating the difference in tax treatment for income tax purposes between companies funded with debt and those funded with equity.

In broad terms, NID provisions granted Italian companies a deduction from the taxable income corresponding to a deemed "notional return" on "qualified" equity increases.

The equity increases that qualified for NID were the following:

(+) capital contributions in cash

(+) retained earnings from the profits of the year

[20] This provision was repealed starting from FY 2019 by the Budget Law for FY 2019. However, the Budget Law for FY 2020 reintroduced such provision with retroactive effect for the same FY 2019 and, therefore, this incentive was never actually canceled by the Italian tax legislation.

(-) distributions to shareholders

(-) investments in bonds and securities other than participations

The notional return was calculated by multiplying the cumulated "qualified" equity increases for an interest rate as follows:

- FY 2016: 4.75%
- FY 2017: 1.6%
- FY 2018: 1.5%
- FY 2019 onward: 1.3%

The election for the domestic tax consolidation regime could enhance the utilization of NID at the level of the tax group. Indeed, any notional return in excess of a company's net taxable income on a stand-alone basis could be transferred to the fiscal unit and be deducted from the consolidated taxable income of the group.

Specific anti-abuse provisions aimed at avoiding a duplication of the deduction with respect to the same equity increase can be applied under certain circumstances.

II. Holding the investment

1. Main tax costs to be considered

Taxable income	Gross income less deductible expenses (i.e., interest expenses and depreciations) is subject to IRES and IRAP at the standard rates of 24% and 3.9%, respectively.
Depreciation	Depreciation is allowed in respect of all tangible fixed assets (except land), as well as

	intangible assets, based on their normal useful life. Depreciation for accounting purposes is relevant for tax purposes on the condition that the depreciation rate adopted by the company for accounting purposes does not exceed the applicable tax rate set forth by a ministerial decree. In any case, the depreciation for tax purposes may not exceed the depreciation allowed under accounting principles and reflected in the profit and loss statements. In a number of cases, specific tax rules depart from accounting depreciation rules.
Write-offs or capital losses on shares	Write-offs on shares are not deductible for Italian tax purposes. Capital losses on shares qualifying for the participation exemption regime are never deductible, while capital losses on shares other than those qualifying for participation exemption are deductible when they are realized. However, specific anti-dividend washing rules provide that where capital losses arise from the disposal of shares that are not eligible for participation exemption, such losses are deductible only for the part exceeding the tax-exempt amount of dividends received from the said shares in the 36 months prior to the disposal.
VAT	As a general rule, all supplies of goods and services are subject to VAT. The standard

	Italian VAT rate is 22%. Reduced rates (10% and 4%) and exemptions may apply depending on the kind of goods and services. Input VAT represents a cost if it is not deductible, but may qualify as a deductible expense for corporate income tax purposes.
License business tax	N/A
Tobin tax	Save certain exceptions (e.g., intragroup reorganizations), transfers of shares issued by Italian resident companies are subject to Tobin tax (financial transaction tax or FTT). FTT applies only in respect to the *Società per Azioni* (or SpA) type of companies. The sale of stock of the *Società a Responsabilità Limitata* (or Srl) type of companies is exempt from FTT. FTT on equity transactions applies at the rate of 0.2% on the value of the transaction. For transactions that occurred on regulated markets or multilateral trading facilities, the ordinary rate is reduced to 0.1%. The purchaser is liable for FTT on equity transactions. FTT must be paid by banks, investment companies and other intermediaries (like the notary public) involved in the execution of the transaction.
Other taxes	Municipal taxes: • municipal tax on real estate ("IMU")

	• tax on indivisible services ("**TASI**") • tax on municipal waste ("**TARI**") While TASI and TARI are deductible for IRES and IRAP purposes, only 50% of IMU can be deducted for IRES purposes.[21]

2. Distribution of profits

Withholding tax on dividends distributed by a local company to a nonresident entity	As a general rule, except where a tax treaty applies, dividends paid to nonresident shareholders on participations not connected with Italian PEs are subject to withholding tax at a rate of 26%. Nonetheless, withholding tax on dividends paid to corporate shareholders who reside in another EU or EEA country that grants an adequate exchange of information with the Italian tax authorities and who are subject to tax in their own home countries will be reduced to a lower rate (i.e., 1.2%). Finally, an exemption from withholding tax applies to a number of circumstances, subject to certain conditions. Parent company in the EU: Following the implementation of the Parent-Subsidiary Directive, dividends paid to qualifying EU parent companies are not subject to withholding tax. To qualify for the exemption from withholding tax, the parent

[21] 20% up to FY 2018.

	company must meet the following requirements: • resides for tax purposes in an EU member state • has one of the legal forms listed in the Annex to the directive • be subject to one of the taxes listed in the Annex to the directive, without the possibility of benefiting from an exemption, unless temporarily or territorially limited • has held at least 10% of the capital of the subsidiary for at least one uninterrupted year Furthermore, and although the requirement is not expressly mentioned by the law provision, the parent company has to qualify as the beneficial owner of the dividends. Under the general Italian anti-abuse provision, which also applies to the distribution of dividends, the parent-subsidiary regime is not available for dividends received by companies controlled by persons who are not residents of an EU member state, unless the recipient could prove that it was not established only for the purpose of benefiting from the special regime for EU outbound dividends.

	Domestic distributions: No withholding tax is levied when both the parent company and the subsidiary are Italian companies.
Taxation of dividends received by a domestic company	Up to 95% of dividends received by resident companies from other resident companies and nonresident companies are exempt from corporate income tax. However, dividends distributed by foreign companies benefiting from a tax-privileged regime are fully taxable in Italy. In the case of dividends from nonresident companies, the exemption applies where the distributed dividends are not deductible from the taxable income of the distributing entity. Contrary to the generally applicable accrual principle, nonexempt dividends are included in taxable income on a cash basis. Any foreign withholding tax levied on the dividend received is creditable against the Italian tax liability of the receiving company as to 5% only of its amount.

III. Selling the investment

1. Asset deal

Capital gain taxation	Any gain realized upon the transfer of assets will normally be subject to tax in the hands of a corporate seller at the standard IRES rate (24%) and IRAP rate (3.9%). However, if the business transferred qualifies as a going concern, the gain will

	only be subject to IRES (it will be IRAP-exempt). For assets held for at least three years, the taxpayer may opt to spread the gain over the current year and the following years up to the fourth year. Such an option is only available for IRES purposes. The spreading option is also available for financial assets (other than participations qualifying for participation exemption) that have been classified as such in the last three annual financial statements. The "last in, first out" method applies when determining the holding period.
Selling costs/transfer taxes	The transfer of assets will trigger VAT, unless the TOGC exemption applies (see above). It will also attract transfer tax if the going concern transferred includes real estate. Any cost incurred by the seller in relation to the transfer is taken into account when calculating the net gain that will be subject to IRES and IRAP.
Sale by corporate nonresidents	Any gain realized by a foreign entity upon the disposal of assets forming part of an Italian permanent establishment is taxable in Italy for IRES and IRAP purposes at the standard rate. The same applies to any gain realized upon the disposal of Italian real estate (irrespective of whether the real

	estate is part of or constitutes a permanent establishment).

2. Share deal

Capital gain taxation	Up to 95% of capital gains on the disposal of shares and other participations realized by an Italian entity are exempt from IRES, provided that all the conditions for benefiting from the participation exemption regime are satisfied. In order to qualify for the exemption, the following criteria must be met. The participation must have been held for an uninterrupted period beginning the 12th month preceding that of the transfer. The participation must have been accounted for as a long-term investment (fixed asset) in the first balance sheet of the holding period. The participated company must be a resident of a state or territory other than a tax-privileged jurisdiction.[22]

[22] For Italian tax purposes, a country is identified as a tax-privileged jurisdiction if (i) its effective corporate income tax rate is lower than 50% of the effective tax rate that the foreign company would have shown if resident in Italy, in case of "controlled" subsidiary, or (ii) its nominal corporate income tax rate is lower than 50% of the nominal Italian one, in the others cases in which the foreign company is not "controlled" by the Italian one. To this extent, EU member states and EEA states ensuring an effective exchange of information never qualify as tax-

	The participated company must carry out a real business activity. Companies with assets that are mainly represented by real estate neither used in the business activity nor classified as inventory (i.e., held for sale) are deemed not to perform a real business activity. The condition under paragraph (c) must be met at the time of the transfer (i) continuously since the first fiscal year of holding if the purchaser is a company belonging to the same group of the seller, or (ii) from the five financial years preceding the year of the disposal in the other cases, while the condition under paragraph (d) above must be met continuously at the time of the transfer from the three financial years preceding the year of the disposal. If such conditions are not met, the entire amount of the capital gain will be subject to IRES at the standard rate of 24%. Capital gains on the disposal of shares are not relevant for IRAP purposes. The same rules apply to capital gains realized by foreign investors through an Italian permanent establishment. However, starting from FY 2019, in the absence of a permanent establishment to which the

privileged jurisdictions. The relief from the full taxation might apply if certain conditions are met.

	participation relates, capital gains arising from the sale of shares or other participations in Italian companies will be subject to a 26% substitute tax irrespective of whether the participation is qualified or nonqualified.[23] Residents of countries that allow exchange of information (called "white-listed countries") are exempt from taxation on capital gains deriving from nonqualified participations. The same exemption applies to capital gains on nonqualified participations in listed companies. Double imposition of capital gains may be prevented through the application of a double tax treaty.
Selling costs/transfer taxes	Negligible transfer taxes (EUR 200 as registration tax) are due upon the disposal of the shares of an Italian company. Any cost incurred by the seller in relation to the transfer of the shares is taken into account when determining the net gain

[23] Up to FY 2018, capital gains realized by nonresidents were taxed as follows:

- If the amount of the participation sold during a 12-month period did not exceed 20% of the voting rights or 25% of the capital of unlisted participations (referred to as "nonqualified participations"), capital gain was subject to a 26% substitute tax.
- If the amount of the participation exceeded the above percentages at least once in the 12-month period (referred to as "qualified participations"), the gain was subject to corporate income tax levied at 24% on 58.14% of its amount, thus resulting in an overall tax burden equal to 13.954%.

	(that is normally) partially exempted. Hence, these costs are generally not deductible in the same proportion from any other income of the seller.

IV. Tax regime for restructuring operations

A number of restructuring operations may take place under a tax neutrality regime. The Italian tax authorities under the general Italian Anti-Abuse Rule may scrutinize such transactions.

Specific rules apply with respect to the transfer of the tax loss carryforward, Net Interest and the excess of NID carried forward of companies or businesses involved in a tax-neutral reorganization. Often, these rules lead to a reduction in the amounts to be further carried forward.

Most tax-neutral restructuring operations are also exempt from VAT (provided that, of course, the conditions for the TOGC exemption are met).

Pre-transaction carve-outs may be contemplated, but their tax efficiency has to be checked on a case-by-case basis.

Merger or demerger	Tax-neutral (rollover regime) Cross-border mergers or demergers with an EU company may also benefit from the tax neutrality regime, provided that certain conditions are met (e.g., the assets and liabilities transferred are kept in an Italian PE). According to a specific provision regarding the transfer out of Italy of the residence of a company to an EU member state for

	corporate income tax purposes, the taxation of the deemed capital gain (exit tax) pertaining to the assets transferred may be spread over five fiscal years. This provision also applies to cross-border mergers or demergers within the EU that do not benefit from the tax neutrality regime and to the transfer of Italian PEs of nonresident taxpayers. Specific rules apply to the tax loss carryforward, Net Interest carried forward and NID carried forward of the companies involved in the transaction.
Contribution of a going concern	Tax-neutral (rollover)
Exchange of shares	If certain conditions are met, share-for-share exchanges can benefit from tax neutrality.

Luxembourg



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At a glance

Corporate income tax rate (%)	17[1]
Municipal business tax (MBT) rate (%)	6.75 for the municipality of Luxembourg City[2]
Capital gains tax rate (%)	17[3]
Net wealth tax (NWT) (%)	0.5/0[4]-0.05% if > EUR 500 million
Tax losses carryforward (years)	Indefinite for losses incurred before 1 January 2017; losses incurred from 1 January 2017 onward can be carried

[1] Corporate income tax rates range from 15% to 17%, depending on the taxable income amount. In addition to corporate income tax, an MBT and a 7% surcharge for the employment fund are levied on taxable income.

[2] The MBT rate varies from 6% to 10.5%, depending on the municipality. The maximum effective overall tax rate for companies located in the municipality of Luxembourg City is 24.94% as of 1 January 2019 and still applicable on 1 January 2020.

[3] In addition to corporate income tax, an MBT and a surcharge of 7% for the employment fund are levied on capital gains.

[4] Applied to net assets as determined for NWT purposes; NWT is referred to as the unitary value (*valeur unitaire*), determined as of 1 January of each year. The unitary value is, in principle, calculated as the difference between (i) assets estimated at their fair market value (*valeur estimée de réalisation*) and (ii) liabilities toward third parties. NWT may be reduced up to the lesser of the amount of either the NWT or the corporate income tax (before tax credit) due during a given year, provided that the Luxembourg company's shareholders decide to allocate an amount that is five times the NWT reduction to a special reserve before the end of the next financial year. This reserve has to be maintained in the financial accounts during the five fiscal years following the year in which the NWT reduction was generated.

	forward for a maximum period of 17 years.
Tax losses carryback (years)	No
Domestic withholding tax (WHT) rate on dividends (%)	15[5]
Domestic WHT rate on interest (%)	0[6]
Tax consolidation regime	Yes ("fiscal unity")
Transfer tax rates (%)	N/A
Sale of real estate assets	7[7] or 10[8] for buildings inside the municipality of Luxembourg City
Sale of movable assets	N/A
Sale of shares of a real estate-oriented company	N/A
Standard VAT rate applicable to real estate (%)	17
Capital duty (%)	0

[5] However, subject to the provisions of an applicable double tax treaty, the WHT rate may be reduced. Furthermore, a withholding exemption may apply if, at the time the income is made available, the conditions of the Luxembourg participation exemption have been met.

[6] Except under the Luxembourg provisions applicable to interest payments made to Luxembourg tax resident individuals, on loans qualified as silent partnerships (*bailleur de fonds*) and on certain profit-participating bonds.

[7] 6% registration duty + 1% transcription tax.

[8] 6% registration duty + 1% transcription tax + 3% municipal surcharge.

Neutral tax regime for restructuring operations	Yes
Tax consolidation	Yes
Fixed minimum NWT[9]	EUR 4,815 (including the 7% surcharge for the unemployment fund)
Progressive minimum NWT[10]	• EUR 535 for companies with a total balance sheet of less than or equal to EUR 350,000

[9] As of 1 January 2016, the former minimum corporate income tax is replaced by a minimum NWT liability. Fixed minimum NWT applies to regulated and nonregulated entities if the sum of their financial assets (including transferable securities, loans and bank deposits) exceeds 90% of their total assets and represent at least EUR 350,000. This minimum tax will also apply to Luxembourg companies that hold real estate in another country through a tax-transparent entity.

[10] Progressive minimum NWT applies to companies, other than financing companies, subject to fixed NWT. Fixed or progressive minimum NWT burden is treated as an advance for future NWT liability. It is, however, not refundable (as opposed to ordinary advances). It will not be possible to reduce the minimum NWT charge with available tax credits (which will be carried forward in such a case). Securitization companies, risk capital investment companies (i.e., *société d'investissement en capital à risque* (SICAR)), variable capital pension savings companies (i.e., *sociétés d'épargne pension à capital variable* (SEPCAV)) and pensions savings associations (i.e., *Association d'Épargne Pension* (ASSEP)) still benefit from the NWT exemption, save, however, for the minimum NWT. In other words, securitization companies, SICAR, SEPCAV and ASSEP under certain legal forms are, going forward, subject to this minimum NWT, whereas they were formerly entirely exempt.

	• EUR 1,605 for companies with a total balance sheet higher than EUR 350,000, but lower or equal to EUR 2 million • EUR 5,350 for companies with a total balance sheet higher than EUR 2 million, but lower or equal to EUR 10 million • EUR 10,700 for companies with a total balance sheet higher than EUR 10 million, but lower or equal to EUR 15 million • EUR 16,050 for companies with a total balance sheet higher than EUR 15 million, but lower or equal to EUR 20 million • EUR 21,400 for companies with a total balance sheet

	higher than EUR 20 million, but lower or equal to EUR 30 million • EUR 32,100 for companies with a total balance sheet higher than EUR 30 million

I. Acquiring the investment

1. Acquisition through an asset deal

1.1 Corporate income tax

The acquisition of assets by a Luxembourg company does not trigger any tax burden.

On the acquisition of assets from a third party, the acquisition cost of the asset is treated as the base cost of the asset.

In the case of an asset deal, the depreciation of the assets depends on the nature of the assets and the estimated lifetime.

Depreciation on buildings is allowed for tax purposes and is usually based on accounting rules. Some specific guidance exists in this respect.

Amortization of the acquired assets is usually based on each asset's acquisition price. Acquisition costs could be tax deductible or amortized when activated.

The depreciated acquisition cost determines gains or losses arising on a subsequent disposal. However, in the event a business is acquired from a

related party at a price deemed not to be at arm's length, a tax adjustment may be made.

If the expenses relate to the acquisition of shares that qualify for the application of the participation exemption regime, they are tax-deductible but will be subject to recapture rules (see Section III.2.1, Participation exemption).

Interest expenses incurred on a loan in relation to the acquisition of the asset are tax-deductible. However, attention should be paid to the interest deduction limitation rule provided for by Article 168-*bis* of the Luxembourg Income Tax Law. The principle is that exceeding borrowing costs will be deductible in the tax period in which they are incurred only up to 30% of the taxpayer's earnings before interest, tax, depreciation and amortization (EBITDA). Exceeding borrowing costs means the portion of interest expenses exceeding interest income.

1.2 Investment facilities

Reinvestment reserve

In principle, Luxembourg tax law allows the temporary immunization of a capital gain derived from the disposal of a building or a non-depreciable fixed asset by accordingly reducing the acquisition price of the asset acquired by the company in lieu of the said alienated building or non-depreciable fixed asset.

Provided that the proceeds of the entire sale are reinvested in the acquisition of another qualifying fixed asset at the end of the second year following the year of disposal, at the latest, any capital gains realized on the disposal of such assets will not be subject immediately to taxation in Luxembourg, but rather deferred.

(i) Should the sale price be reinvested in a fixed asset, the acquisition value of said asset will be reduced from a Luxembourg tax

perspective by an amount corresponding to the capital gain whose taxation has been deferred.

(ii) Should the sale price be reinvested in a participation, the capital gain reinvested will have to be booked in a reserve account of the company's balance sheet and the said participation recorded at its acquisition value.

Other investment facilities

Other investment facilities are available in connection with the acquisition of certain assets (mostly relating to environment-friendly investments).

1.3 VAT

As a rule, all supplies of goods or services are subject to VAT. Luxembourg VAT is due if such transactions are (deemed to be) located in Luxembourg.

In an asset deal, the transfer of the assets is regarded, in principle, as several distinct supplies of goods, each of which is subject, in principle, to VAT at the appropriate rate. However, the Luxembourg VAT law provides for a special regime for a transfer of a totality of assets/business or part thereof as a going concern (TOGC).

As a matter of law, a TOGC qualifies neither as a supply of goods nor as a supply of services and hence it falls outside the scope of VAT, which is, therefore, not chargeable for such TOGC.

Where the asset deal meets the conditions listed below, it qualifies as a TOGC:

- The assets must constitute a whole or well-separated part of the business and must be sold as part of the transfer of a "business" as a "going concern."

  - Where only part of the "business" (assets) is sold, it must be capable of operating separately.
  - A mere transfer of assets, such as the sale of products, is **not** sufficient in order to qualify as a TOGC.
- The buyer must intend to operate the business or the part of the business transferred.
  - Therefore, the buyer may not intend to liquidate immediately the activity concerned.
  - There may be no series of immediately consecutive transfers of "business."

Even though the TOGC itself falls, as a matter of law, outside the scope of VAT, the costs relating to such TOGC (e.g., consultancy fees) in principle qualify as general costs. Consequently, one may deduct the input VAT incurred in relation to such TOGC in accordance with the general rules governing VAT deduction.

The Luxembourg VAT regime for TOGCs is not optional. If the regime applies to the facts of the asset deal, then, as a matter of law, no VAT will be chargeable by the transferor. Therefore, it is important to establish whether the asset deal qualifies as a TOGC. When the asset deal does not qualify as a TOGC, the transfer of each individual asset triggers its own VAT consequences. This may be, for example, relevant when real estate is involved. The transfer of real estate cannot be considered as a TOGC.

In principle, the supply of real estate is exempt from VAT and subject to transfer tax. Some exceptions, however, apply to the main rule whereby the supply of real estate is subject to VAT. For instance, if certain requirements are met, the seller and the buyer may opt for a transfer of real estate that is subject to VAT. In the event real estate is transferred with the application of a VAT exemption, while at the time of the

acquisition VAT was incurred, and recovered by the seller, the seller will be confronted with a partial assessment/adjustment for the VAT that it initially recovered. The regularization period is fixed at 10 years for real estate assets and the regularization each year applies only on one-tenth of the VAT incurred on the acquisition.

Rate	Standard rate: 17% Intermediate rate: 14% Reduced rate: 8% Super reduced rate: 3% Further, certain supplies are exempt from VAT.
Basis	General rule: Sales price/full consideration received in exchange for the supply of services.
Filing and payment	Depending on the annual amount of the turnover realized by the company and estimated amount of intracommunity acquisitions of goods/services, VAT returns must be filed monthly, quarterly or annually. Periodical VAT returns must be submitted, in principle, within 15 days of the following month/quarter. The VAT due must be paid at the time of submission. Yearly returns should be submitted by 1 March of the following year, in the event only one return has to be filed, or by 1 May of the following year when periodical returns are filed.

	Administrative filing extensions of two months for periodical returns and of eight months for annual returns are accepted.
Liable person	General rule: The seller. Exception: The buyer, in certain cases, based on the reverse charge mechanism.
Recoverability	The costs relating to a TOGC normally qualify as general costs and, hence, the input VAT on such costs may be deducted in accordance with the "VAT deduction principles." Input VAT on other costs is deductible in accordance with the general rules for recoverability. When entitled to recover input VAT, the input VAT may be deducted from the VAT payable in the relevant periodical VAT return. An optional procedure to speed up the recovery of the input VAT is foreseen by the Luxembourg VAT law. However, it generally triggers a VAT audit.

1.4 Transfer tax

Transfer tax in Luxembourg is, among others, levied on the acquisition of Luxembourg real estate.

The transfer tax rate is 6%.[11] The tax base is the market value or the consideration paid if the latter is higher than the market value.

Consideration pertains to the compensation received or whatever the party transferring the real estate has stipulated. Legally, transfer tax is due by the acquirer. However, it is customary for the buyer and the seller to agree on who will effectively bear the tax. Transfer tax is not recoverable for the acquirer.

Transfer tax also applies in the event the sale, for VAT purposes, would be part of the TOGC relief.

Rate	6%
Basis	The tax base is the purchase price or the market value, if higher.
Date of payment	Transfer tax is paid at the same time the return is submitted. The return has to be submitted within one month after the transfer has taken place.
Liable person	Buyer
Tax deductibility for corporate income tax	Added to the cost price and subsequently (partly) amortized

1.5 Other acquisition costs

Notary fees	Decreasing rates with a maximum of EUR 3,009.42

[11] Plus a 3% municipal surcharge for buildings inside the municipality of Luxembourg.

Mortgage registration fees	Registration duty: 0.24% under certain conditions Inscription right: 0.05% Transcription rights: 1% (in some cases 0.05%) Fixed fee up to EUR 12.39
Stamp duties	N/A
Tax deductibility for corporate income tax	Deductible from corporate income tax under tax depreciation rules
WHT obligation on the disposal of real estate located in Luxembourg	No WHT

2. Acquisition through a share deal

2.1 Corporate income tax

For corporate income tax purposes, the acquired shares should be taken up in the books against cost price. Acquisition costs could be added to the fiscal cost price of the shares. Usually, however, the acquisition costs relating to the purchase of shares that qualify for the application of the participation exemption regime are deducted, under certain conditions (see Section III.2.1, "Participation exemption").

Under certain conditions, tax unity is available to achieve an efficient debt push-down. Within a fiscal unity, the income and costs of the members are aggregated and hence this mechanism can be used to achieve an efficient debt push-down (see Section I.3.3, "Debt push-down").

The 2020 corporate income tax rate is set at 17%. Aggregated rate with municipal business tax amounts to 24.94%.

2.2 VAT

Transactions relating to shares and participations in other companies (e.g., acquisition, holding and sale of shares), in principle, fall outside the scope of VAT.

However, such transactions might fall within the VAT scope in the case where they are performed in the context of a trading activity. In such a case, transactions relating to shares will be exempt from VAT.

The traditional view is that VAT incurred on costs referable to the disposal/acquisition of shares is not deductible. However, the European Court of Justice has sometimes conceded that this VAT might be deducted in the case where the costs incurred present a direct and immediate link to the taxable person's general activities giving right to a VAT deduction.

Therefore, the deductibility of input VAT attributable to the sale/acquisition of shares or participation very much depends on the facts of each individual case; furthermore, this topic is not really crystallized in case law. Therefore, it is recommended to carefully review the setup of a share deal to mitigate the risk of nonrecoverable VAT.

2.3 Transfer tax

The acquisition of shares in a company does not trigger any transfer tax.

2.4 Tax credits

Tax credits remain with the company and would not be affected by a share transfer. This means that tax credits could still be used after a share deal.

2.5 Tax losses' preservation

A tax loss incurred before 1 January 2017 can be carried forward without limitation after the year during which the loss was incurred. Losses

incurred from 1 January 2017 onward can be carried forward for a maximum period of 17 years.

Only the taxpayer that incurred the loss can deduct this loss. The tax loss carryforward cannot be transferred.

A mere change of ownership of the shares does not prevent the taxpayer from using existing tax losses.

2.6 Transfer of tax liabilities

In a share deal, the buyer indirectly inherits the tax liabilities of the acquired company. In general, the statute of limitations for direct taxes is five years (i.e., the end of the fifth fiscal year following the relevant year) unless the filed tax return is found incomplete or inaccurate (with or without fraudulent intention), resulting in additional taxes to be collected or in case the tax return has not been filed, the statute of limitations is extended to 10 years.

Transaction costs

Transaction costs will be deductible but are subject to recapture rules, or part of the acquisition price of the shares.

3. Financing the investment

3.1 Deductibility of financing expenses

In general, interest expenses on unrelated or third-party debt (i.e., bank debt) used to finance the investment are fully tax-deductible for Luxembourg corporate income tax purposes.

The Luxembourg practice could limit the tax deduction of interest expenses on related party debt in the case of excessive debt financing.

The interest limitation rule applies as of 1 January 2019 on the deduction of exceeding borrowing costs that may be limited under certain conditions up to 30% of the EBITDA or EUR 3 million. However, interest in relation to certain qualifying participation does not fall under the interest deduction limitation rule.

Recapture rule

As a matter of principle, the operating expenses (being only those equal in value to the exempt income) incurred during a financial year in direct economic connection with that exempt income derived during the same financial year (e.g., interest on the debt financing the shareholding out of which the exempt dividend is paid) are not deductible.

Furthermore, any capital gains realized upon the disposal of shares are not exempt from corporate income tax and MBT for an amount corresponding to the excess of the expenses related to the shareholding that reduced the tax base of the company in the year of disposal or in the previous financial years. This is known as the "recapture rule."

A capital gain realized by a Luxembourg company on the disposal of shares is nevertheless taxable for the part corresponding to previously incurred and economically related expenses, such as interest expenses incurred on a loan financing the shareholding sold (wholly or partly) or write-downs (i.e., value adjustments) recorded on the said shareholding, to the extent the said charges were deducted in the year of the disposal or in previous financial years.

For a company whose only activity is to hold participations, the "recapture" of the said expenses is neutral from a tax perspective, as these expenses should have created a corresponding tax loss that can be carried forward without a limit in time, or for a maximum of 17 years, depending on when the loss was incurred (please refer to Section 2.5 above), and that would offset the taxable portion of the capital gain.

Thin capitalization rules

Luxembourg law does not specify any debt-to-equity ratio or other guidelines that must be adhered to. However, according to the general practice adopted by the Luxembourg tax authorities, the debt-to-equity ratio applicable to a fully taxable Luxembourg capital company is 15 for equity, up to 85 for all liabilities combined. Within this limit, interest on arm's length terms on debt paid or accrued is tax-deductible and payments are not subject to Luxembourg WHT.

Should this ratio be exceeded, interest in relation to the excess of liabilities can be requalified as dividends for tax purposes. The consequence is that such interest in excess is not deductible and WHT would apply, depending on the country of residence of the recipient.[12]

Hybrid loans

Interest expenses incurred on a loan reclassified as equity for tax purposes (a hybrid loan) are not deductible for Luxembourg tax purposes.

The "hybrid" character of the loan will be determined depending on the circumstances at hand, as well as on various factors such as subordination, voting rights, the right to liquidation proceeds and the term of the loan.

Subject to certain conditions, the interest that a Luxembourg taxpayer receives on a hybrid loan may be exempt under the Luxembourg participation exemption regime. The Luxembourg participation exemption regime has, however, been modified with effect as from 1 January 2016. Dividends received after 31 December 2015 by any of the qualifying entities from an entity that is a resident of another EU member state and is

[12] Unless a reduced rate is provided by an applicable double tax treaty or exemption under Luxembourg's participation exemption regime.

covered by Article 2 of the Parent-Subsidiary Directive, will no longer benefit from the participation exemption regime if the said dividends:

- are tax-deductible in the other relevant EU member state
- are allocated as part of an arrangement or series of arrangements that, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of this directive, is not genuine, having regard to all relevant facts and circumstances

An arrangement or a series of arrangements, which may comprise several steps or parts, is considered "not genuine" if it is not put into place for valid commercial reasons that reflect the economic reality.

The Law of 21 December 2018 introduced a new Article 168-*ter* of the Luxembourg Income Tax Law (LITL) that implements the generic anti-hybrid mismatch provisions included in the Anti-Tax Avoidance Directive (ATAD 1). The new provisions aim to eliminate the double non-taxation created through the use of certain hybrid instruments or entities only in an EU context.

The amendments to the ATAD 1 (so-called ATAD 2), covering hybrid situations in a non-EU context, were implemented as of 1 January 2020 (and by the end of 2021 for the rules on reverse hybrids).

Arm's length principle

All transactions between related entities should be conducted on an arm's length basis. Therefore, remuneration for a loan between related parties should be at arm's length. If, however, the interest expenses would not be at arm's length, Luxembourg tax authorities could adjust the reported figures in a tax return, and the interest expenses in excess of the arm's length interest expenses would not be tax-deductible and would also qualify as deemed dividend distributions.

There are three articles in the LITL that refer to the arm's length principle: Article 56 relating to the transfer of business profits; Article 56-*bis* that provides that Luxembourg companies have to determine an arm's length price for all transactions between related parties; and Article 164 (3) relating to hidden profit distributions.

Article 56 of the LITL provides for the arm's length principle as a rule:

> If (a) an enterprise participates directly or indirectly in the management, control or capital of another enterprise; or if (b) the same persons participate directly or indirectly in the management, control or capital of two enterprises and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations, which differ from those that would be made between independent enterprises, then any profits that would, but for those conditions, have accrued to one of the enterprises, will be determined under the conditions that prevail between independent enterprises and taxed accordingly. (unofficial translation)

To this end, Luxembourg transfer pricing legislation complies with the arm's length principle to be applied between associated enterprises carrying out commercial and financial transactions, as set forth in the OECD Transfer Pricing Guidelines.

The law of 23 December 2016 introduced Article 56-*bis* in the LITL. This article provides that Luxembourg companies have to determine an arm's length price for all transactions between related parties. For this purpose, companies have to determine their pricing on the basis of a comparability analysis (i.e., comparison with market transactions having similar economic characteristics). In this respect, the comparison method to be used should be the one achieving the more precise arm's length price. Moreover, where a transaction contains elements that do not have a valid commercial rationale and that negatively impact the determination of the arm's length

price, such transaction should be ignored in full or in part for the purpose of the determination of said arm's length price.

Accordingly, paragraph 171 AO states that information and documentation obligations regarding the burden of proof of taxpayers toward the tax authorities are applicable for transfer pricing purposes.

The tax authorities have also issued guidelines and internal notes with respect to transfer pricing. First, Circular LIR No. 56/1-56-*bis*/1 applicable from 1 January 2017, regarding the tax treatment applicable to Luxembourg companies carrying out intragroup financing transactions, further details the application of the arm's length principle to such transactions and abrogates and replaces 2011 Circulars.[13] Second, Circular LIR No.°164/1 dated 23 March 1998 relates to the interest rates on shareholders' corporate current accounts. Finally, an internal note No.°164/1 dated 9 June 1993 relates to hidden profit distributions within the context of shareholders' corporate current accounts.

The above-mentioned circulars and internal note set out a framework of detailed principles to be followed when applying the arm's length principle to the intragroup financing transactions.

3.2 WHT on interest

Luxembourg does not levy any WHT on interest (except under certain conditions if paid to a Luxembourg tax resident individual, on loans qualified as silent partnerships (*bailleur de fonds*) and on certain profit-participating bonds).

[13] Circular LIR No.°164/2 dated 28 January 2011 and Circular LIR No.°164/2-*bis* dated 8 April 2011.

3.3 Debt push-down

There are several commonly used methods for the interest expenses on the debt funding of the acquisition to be offset against the operating profits of the target company.

One method is to form a fiscal unity for Luxembourg corporate income tax purposes between the investment vehicle and the target company. Another method is to merge the target company into the investment vehicle. We provide a short description of these methods in the following paragraphs.

Tax consolidation (fiscal unity)

Upon joint requests and subject to certain conditions, Luxembourg resident companies and Luxembourg permanent establishments of foreign companies may form a fiscal unity for Luxembourg Corporate income tax purposes that permits members of the fiscal unity to file one consolidated corporate income tax return.

A fiscal unity consists of an integrating company or a Luxembourg permanent establishment of a foreign company and at least one integrated company or permanent establishment under the so-called horizontal or vertical tax consolidation patterns. The integrating entity of the fiscal unity is considered the taxpayer of the fiscal unity.

One of the main advantages of a fiscal unity is that all results of the fiscal unity members are aggregated. Thus, losses incurred by one member can be offset with profits realized by another member, not only within the same year but also over different years.

To be eligible to form a fiscal unity, the following requirements should be met:

1. The integrating entity should: legally and economically, directly or indirectly, own at least 95% (or 75% under certain conditions) of the nominal paid-up share capital in the integrated entity/entities. A horizontal fiscal unity is also possible under certain conditions between companies with the same direct or indirect parent company (with the parent company not being part of the fiscal unity). Qualifying companies held by a common parent company established in any European Economic Area (EEA) country, and subject to a tax comparable to Luxembourg's corporate income tax in its country of residence, may form a tax unity.

2. The financial years of all the entities that are part of the tax-consolidated group should coincide.

3. The same corporate income tax regime should apply to each entity that is part of the tax-consolidated group.

4. All integrating and integrated entities should be residing in Luxembourg or must be permanent establishments in Luxembourg.

5. The fiscal unity should be applied for a minimum of five years.

SICAR, investment funds and securitization vehicles cannot be part of a tax-consolidated group.

A fiscal unity may be formed at the joint request of the member entities (and, as the case may be, by the non-integrating entity). The fiscal unity has to be requested before the end of the first taxable year for which it is requested.

Further to amendments to the provisions on interest limitation rules, introduced on 26 April 2019, groups may apply the interest deduction limitation rules on a stand-alone basis or at group level.

"Tax-free" mergers

See Section IV, "Tax regime for restructuring operations." As a rule, any profit realized in the context of a transfer of assets/liabilities in the case of a merger/demerger is subject to corporate income tax. Realized hidden reserves, goodwill and fiscal reserves that are not retained following the merger/demerger will be added to the taxable profits in the year of the merger or division. Tax law, however, provides possibilities to realize the merger/demerger in a tax-neutral way, provided specific conditions are met.

II. Holding the investment

1. Main tax costs to be considered

1.1 Taxable income

Net income less deductible expenses (i.e., interest expenses, depreciation) is subject to corporate income tax at the maximum progressive statutory rate of 24.94%.[14]

1.2 Depreciation

Business assets are usually depreciated, depending on the nature of the assets and the estimated lifetime.

[14] As of 1 January 2017, for companies established within the municipality of Luxembourg.

Depreciation on buildings is allowed for tax purposes (as described in Section 1.1), while random accelerated depreciation (e.g., in one year) may be claimed under specific conditions.

1.3 VAT

As a rule, the supply of goods or services carried out by the VAT payer or professionals in the course of their business activities is subject to VAT at a general rate of 17%. Reduced rates (14%, 8% or 3%) and exemptions may also apply.

Input VAT may be deductible, depending on the activities of the VAT payer. Some transactions between entities of the same group may not trigger VAT, such as transactions between a head office and its branch (i.e., permanent establishment).

1.4 Business license

A business license might be required to perform certain activities in Luxembourg. The application for a business license, therefore, has to be determined on a case-by-case basis.

1.5 Other taxes

Local authorities determine the annual percentage of the real estate tax.

2. Distribution of profits

2.1 WHT on dividends distributed by a Luxembourg corporation

In general, dividend distributions are subject to Luxembourg dividend WHT at the statutory rate of 15%.

However, under certain conditions, dividends distributed by a Luxembourg entity could be exempt from WHT. The WHT exemption is subject to the condition that at the date the income is placed at the disposal of the beneficiary, the beneficiary holds or commits to hold the shareholding in

the Luxembourg entity for an uninterrupted period of at least 12 months, and throughout that whole period, the shareholding represents at least 10% of the share capital of the Luxembourg entity, or its acquisition price amounts to at least EUR 1.2 million.

However, profit distributions do not benefit from the WHT exemption in Luxembourg where the subsidiary is a collective entity listed and covered by the Parent-Subsidiary Directive, if:

- such distributions are deductible in the other relevant EU member state (anti-hybrid rule)
- allocated as part of an arrangement, or a series of arrangements, that is not "genuine" (i.e., that has not been put in place for valid commercial reasons reflecting economic reality) and has been put in place for the main purpose, or one of the main purposes, of obtaining a tax advantage that is not in line with the objective of the Parent-Subsidiary Directive

2.2 Taxation of (domestic or foreign) dividends received by a Luxembourg corporation

In general, dividends received are subject to Luxembourg corporate income tax at a maximum statutory rate of 24.94%.[15]

However, dividends received from a qualifying shareholding may be exempt under the participation exemption regime (see Section III.2.1, Participation exemption).

If not, an exemption of 50% is granted under certain conditions.

[15] As of 1 January 2019 for companies established within the municipality of Luxembourg.

III. Selling the investment

1. Asset deal

Selling costs	See Section I.1, Acquisition through an asset deal. Indirect tax: Reference is made to paragraphs 1.3 and 1.4.
Capital gain taxation	Maximum statutory rate: 24.94% Subject to certain conditions, taxation of the capital gain may be deferred using the reinvestment facility (see Section I.1.2, Investment facilities). In an asset deal, capital losses on assets are deductible for corporate income tax purposes.
Sale by corporate nonresidents	Acting without a permanent establishment in Luxembourg: No tax on capital gain on immovable property is levied after a six-month holding period, but it is subject to tax treaty provisions. Acting with permanent establishment in Luxembourg: See Capital gain taxation here above.

1.1 Business merger facility

Under certain conditions, the taxation of capital gains realized on the transfer of assets and liabilities — composed of an enterprise or an independent part of an enterprise — in return for shares in the acquiring

company ("business merger") can be deferred and "rolled over" to the acquiring company, provided that certain requirements are met.

With respect to tax deferral, it is noteworthy to mention that as from 1 January 2020 exit taxation rules in relation to the transfer of assets realized upon seat migration, for instance, considered as a liquidation from a Luxembourg corporate income tax perspective, have been amended. Indeed, paragraph 127 of the Luxembourg general tax law (*Abgabenordnung*) providing the possibility to postpone payment of the exit tax, indefinitely under certain conditions, has been changed and replaced by a payment of the exit tax over a five-year period.

2. Share deal

Selling costs

See Section I.1, Acquisition through an asset deal.

Indirect tax: Reference is made to paragraph 2.2 below.

Capital gain taxation

In general, capital gains are subject to the maximum statutory rate of 24.94% corporate income tax. However, capital gains derived from shares in a qualifying subsidiary may be exempt under the participation exemption regime (see Section III.2.1, Participation exemption).

Capital losses on shares in a qualifying subsidiary are deductible for Luxembourg corporate income tax purposes.

Sale by corporate nonresidents

Acting without a permanent establishment in Luxembourg: Generally, taxation of capital gains on shares is allocated to the country of residence of the seller based on the applicable tax treaty.

However, if the sale of a participation qualifying as a substantial participation is made within a period of six months after the acquisition, any gain realized upon such a sale will be taxed in Luxembourg, unless a double tax treaty provides otherwise.

Acting with a permanent establishment in Luxembourg: See Capital gain taxation above in this section.

2.1 Participation exemption

Dividends received by a Luxembourg tax resident company are, in principle, subject to corporate income tax and MBT at an aggregate rate of 24.94%.

However, according to the LITL:

- Income (i.e., dividends) from a direct shareholding in the share capital of the subsidiary held by any of the following:
    - a Luxembourg resident, fully taxable "entity" incorporated under one of the (legal) forms listed in the appendix to paragraph (10) of Article 166 of the LITL
    - a Luxembourg resident, fully taxable "share capital company"[16] not listed in the appendix of paragraph (10) of Article 166 of the LITL
    - a Luxembourg permanent establishment of an entity covered by Article 2 of the Parent-Subsidiary Directive

[16] These are: *sociétés anonymes* (SA), *sociétés en commandite par actions* (SCA) and *sociétés à responsabilité limitée* (SARL).

- a Luxembourg permanent establishment of a "share capital company" resident in a state with which Luxembourg has concluded a double tax treaty
- a Luxembourg permanent establishment of a "share capital company" or of a cooperative company that is a resident in a state that is a party to the European Economic Area Agreement other than a member state of the EU

is exempt from corporate income tax and MBT, provided that, at the date the income is placed at the disposal of the beneficiary, the latter holds or commits to hold said shareholding for an uninterrupted period of at least 12 months and, throughout that whole period, the shareholding represents at least 10% of the share capital of the subsidiary, or its acquisition price amounts to at least EUR 1.2 million.

- The exemption applies, provided that the income derives from a shareholding referred to in paragraph (1) above held directly in the share capital of any of the following:
  - an entity covered by Article 2 of the Parent-Subsidiary Directive
  - a Luxembourg resident, fully taxable "share capital company" not listed in the appendix of paragraph (10) of Article 166 of the LITL
  - a nonresident "share capital company" fully subject to a tax corresponding to Luxembourg corporate income tax

  (This condition should be met if the foreign company is subject to a compulsory income tax at an effective tax rate at least equal to half of the corporate income tax (excluding unemployment surcharges). In addition, the tax basis of such company must be comparable to the tax basis that would result from the application of Luxembourg

rules and methods, relating to the determination of the tax basis applicable to a fully taxable Luxembourg resident company.)

- As mentioned above, notwithstanding anything to the contrary, dividends received after 31 December 2015 by any of the entities covered by paragraph 7.1.(1) above from an entity that is a resident of another EU member state and is covered by Article 2 of the Parent-Subsidiary Directive, do not benefit from the aforementioned corporate income tax and MBT exemption if the said dividends are either:
    - tax-deductible in the other relevant EU member state
    - allocated as part of an arrangement or series of arrangements that (having been put into place for the main purpose, or one of the main purposes is that of obtaining a tax advantage that defeats the object or purpose of this directive) is not genuine, having regard to all relevant facts and circumstances

      (An arrangement or a series of arrangements, which may comprise several steps or parts, is considered "not genuine" if it is not put into place for valid commercial reasons that reflect the economic reality.)

2.2 Share-for-share deal

If the Luxembourg participation exemption does not apply, it is possible to apply the share-for-share deferral. In the event that a Luxembourg taxpayer transfers shares to another company in exchange for shares in the acquiring company (a "share-for-share deal"), the transferring company may defer taxation of any capital gain on the transferred shares. This deferral is subject to specific conditions.

If the Luxembourg taxpayer decides to defer taxation of the capital gains, the shares that the taxpayer received in return must be recorded in its fiscal books with the same value as the shares that were transferred.

IV. Tax regime for restructuring operations

The Luxembourg tax system provides for different options for mergers.

As a rule, any profit realized in the context of a transfer of assets/liabilities in the case of a merger/demerger is subject to tax. Hidden reserves (built-in gains), goodwill and fiscal reserves that are not retained following the merger/demerger will be added to taxable profits in the year of the merger or division. Tax law, however, provides possibilities to realize the merger/demerger in a tax-neutral way under certain conditions. Therefore, situations must be analyzed on a case-by-case basis.

Indirect taxation

- In an asset deal, the transfer of the assets is, in principle, regarded as several distinct supplies of goods, each of which is, in principle, subject to VAT at the appropriate rate. However, no VAT is due when the sale of assets constitutes a totality of assets/business or part thereof as a going concern.
- A stock merger involves the transfer of shares, which is either VAT-exempt or will fall outside the scope of VAT when the stock merger qualifies as a TOGC, in which case it will not be subject to VAT. The same applies to a share deal.
- Apart from VAT, transfer tax could be levied.

V. Special investment regimes

Different special tax regimes exist in Luxembourg, but will not be discussed in this handbook.

Mauritius



Jason Harel, Founding Partner

Jason Harel is a founding partner of BLC Robert, a leading law firm in Mauritius, which is ranked as a Tier One firm by legal directories such as The Legal 500, Chambers and Partners, and IFLR1000.

He is qualified as a chartered accountant and also a barrister both in England and Wales, and in the Republic of Mauritius. He possesses substantial experience in real estate, banking, corporate finance, corporate transactions, mergers and acquisitions, and taxation.

Jason is consistently identified by legal directories as a 'leading practitioner' in his field, acting for public and private companies. He sits on a number of boards of directors including Africa Legal Network (ALN) and IBL Ltd, and is also the chair of a family-controlled hotel group.

Prior to joining BLC Robert — and after completing his pupillage with Gray's Inn Tax Chambers, the leading tax chambers in the UK — Jason was a senior associate within the Trade Finance and Project Finance Group of Denton Wilde Sapte LLP in London from 2000 to 2005. Jason also worked for Kingston Smith in their corporate insolvency and restructuring divisions.

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He is also the lead employment lawyer in the firm, advising on several high profile employment matters. Fayaz is a regular contributor of published articles on corporate and commercial matters. He is also a member of the Alternative Tax Dispute Resolution Panel, an independent panel set up by the Mauritius Revenue Authority with the aim of finding mutual agreement in respect of large tax disputes. Furthermore, as part of his social responsibility engagement, he is the president of OpenMind, a non-governmental organization focusing on the plight of people suffering from psychological disorders.

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Satyanraj Ramdoo has been a barrister at BLC Robert since 2012 and advises primarily on mergers and acquisitions, corporate and business law matters. He also regularly advises on data protection, regulatory and compliance issues, and forms part of the intellectual property desk at BLC Robert. Satyan also provides support on banking and finance transactions.

Satyan is heavily involved in drafting legal documentation, reviewing foreign law agreements and issuing legal advice. He is also called upon to conduct extensive legal due diligence exercises on Mauritian entities for investors. Satyan has previously acted for an international network of private equity firms making infrastructure investments throughout various African jurisdictions including Mauritius. He has also assisted in the corporate and transactional aspects of an amalgamation of Mauritian entities of a US multiple-industry services and solutions group of companies.

Satyan acts for various private local and foreign companies and investors acquiring stakes in Mauritian companies, and has recently advised a French project company in its investment in a major local bank on its acquisition of a hotel in Mauritius.

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At a glance

Corporate income tax rate (%)	15
Local income tax rate (%)	15
Tax losses carryforward (years)	5
Tax losses carryback	N/A
Limitations on transfer of tax losses	Ordinary losses may be carried forward for five years. Any losses arising from an annual wear and tear allowance that relates to capital expenditure on or after 1 July 2006 may be carried forward indefinitely.
Domestic withholding tax rate on dividends (%)	N/A
Domestic withholding tax rate on interest (%)	10
Capital gains tax (%)	N/A
Transfer tax rates (%)	No securities transfer tax unless the company owns immovable property.
Sale of shares	5% is levied on a share transfer of a company, which includes any freehold or leasehold property.

	20% is charged when a company has leasehold rights on state land. 0% for shares on the stock exchange and of a global business license (GBL) company.
Sale of Mauritian real estate	5
Standard VAT rate (%)	15
Neutral tax regime for restructuring operations	Yes
Tax consolidation	No

I. Acquiring the investment

1. Acquisition through an asset deal

1.1 Corporate income tax

The disposal of an asset whether to a third party, a member of the same group or a nonresident, will not attract any capital gains tax. The sale of shares will, however, be subject to income tax if the sale is considered to be on revenue account. However, a company holding a global business license is exempt from tax on the sale of equities.

1.2 VAT

VAT is charged at a standard rate of 15% on a taxable supply of goods or services in Mauritius. Various supplies are exempt from VAT including the sale or transfer of immovable property, a building or part of a building, apartment, flat or tenement. Entities with a turnover of more than MUR 6

million must register for VAT; however, specific service providers, such as accountants, auditors, attorneys and solicitors, consultants, surveyors and valuers, must register for VAT regardless of their turnover.

VAT returns must be completed quarterly (i.e., every three months). If a registered entity exceeds MUR 10 million turnover, VAT returns are required to be completed monthly.

1.3 Transfer of a going concern

The disposal of a business as a going concern, or of its assets or liabilities, whether or not in connection with its reorganization or winding up, is a supply made in the course or furtherance of the business. VAT will be charged on any supply of goods or services made in Mauritius, where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by them.

Rate	15%
Basis	General rule: sale price
Date of payment	Quarterly or monthly based on the company's turnover
Liable person	The supplier (vendor)
Recoverability	A taxable person may recover input tax (VAT charged on goods or services supplied to it in the course or furtherance of the business) by deducting it from output tax (VAT charged on goods or services supplied by it in the course or furtherance of the business).

	Input tax cannot be recovered on purchases of goods and services that are not used in the course of or furtherance of the business or goods/services used in business expenditure.

1.4 Transfer taxes

The transfer of shares on the stock exchange or a Category 1 GBL company is 0%. The transfer of real estate attracts transfer duty at rates of 5%.

1.4.1 Securities transfer tax

Rate	N/A
Basis	N/A
Date of payment	N/A
Liable person	N/A
Recoverability	N/A

1.4.2 Transfer duty

Rate	5% to 15%
Basis	Land transfer tax is payable at the rate of 5% by the transferor of immovable property.
Date of payment	Payable at the time of registration
Liable person	The transferor
Recoverability	N/A

1.4.3 Other acquisition costs

Transfer fees — immovable property	A registration duty is payable by the transferee at a rate of 5%-15% depending on the type of property acquired and duration of ownership.

1.5 Transfer of tax liabilities

In terms of the Companies Act, an amalgamated company will remain liable for all liabilities of the companies.

1.6 Tax losses

Not applicable, as Mauritius does not charge securities tax.

Ordinary losses may be carried forward for five years.

2. Acquisition through a share deal

2.1 Corporation tax

The disposal of shares, whether to a third party, a member of the same group or a nonresident, will not attract any capital gains tax.

2.1.1 Group relief group

Group relief is not available in Mauritius.

2.1.2 Merger

It is possible to merge two Mauritian companies under Mauritian corporate law. A merger is achieved pursuant to an agreement between two or more companies, resulting in the formation of one or more new companies, which together hold all of the assets and liabilities that were held by any of the merging companies immediately before the implementation of the agreement, and the dissolution of each of the merging companies; or the

survival of at least one of the merging companies, with or without the formation of one or more new companies, and the vesting in the surviving company or companies, together with such new company or companies, of all of the assets and liabilities that were held by any of the merging companies immediately before the implementation of the agreement.

2.2 VAT

The transfer of ownership of existing shares is regarded as a financial service and, hence, exempt for VAT purposes. As a result, no expenses to which VAT is applicable will be permitted as claims for input tax purposes.

Rate	VAT-exempt
Recoverability	The supplier vendor will not be entitled to recover input tax that is directly attributable to the transfer of existing shares.

2.3 Securities transfer tax

The transfer of shares or marketable securities does not attract any transfer tax.

2.4 Tax losses

Ordinary losses may be carried forward for five years.

2.5 Transfer of tax liabilities

Any tax liabilities of the company in which the shares are acquired will remain liabilities of that company.

3. Financing the investment

3.1 Deductibility of financing expenses

Any expenditure or loss incurred is deductible from gross income to the extent it is incurred in the production of the gross income.

As there is no capital gains tax, a capital loss cannot be deducted.

Thin capitalization rules	There are no thin capitalization rules applicable in Mauritius.
Arm's length principle	All transactions between related parties must be on arm's length terms.
Formula rules	N/A
Other restrictions on deductibility	If a company issues debentures to each of its shareholders, any interest paid and claimed as a deductible expense may be disallowed and will be treated as a dividend.

3.2 Withholding tax on interest

Interest payments made by a Mauritian company to a foreign recipient are subject to a 5% withholding tax. This withholding tax does not apply to interest payments made by a GBL company to a foreign recipient. Double taxation agreements may offer some relief and reduce the withholding tax.

II. Holding the investment

1. Main tax costs to be considered

Taxable income	Worldwide net income is subject to corporate income tax at 15%. Foreign tax credits include any withholding tax at the source and, in the case of a dividend, include the pro-rated portion of the corporate income tax paid by the company declaring the dividend, limited to 15%. Any foreign tax credits taken into account in respect of the corporate tax paid by a company declaring a dividend is regarded as income for taxation purposes.
Depreciation	Capital losses are not allowed, since capital gains are not tax-deductible.
VAT	VAT is levied at 15% on the supply of goods or services in the course or furtherance of a vendor's business. In specific instances, the VAT levied on the supply of goods and services is reduced to 0% or an exemption may apply.

2. Distribution of profits

Withholding tax on dividends distributed by a Mauritian company to a foreign shareholder	Mauritius does not impose any withholding tax on dividends paid to local or foreign companies.
Taxation of domestic dividends received by a Mauritian company	Dividend income from domestic investments is not subject to tax unless distributed to a natural person who is tax resident in Mauritius, in which case a dividend from a Mauritian company is taken into account for solidarity tax purposes and is paid at the time the natural person submits their tax return.
Taxation of foreign dividends received by a Mauritian company	80% of the dividend income of a GBL company from foreign investments is exempt from tax, resulting in an effective tax rate of 3% provided that the GBL company can demonstrate substance in Mauritius. It is likely that this exemption will be abolished with effect from 1 January 2020. Dividend income of any other company from foreign investments is taxable at 15%.

III. Selling the investment

1. Asset deal

Selling costs	See Section I, "Acquiring the investment."
Capital gains tax	0%
Sale by corporate nonresidents	N/A

2. Share deal

Selling costs	See Section I.2, "Acquisition through a share deal."
Capital gains tax	0%
Sale by corporate nonresidents	N/A

IV. Tax regime for restructuring operations

1. Tax-free restructuring

As Mauritius does not charge capital gains tax, all group restructures within Mauritius will not have a tax cost.

The current corporate reorganization transaction can be summarized as follows:

1.1 Intragroup transaction

An intragroup transaction occurs where any asset is disposed of by a company (transferor company) to another company (transferee company). In Mauritius, there is no concept of a group for corporate restructure

purposes. As Mauritius does not charge capital gains tax, all group restructures within Mauritius will be tax-free.

1.2 Asset-for-share transaction

An asset-for-share transaction occurs where a person other than a trust transfers an asset to a resident company in exchange for equity shares in the transferee company. As Mauritius does not charge capital gains tax, all group restructures within Mauritius will be tax-free.

1.3 Amalgamation transaction

An amalgamation transaction occurs where a company (amalgamated company) disposes of all its assets to another company by an amalgamation, conversion or merger, and the existence of the amalgamated company is terminated. As Mauritius does not charge capital gains tax, amalgamations of Mauritian companies do not trigger any tax.

The amalgamation of a Mauritian company holding foreign equity may trigger a tax liability if the foreign company distributes a dividend to the Mauritian company although an advanced tax ruling may be applied for.

1.4 Unbundling transaction

An unbundling transaction occurs where a company distributes to its shareholders the shares it holds in another company. As Mauritius does not charge capital gains tax, all group restructures within Mauritius will be tax-free.

1.5 Liquidation transaction

A liquidation transaction occurs where a company (liquidating company) distributes all its assets to its holding company in anticipation of or during its liquidation, winding up or deregistration. The liquidating company is deemed to dispose of the assets at cost, dividends do not attract any withholding tax and the receipt of the dividend is exempt from tax in the

hands of the holding company. As Mauritius does not charge capital gains tax, all group restructures within Mauritius will be tax-free.

V. Foreign branch profits

If a nonresident company has a branch carrying out business in Mauritius, that nonresident company is subject to tax on the income of the Mauritian branch. No tax is levied on the profit of the foreign head office. Nonresident companies are only taxed on income generated in Mauritius.

VI. Foreign exchange controls

The exchange controls in Mauritius have been suspended.

The Netherlands



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Wibren Veldhuizen's main fields of expertise include international taxation, particularly corporate taxation. He has extensive experience in advising multinational companies on (cross-border) tax advice, mergers and acquisitions, international finance transactions, application of tax treaties and tax rulings. Wibren also represents clients as a tax litigator in the larger Dutch tax and transfer pricing disputes. His clients consist primarily of large multinationals with a significant presence in the Netherlands.

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At a glance

Corporate income tax rate (%)	25[1]
Local income tax rate (%)	N/A
Capital gains tax rate (%)	25[2]
Tax losses carryforward (years)	6[3]
Tax losses carryback (years)	1
Limitations on transfer of tax losses	Yes
Domestic withholding tax rate on dividends (%)	15[4]

[1] This is the maximum progressive statutory rate; a lower rate of 19% applies to income up to EUR 200,000. However, the Dutch corporate income tax rate will be gradually decreased as of 1 January 2020 until 1 January 2021. The maximum progressive Dutch corporate income tax rate will remain at 25% (16.5% for profits of EUR 200,000 or less) in 2020 and will decrease to 21.7% in 2021 (15% for profits of EUR 200,000 or less).

[2] Capital gains are subject to Dutch corporate income tax as regular profits, unless a specific exemption applies.

[3] As of 1 January 2019, the tax loss carryforward is reduced from nine years to six years. This means that losses that arise in FY 2019 may be carried forward ultimately until 2025. This measure does not apply to losses incurred in years up to and including FY 2018, which can still be carried forward for a period of nine years. A legislative amendment is pending at time of publication. If adopted, tax losses carryforward, which have not expired by 31 December 2021, will not expire. The proposed bill will also restrict loss utilization for losses greater than EUR 1 million. Up to EUR 1 million of losses may be offset, unrestricted, annually. Losses greater than EUR 1 million can be used to offset 50% of the annual profit.

[4] Dutch tax law provides for a full Dutch dividend withholding tax exemption for corporate shareholders that reside in member states of the European Economic Area (EEA) (including the European Union (EU)) or in jurisdictions with which the

Domestic withholding tax rate on interest (%)	N/A[5]
Capital duty	N/A
Transfer tax rates (%)	
Sale of movable assets	N/A
Sale of real estate assets	6[6]
Sale of shares of a real estate oriented company	6
Standard VAT rate (%)	21
Neutral tax regime for restructuring operations	Yes
Tax consolidation	Yes
Implementation of ATAD	Yes
Implementation of ATAD 2	Yes

Netherlands has concluded a tax treaty that contains a dividend income clause (see Section II.II.2). Furthermore, tax treaty provisions and EU legislation may provide for a lower withholding rate.

[5] The Dutch Government introduced a new withholding tax on intragroup interest and royalty payments to low-tax jurisdictions and non-cooperative jurisdictions as of 2021.

[6] The general rate of transfer tax will be increased to 7% in 2021. For residential properties, a 2% rate applies.

I. Acquiring the investment

1. Acquisition through an asset deal

1.1 Corporate income tax

In the case of an asset deal, acquired goodwill can be amortized for Dutch corporate income tax purposes at a maximum rate of 10% of the acquisition costs per year. Other business assets can be depreciated at a maximum rate of 20% of the acquisition costs per year. Depreciation on buildings is only allowed for Dutch corporate income tax purposes if the book value of the building exceeds a certain minimum value. This minimum value of a building for purposes of tax depreciation is:

The "Act valuation immovable property" or "*Wet waardering onroerende zaken*" (WOZ) value of the building. The minimum value was, until 2018, the WOZ value of the building if the building was intended to be used predominantly by a non-affiliated person or entity, or 50% of the WOZ value in any other case. Since 2019, this distinction is no longer made. In all cases, the minimum value is now 100% of the WOZ value. The WOZ value of a building is determined annually on 1 January by the Dutch municipal authorities, using 1 January of the previous year as a reference date.

The basis for the amortization of the acquired assets is the respective acquisition price minus the residual value.

In an asset deal, any existing tax losses remain with the transferring entity.

The acquisition costs could be tax-deductible or amortized when activated, whereas the acquisition costs relating to the purchase of shares that qualify for the application of the participation exemption regime would not be tax-deductible (see Section III.2.1, "Participation exemption").

1.2 Investment facilities

Reinvestment reserve	A Dutch company is allowed (under certain circumstances) to temporarily defer taxation of a capital gain realized on the sale of a business asset. The capital gain is added to a "reinvestment reserve." The reinvestment reserve can be maintained for a period ending three book years after the year that the business asset was sold, provided that — and as long as — the company intends to reinvest in another business asset. When the company reinvests in another business asset with a similar economic function within the business of the company, the reinvestment reserve is used to reduce the acquisition price of the newly acquired business asset. For newly acquired business assets with a maximum depreciation rate of 10 years, the acquired assets need to have the same economic function as the replaced assets. If and insofar as the company does not reinvest within the three-year period, the remaining reserve is added to the fiscal profit and, therefore, is subject to Dutch corporate income tax. It should be taken into account that the Dutch Corporate Income Tax Act sets forth

	certain limitations and restrictions in order to apply this reinvestment reserve.
Other investment facilities	Other investment facilities are available in connection with the acquisition of certain assets (mostly relating to environment-friendly investments).

1.3 VAT

As a rule, all supplies of goods or services are subject to Dutch VAT if the place of such supplies is (deemed to be) located in the Netherlands.

In an asset deal, the transfers of the assets are, in principle, regarded as several distinct supplies of goods (and services), of which the transfer of each asset must be analyzed individually to determine the applicable VAT treatment.

However, if the transfer takes place in the event of a transfer of a business, or an independent part thereof, the transfer may be considered as a transfer of a going concern (TOGC). In that case, the transfer is not subject to VAT.

Where the asset deal meets all the conditions listed below, it generally qualifies as a TOGC:

- The transfer must constitute a whole or well-separated part of an operational business that is capable of undertaking economic activities.
- The seller and the buyer must both qualify as a VAT entrepreneur.
- The buyer must have the intention to continue the transferred business and, therefore, should not have the intention to immediately liquidate the activity concerned.

The Dutch VAT TOGC regime is not optional and applies by default if the asset deal qualifies as a TOGC.

Costs incurred in light of a TOGC (e.g., consultancy fees) are, in principle, considered general costs. Therefore, VAT on such costs is generally recoverable on a pro rata basis.

Asset deals involving real estate

The supply of real estate is generally exempt from VAT, with an exception for "new" real estate. The supply of building land, newly constructed buildings (this may include buildings that have been substantially renovated), within two years after their first use, and the supply where the seller and the buyer have jointly opted for a "VAT-taxable" transfer, are taxed.

Rate	General rate: 21% Reduced rate: 9% Further, certain supplies are exempt from VAT or are zero-rated.
Tax base	Sales price
Filing and payment	VAT returns are generally filed on a quarterly or monthly basis. Under certain conditions, taxpayers may choose to file VAT returns annually. In principle, VAT returns must be submitted (and paid) within one month after the filing period.
Liable person	The seller or the buyer (generally, depending on the place of supply)
Recoverability	Generally, the costs relating to a TOGC qualify as general costs and hence, the input

	VAT on such costs may be deducted in accordance with the "pro rata calculation method." Input VAT on other costs is deductible in accordance with the general rules for recoverability. When entitled to recover input VAT, the input VAT may be deducted from the VAT payable in the relevant periodic VAT return.

1.4 Transfer tax

In the Netherlands, transfer tax is levied on:

- the acquisition of Dutch real estate
- the acquisition of (the beneficial ownership of) rights to Dutch real estate
- the acquisition of a minimum of one-third of the outstanding shares in a company owning Dutch real estate (reference is made in Section I. 2.3)
- certain certificates entitling the holder to a proportionate share of Dutch immovable property

The transfer tax rate is 6% (the general rate of transfer tax will be increased to 7% in 2021). A 2% tax rate applies to the acquisition of residential property (or shares representing such property). The tax is calculated upon the purchase price or higher market value. Legally, transfer tax is due by the acquirer, but it is customary for the buyer and the seller to agree on who will effectively bear the tax. Transfer tax is not recoverable for the acquirer.

Transfer tax also applies in the event the transfer would be part of the TOGC relief, for VAT purposes.

There are some very specific transfer tax exemptions. For instance, a transfer tax exemption could apply within the context of an internal reorganization. An exemption may also apply if the acquisition relates to building land or newly constructed buildings. Such transactions are subject to VAT by law.

Rate	The rate is 6% (7% as of 2021); for residential property, a 2% rate applies.
Basis	The tax base is the purchase price or the higher market value.
Date of payment	Transfer tax is paid at the same time the return is submitted. The return has to be submitted within one month after the transfer has taken place.
Liable person	The buyer
Tax deductibility for corporate income tax	Added to cost price and subsequently (partly) amortized.

1.5 Other acquisition costs

Notary fees	Generally not a percentage of the assets, but on a time-spent basis
Mortgage registration fees	Registration fees: relatively small
Stamp duties	N/A

Tax deductibility for corporate income tax	Deductible from corporate income tax under the tax depreciation rules
Withholding tax obligation on disposal of real estate located in the Netherlands	N/A

2. Acquisition through a share deal

2.1 Corporate income tax

For corporate income tax purposes, the acquired shares are carried in the books at cost price. Generally, acquisition costs are added to the cost price of the shares for Dutch tax purposes, as the acquisition costs relating to the purchase of shares that qualify for the application of the participation exemption regime are not tax-deductible (see Section III.2.1, "Participation exemption").

If a Dutch resident company acquires the legal and economic ownership of at least 95% of the nominal paid-up share capital of another Dutch resident company, both companies can, subject to certain conditions, form a fiscal unity. Within a fiscal unity, the income and costs of the members are aggregated, and hence, this mechanism can be used to achieve an efficient debt push-down (see Section I.3.3, "Tax consolidation ("fiscal unity")").

2.2 VAT

Transactions relating to shares and participations in other companies (e.g., acquisition, holding and sale of shares) only fall within the scope of VAT if such transactions occur in the course of the economic activity of the taxpayer.

Acquisition of shares

The acquisition of shares falls within the scope of VAT where the acquirer makes (or intends to make) VAT relevant supplies to the acquired subsidiary (e.g., performing management services). In such cases, VAT incurred on costs relating to the acquisition (e.g., advisory and legal fees) is, in principle, recoverable on a pro rata basis. However, the recoverability of VAT on acquisition costs depends on the facts of each individual case and, in practice, may be questioned by the Dutch tax authorities. Therefore, it is recommended to carefully review the setup of a share deal to mitigate the risk of nonrecoverable VAT.

Sale of shares

If the sale of shares falls within the scope of VAT (because it can be attributed to an economic activity), then it is, in principle, a VAT-exempt transaction.

The recoverability of VAT on costs relating to the sale of shares (e.g., advisory and legal fees) depends on the facts of each individual case. Furthermore, this topic is not crystallized in case law. Therefore, it is recommended to carefully review the setup of a share deal to mitigate the risk of nonrecoverable VAT.

2.3 Transfer tax

As mentioned in Section I.1.4, the acquisition of a minimum of one-third of the outstanding shares in a company owning real estate may trigger the levy of transfer tax at 6% (7% as of 2021), or 2%, in as far as the shares represent residential property, if all of the following conditions are met at the time of acquisition or at any time in the preceding 12 months:

- The purpose of the company, the shares of which are transferred, is the transfer and exploitation of the real estate owned by the

company (i.e., at least 70% of the owned real estate should be exploited, for example, destined for sale or rental).

- At least 50% of the global assets of the company qualify as real estate (or certain rights relating thereto).
- At least 30% of the global assets of the company qualify as real estate (or certain rights relating thereto) located in the Netherlands.

Dutch tax law does not provide for other indirect taxes on the acquisition or transfer of shares.

Definition (transfer tax purposes)	Transfer tax could be levied on the acquisition of a minimum of one-third of the outstanding shares in a company owning real estate. (The information above is rather general. Therefore, whether or not transfer taxes apply should be determined on a case-by-case basis.)
Rate	6% (7% as of 2021); in as far the shares represent residential property, a 2% rate applies
Basis	Purchase price or higher market value

2.4 Tax credits

Tax credits remain with the company and would not be affected by a share transfer if the share transfer does not result in a change of 30% or more in the ultimate shareholding. In the event 30% or more of the ultimate shareholding has been changed, the tax credits may become useless, unless several conditions are met. These conditions are similar to

the ones that apply in relation to the loss settlement and, therefore, are described under Section 2.5.1. "Change of shareholding."

2.5 Tax losses' preservation

As of 1 January 2019, the tax losses carryforward is reduced from nine years to six years. This means that losses that arise in FY 2019 may be carried forward ultimately until 2025. This measure does not apply to losses incurred in years up to and including FY 2018, as those can still be carried forward for a period of nine years.

A legislative amendment is pending at time of publication. If adopted, tax losses carryforward, which have not expired by 31 December 2021, will not expire. The proposed bill will also restrict loss utilization for losses greater than EUR 1 million. Up to EUR 1 million of losses may be offset, unrestricted, annually. Losses greater than EUR 1 million can be used to offset 50% of the annual profit

In addition, the following two anti-abuse provisions may limit the possibility of setting off tax losses.

2.5.1 Change of shareholding

An anti-abuse provision may prevent tax loss compensation in the case of a significant change (i.e., of at least 30%) in the ultimate ownership of the taxpayer concerned (compared to the year in which the oldest existing losses were incurred). However, even in the case of a significant change in ultimate ownership, the anti-abuse provision should not apply to tax losses incurred in a year during which, for a period of at least nine months, the taxpayer's assets consisted of less than 90% of passive investments, and provided that these conditions are both present:

- The former business activities of the taxpayer have not been reduced to less than 30% of the activities carried out during the oldest year in which tax losses were incurred.

- The taxpayer does not intend to reduce its business activities to less than 30% within a period of three years.

2.5.2 Holding or financing losses

Losses incurred up to and including 2018 by taxpayers whose activities consist entirely or almost entirely (i.e., for 90% or more) of holding or financing activities, can only be offset against taxable profits realized in the years in which the taxpayer's activities consist entirely or almost entirely of holding or financing activities.

If the activities of a company for the entire year consist of at least 90% of holding or intragroup financing activities, the losses incurred from these activities can only be set off against profits of years in which the company was engaged in such activities for at least 90% of that year.

In addition, the book value of receivables on related companies less the book value of debts to related companies may not exceed the book value of other comparable debts less the book value of other comparable debts at the end of the year in which the loss was realized.

The rule of thumb is that losses incurred from holding or financing activities cannot be set off against profits derived from other activities, but only against holding or financing profits. However, not satisfying one of the above-mentioned conditions may restrict the offsetting of holding or financing losses against holding or financing profits.

The above-mentioned restriction for the so-called holding or financing companies was abolished as of 1 January 2019. However, as mentioned above, the restriction still applies to losses incurred up to and including 2018.

2.6 Transfer of tax liabilities

In a share deal, the buyer indirectly inherits the tax liabilities of the acquired company. In general, the statute of limitations in the Netherlands

is five years. However, this period is extended with any time granted for the deferment of filing the corporate income tax return. The statute of limitations may be extended to 12 years for foreign-sourced income. This period may be further extended if a postponement to file the tax return is granted, with the duration of that postponement. It is unlimited in the case of criminal offenses.

In addition, please note that additional assessments may only be imposed if the tax inspector discovers a novelty that could not have been previously known to them.

2.7 Transaction costs

Transaction costs will typically increase the cost price of the shares for Dutch corporate income tax purposes and are, if the participation exemption applies, not tax-deductible for the buyer. Likewise, if the participation exemption applies to the seller, transaction costs are also not tax-deductible for the seller.

3. Financing the investment

3.1 Deductibility of financing expenses

In general, interest expenses on unrelated/third-party debt (i.e., bank debt) used to finance the investment, are fully deductible for Dutch corporate income tax purposes.

However, the Dutch Corporate Income Tax Act contains several (anti-abuse) provisions that limit the tax deduction of interest expenses on related party debt in the case of certain "tainted transactions" or in the case of excessive debt financing. The below table includes the currently applicable interest deduction limitation rules.

In general, all transactions between related entities should be entered into on an arm's length basis. For example, the conditions (interest rate, term,

principal amount, etc.) on a loan between related parties should be at arm's length. If certain conditions of a transaction are not at arm's length, the Dutch tax authorities could adjust the reported figures in a tax return and, for example, deny the deduction of interest expenses that are not considered to be at arm's length. In addition, the Dutch tax authorities have provided extensive guidance on the pricing of financial transactions between related parties in the Transfer Pricing Decree.[7]

Anti-base erosion rules	Interest expenses on loans from affiliated entities or individuals may be disallowed for Dutch corporate income tax purposes if the loan is related to any of the following tainted transactions: • a profit distribution or repayment of share capital • a capital contribution to an affiliated entity • an acquisition or increase of the shareholding in an entity that qualifies as an affiliated entity after the acquisition An entity qualifies as an affiliated entity if the Dutch taxpayer has or acquires a direct or indirect interest of at least one-third in the entity or vice versa, or if a mutual (indirect) shareholder has or acquires a direct or indirect interest of at least one-third in both the Dutch taxpayer and the other entity. If an entity does not individually meet the one-third threshold, such entity

[7] Transfer Pricing Decree, 22 April 2018, No. 2018-6865.

	nevertheless qualifies as affiliated if it forms part of a "cooperating group" of entities that jointly meet the one-third threshold. The interest expenses should not be disallowed if the taxpayer is able to demonstrate either of the following: • The debt and the related transaction are predominantly business-driven. • The interest payments are effectively taxed in the hands of the creditor at a tax rate of 10% of a taxable profit calculated in accordance with Dutch tax law, and the recipient is furthermore not eligible to offset tax losses. However, if the tax authorities can reasonably establish that (i) the debt is provided with the intention to set off tax losses or use other claims arising in a current year or the near future, or (ii) the debt or the relating transaction is not predominantly business-driven, then the interest expenses are not deductible.
Hybrid loans	Interest expenses incurred on a loan that is reclassified as equity for Dutch tax purposes ("hybrid loan") are not deductible for Dutch corporate income tax purposes. A loan is reclassified as equity for Dutch tax purposes if all of the following circumstances exist:

	• The remuneration on the loan depends (almost) entirely on the profit of the debtor. • The loan is subordinated to all creditors. • The loan does not have a fixed term, but may be reclaimed only upon bankruptcy, insolvency or liquidation of the debtor, or the loan has a term of more than 50 years.
Noninterest-bearing loans with a term of more than 10 years	Interest expenses and currency exchange losses on loans from related parties are not deductible for Dutch corporate income tax purposes if all of the following circumstances exist: • A related entity has provided the loan. • The loan does not have a fixed maturity date or has a maturity of more than 10 years. • The remuneration on the loan is significantly (more than 30%) lower than the market rate.
Non-business motivated loan	A write-down of a non-business motivated loan cannot be taken into account as a taxable loss and should either be treated as a deemed dividend distribution or an informal capital contribution. A non-business motivated loan is defined as a high-risk loan (e.g., a loan without proper security instruments that would not have been

	agreed upon by an unrelated creditor), of which the risk is solely being accepted by the creditor, because the creditor and debtor are affiliated entities, and the risk cannot be compensated through an arm's length correction of the interest on the loan.
Earnings Stripping Rule	As of 1 January 2019, a new general interest deduction limitation for Dutch corporate income tax purposes was introduced in Article 15b of the Corporate Income Tax Act (CITA) ("**Earnings Stripping Rule**") due to the implementation of the Anti-Tax Avoidance Directive (ATAD). Under the Earnings Stripping Rule, the starting point is to determine the taxpayer's "Interest Expense Excess." This is the amount by which the taxpayer's tax-deductible interest expenses exceed its taxable interest income. The deductibility of the Interest Expense Excess is limited to the higher of (i) 30% of the taxpayer's earnings before interest, taxes, depreciation and amortization (EBITDA) (carving out tax-exempt income) and (ii) a safe harbor of EUR 1 million. The implementation of the Earnings Stripping Rule is stricter than the ATAD, which allowed for a safe harbor threshold of EUR 3 million. Interest disallowed under the Earnings Stripping Rule can be carried forward to later years without limitation in time. The tax inspector sets out the exact amount of interest to be carried forward in a formal

	decision (*beschikking*). Starting on 1 January 2020, the amount set out in this formal decision can be changed in later years in the event of new facts, bad faith or a mistake that should reasonably have been known to the taxpayer. The amendments also apply to formal decisions issued before 1 January 2020. The Earnings Stripping Rule will equally apply to both existing and new loans (no grandfathering) and to both intragroup and third-party interest. In addition, no "group escape" (as allowed under the ATAD) is included in the Dutch Earnings Stripping Rule. Furthermore, the Earnings Stripping Rule applies to all entities including "stand-alone taxpayers," i.e., entities not part of a group of entities. Finally, no exception is made for taxpayers operating in specific sectors. Due to the implementation of the Earnings Stripping Rule, the previously existing interest deduction limitation rules with respect to debt related to the acquisition and holding of subsidiaries (Articles 13l and 15ad of the CITA) have been abolished as per 1 January 2019.
Other limitations on the deductibility	Financial assistance: Public limited liability companies (*Naamloze Vennootschap* or NVs) are prevented from providing finance, fund assistance or guarantees for the acquisition

	of their own shares/participations or the shares of their parent company. These financial assistance rules do not apply to private limited liability companies (*Besloten Vennootschap* or BVs).

3.2 Withholding tax on interest

The Netherlands currently does not levy withholding tax on interest (nor on royalties). However, the Dutch Government introduced a new withholding tax on intragroup interest and royalty payments to low-tax jurisdictions and non-cooperative jurisdictions as of 2021.

3.3 Tax consolidation ("fiscal unity")

Upon a joint request and subject to certain conditions, Dutch resident companies may form a "fiscal unity" for Dutch corporate income tax purposes, which permits members of the fiscal unity to file one consolidated corporate income tax return. A fiscal unity consists of a parent company and at least one subsidiary. The parent company of the fiscal unity is considered the taxpayer of the fiscal unity.

One of the main advantages of a fiscal unity is that all results of the fiscal unity members are aggregated automatically. Thus, losses incurred by one member can be offset with profit realized by another member, not only within the same year but also over different years. Another advantage is that intercompany transactions between members are not recognized for Dutch corporate income tax purposes, which allows tax-efficient restructuring within the fiscal unity.[8]

[8] On 1 January 2020 new legislation entered into force with retroactive effect to 1 January 2018 that will make certain (tainted) transactions within the fiscal unity visible again (i.e., as if no fiscal unity exists).

To be eligible to form a fiscal unity, the following requirements should be met:

- The parent company should — legally and economically, directly or indirectly — own at least 95% of the nominal paid-up share capital, voting rights and profit rights in the subsidiary. A fiscal unity can also be established between Dutch sister companies that have a common shareholder within the EU that owns at least 95% of the shares, voting rights and profit rights of these sister companies. The same applies for a Dutch parent company that holds a 95% interest in a Dutch subsidiary through a foreign company within the EEA, which includes EU member states, Iceland, Liechtenstein and Norway.
- The taxable periods of each company should coincide.
- The same corporate income tax regime should apply to each company.
- All companies should be tax residents in the Netherlands, both under domestic tax law and under any applicable tax treaty.
- All companies should have a qualifying legal form.
- The parent company should not hold the shares in the subsidiary as stock.

As mentioned above, a fiscal unity may be formed at the joint request of the member companies. The fiscal unity can have a retroactive effect with a maximum of three months prior to the date of the request. Furthermore, a newly incorporated subsidiary can join the fiscal unity in the year in which it is incorporated. If a subsidiary fails to meet any of the requirements mentioned above, it would be automatically excluded from the fiscal unity from the moment it no longer satisfies the above requirements.

Interest deductions could be limited due to specific interest deduction limitation rules for acquisition holdings included in the same fiscal unity as the Dutch target company. We refer to the table that is part of Section 3.1, under interest deduction rules for acquisition holdings.

One of the disadvantages of a fiscal unity is that each company becomes jointly and severally liable for the Dutch corporate income tax of the entire fiscal unity, with respect to years in which that company was a member of the fiscal unity.

3.4 "Tax-free" mergers

See Section IV, "Tax regime for restructuring operations."

II. Holding the investment

1. Main tax costs to be considered

Taxable income	Fiscal profit, including corrections off the books (i.e., interest expenses, participation exemption, etc.), is subject to Dutch corporate income tax at the progressive statutory rate of a maximum of 25%. See footnote 1.
Depreciation	Acquired goodwill in an asset deal can be amortized for Dutch corporate income tax purposes at a maximum rate of 10% of the acquisition costs per year. Other business assets can be depreciated at a maximum rate of 20% of the acquisition costs per year. Depreciation on buildings is allowed only for Dutch corporate income tax purposes if the

	book value of the building exceeds a certain minimum value (as described in Section 1.1). Random accelerated depreciation (e.g., in one year) may be claimed for certain assets that are on the list of assets and regions compiled by the Dutch Ministry of Environmental Affairs or the list compiled by the Dutch Ministry of Economic Affairs.
VAT	As a rule, supplies of goods or services carried out by entrepreneurs or professionals in the course of their business activities are subject to VAT at the general rate of 21%. Reduced rates (9%, 0%) and exemptions may also apply. Input tax may be deductible, depending on the activities of the entrepreneur. Transactions between entities of the same VAT group are disregarded for VAT purposes. This is generally also the case for transactions between a head office and its branch.
License business tax	No
Other taxes	Real estate tax (annual percentage determined by local authorities and applied to the WOZ value of property)

2. Distribution of profits

Withholding tax on dividends distributed	In general, dividend distributions are subject to Dutch dividend withholding tax at the

by a Dutch corporation to domestic recipients	statutory rate of 15%. Dividends are exempt from Dutch dividend withholding tax if one of the following two options applies: • The recipient can apply the Dutch participation exemption to the dividends received, and the shares held in the distributing company can be allocated to the Dutch enterprise of the recipient. • The recipient and the distributing company are part of the same fiscal unity for Dutch corporate income tax purposes and the shares in the distributing company can be allocated to the Dutch enterprise of the recipient. Please note that the Dutch Government introduced an additional dividend withholding tax for dividend payments to low-tax (<9% statutory tax rate) jurisdictions and jurisdictions marked by the EU as non-cooperative, due to enter into force as of 1 January 2024.
Foreign recipients	Under the Dutch legislation, dividends are typically exempt from Dutch dividend withholding tax if the recipient is a corporate entity with a minimum shareholding of 5% in the nominal paid-up share capital of the Dutch entity and the recipient is either of the following:

	• a corporate tax resident in the Netherlands or in a member state of the EEA (including the EU) • a resident in a jurisdiction with which the Netherlands has concluded a tax treaty that contains a dividend income clause (it is important to note that even if the dividend income clause does not provide for a 0% rate, the exemption will nevertheless apply in full based on the mere fact that a tax treaty is in place) The exemption principally only applies to corporate shareholders that reside in a tax treaty jurisdiction, although specific relief is available for hybrid entities that receive dividends from a Dutch company, provided certain conditions are satisfied. However, the exemption is rejected if the following two conditions are both met: • The foreign shareholder holds interest in the Dutch company with a purpose of mitigating the levy of Dutch taxation. • An artificial arrangement is in place. These two "anti-abuse" tests already existed in Dutch tax law. Similar to the existing tests, the new rules should not result in the levy of Dutch dividend withholding tax in case of dividend distributions by a Dutch taxpayer to: (i) any shareholders with an

	active business enterprise; or (ii) intermediate holding companies that (indirectly) link two active business enterprises, provided the intermediate holding company has relevant substance in its country of establishment. The intermediate holding company is said to have relevant substance if, among others: (a) the intermediate holding company incurs at least EUR 100,000 (or the equivalent in a different currency) in wage costs that form the remuneration for the linking role activities of the intermediate holding company; and (b) the intermediate holding company has an office space available with the customary facilities for the performance of the linking role activities. Please note that as of 1 January 2020 these substance requirements no longer serve as safe harbor. Furthermore, the withholding tax exemption is not applicable if the activities of the recipient of the dividends are comparable to those of a Dutch portfolio investment institution (see Section V).
Cooperative	Up to and including 2017, profit distributions made by a Dutch cooperative to its members were not subject to Dutch dividend withholding tax, unless the structure was considered abusive. From 1 January 2018, "holding cooperatives" must withhold, in principle, Dutch dividend

	withholding tax at a rate of 15% on profit distributions to qualifying members. A cooperative qualifies as a holding cooperative if the activities of the cooperative usually consist of 70% or more of: (i) owning shareholdings that qualify for the Dutch participation exemption regime; or (ii) financing-related entities. A qualifying member is a member that is entitled to at least 5% of the annual profits or 5% of the liquidation proceeds of the holding cooperative. Holding cooperatives and its qualifying members, however, may be eligible for the exemption in tax treaty situations as described in this section above. Furthermore, application of bilateral tax treaties may reduce this domestic withholding tax rate to a lower rate.
Taxation of (domestic and/or foreign) dividends received by a Dutch corporation	In general, dividends received are subject to Dutch corporate income tax at the progressive statutory rate of a maximum of 25% (see footnote 1). However, dividends received from a qualifying shareholding may be exempt under the participation exemption (see Section III.2.1).

III. Selling the investment

1. Asset deal

Selling costs	See Section I, "Acquisition through an asset deal." Indirect tax: Reference is made to 1.3 and 1.4
Capital gain taxation	Maximum progressive statutory Dutch corporate income tax rate: 25% Subject to certain conditions, taxation of the capital gain may be deferred using the reinvestment facility (see Section I.1.2, "Investment facilities"). In an asset deal, capital losses on assets are deductible for Dutch corporate income tax purposes, whereas generally, capital losses on a shareholding of at least 5% are not deductible for Dutch corporate income tax purposes under the participation exemption regime (see Section III.2.1, "Participation exemption").
Sale by corporate nonresidents	Acting without a permanent establishment in the Netherlands: only tax on immovable property, but subject to tax treaty provisions. Acting with a permanent establishment in the Netherlands: see section on capital gain taxation in this table.
Substantial interest regime	A foreign company holding an interest of 5% or more in a Dutch legal entity holds a

	"substantial interest" for Dutch corporate income tax purposes and, therefore, could be regarded as a foreign taxpayer in the Netherlands for Dutch corporate income tax purposes. If so, income (such as interest, dividends and capital gains) deriving from the Dutch legal entity may be recognized as a source of income in the Netherlands and, therefore, may be subject to 25% Dutch corporate income tax at the level of the foreign shareholder. This regime only applies in the following circumstances: • Substantial interest is held with the main purpose or one of the main purposes of mitigating the levy of Dutch personal income tax levied from another person or company. • An artificial arrangement, transaction or a series of artificial arrangements or scheme of transactions is in place.

1.1 Business merger facility

The taxation of capital gains realized on the transfer of assets and liabilities — comprising an enterprise or an independent part of an enterprise — in return for shares in the acquiring company, also called a business merger, can be deferred and "rolled over" to the acquiring company, provided that certain requirements are met.

Both companies should be subject to Dutch corporate income tax, and in order to roll over effectively the capital gain, the acquiring company is

required to assume the same position for Dutch corporate income tax purposes as the transferring company regarding the transferred assets and liabilities.

The capital gain will not be deferred if the business merger is predominantly aimed at the avoidance or deferral of taxation. If (part of the) shares in either the transferor or the transferee are sold to a third-party buyer within three years after the transfer, the business merger is deemed to be predominantly aimed at the avoidance or deferral of taxation.

We note that the Dutch Ministry of Finance has issued several regulations regarding the application of the business merger exemption. Whether or not the business merger facility applies should be carefully analyzed on a case-by-case basis.

2. Share deal

Selling costs	See Section I, "Acquisition through an asset deal." Indirect tax: Reference is made to paragraph 2.2
Capital gain taxation	In general, capital gains are subject to the progressive statutory rate of a maximum of 25% Dutch corporate income tax. However, capital gains derived from shares in a qualifying subsidiary may be exempt under the participation exemption regime (see Section III.2.1). Conversely, capital losses on shares in a qualifying subsidiary are not deductible for Dutch corporate income tax purposes under

	the participation exemption regime (see Section III.2.1).
Sale by corporate nonresidents	Acting without a permanent establishment in the Netherlands: Generally, the taxation of capital gains on shares is allocated to the country of residence of the shareholder, based on the applicable tax treaty. Acting with a permanent establishment in the Netherlands: See section on capital gain taxation in this table.

2.1 Participation exemption

The Dutch participation exemption provides for a full exemption of all benefits (dividends received and capital gains realized) derived from a qualifying shareholding in a subsidiary with a capital divided into shares. A shareholding in a subsidiary with a capital divided into shares generally qualifies for the participation exemption if the shareholding represents 5% or more of the nominal issued paid-up capital of the subsidiary, unless one of the following two conditions applies:

(i) The subsidiary is (deemed to be) held as a passive investment.

(ii) The payment is deductible for profit tax purposes (in another jurisdiction).

A subsidiary is considered to be held as a passive investment if the taxpayer's objective is to obtain a return that may be expected from normal (passive) asset management. A subsidiary is not held as a passive investment if the subsidiary is engaged in the same line of business as the enterprise conducted by the taxpayer. A subsidiary will be deemed to be held as a passive investment if more than half of the subsidiary's consolidated assets consist of shareholdings of less than 5% or if the

predominant function of the subsidiary — together with the function of lower tier subsidiaries — is group financing or making assets (or the right to use assets) available to group companies.

Even if a subsidiary is (deemed to be) held as a passive investment, that subsidiary may still qualify for the application of the participation exemption if it is: (a) subject to a "realistic levy" by Dutch standards (the "subject-to-tax test"); or (b) the assets of the subsidiary usually consist of less than 50% of free portfolio investments (the "asset test").

(a) The "subject-to-tax test"

If a subsidiary is not subject to a tax on profits that results in a tax levy of at least 10%, the subsidiary does not satisfy the subject-to-tax test. For the purpose of this test, the subsidiary's profits should be recalculated according to Dutch tax standards. In this respect, loss carryforward, the avoidance of double taxation or group relief should not be taken into account.

(b) The "asset test"

If the assets of a subsidiary usually consist of less than 50% of free portfolio investments, the subsidiary satisfies the asset test. Free portfolio investments can be regarded as assets that are not necessary for the business activities of the subsidiary. Examples of free portfolio investments are shares in companies that are held as an investment, intragroup receivables and excess cash. The asset test is performed on a consolidated basis; assets of any lower-tier subsidiary should be attributed to the direct subsidiary when determining whether this participation satisfies the asset test. The asset test should be checked on a continuous basis (i.e., the asset test should be satisfied throughout the entire year).

2.2 Liquidation loss rule

The Dutch liquidation loss rule allows for loss importation to the Netherlands upon the liquidation of a foreign subsidiary or permanent establishment. The Dutch Government announced that in September 2020 a legislative proposal will be published that introduces additional restrictions for the deductibility of a loss incurred when liquidating a subsidiary on which the Dutch participation exemption applies. The following restrictions are expected to apply as from 2021 on the part of a liquidation loss that exceeds EUR 5 million:

1. Shareholding requirement: The Dutch parent entity needs to own more than 50% of the shares in the subsidiary or have a decisive influence on the subsidiary.

2. Geographic requirement: The subsidiary needs to be a tax resident of the EU/EEA. Hence, the liquidation loss rule no longer applies with regard to subsidiaries that are a tax resident outside the EU/EEA.

3. Temporal requirement: The subsidiary needs to be dissolved ultimately three years after the end of the calendar year in which the activities of the subsidiary are discontinued or the decision to discontinue the activities is taken.

The restrictions are expected to become applicable as from 1 January 2021.

2.3 Controlled foreign company rule ("**CFC Rule**")

Based on the ATAD, EU member states are obliged to implement a CFC Rule according to which the nondistributed earnings of a foreign subsidiary or permanent establishment are taxed in the Netherlands if certain criteria are fulfilled. The ATAD offered the following two options of implementing the CFC Rule:

Model A: On the basis of Model A nondistributed passive income of the subsidiary or permanent establishment, such as interest, royalties, dividend and financial leasing, will be included in the tax base of the taxpayer.

Model B: On the basis of Model B income generated through assets and risks that are linked to significant people functions carried out by the taxpayer (i.e., the controlling company), to be calculated in accordance with the arm's length principle, will be included in the tax base of the taxpayer.

The Netherlands already applies Model B, as the arm's length principle is already an important part of Dutch tax legislation. The Dutch Government is of the view that Dutch tax law already meets the minimum standard of the ATAD CFC legislation.

However, the Netherlands has chosen to apply Model A as well for specific situations as of 1 January 2019 by implementing the CFC Rules in the Dutch corporate income tax. This is the case where both of the following criteria are fulfilled with respect to a foreign subsidiary or permanent establishment:

- The Dutch taxpayer — with or without affiliated persons — has a direct or indirect interest of at least 50% of the nominal paid-up capital, voting rights and the profits in the foreign subsidiary or permanent establishment.
- The foreign subsidiary or permanent establishment is not subject to corporate income tax in its country of residence, or subject to corporate income tax in its country of residence at a statutory rate of less than 9%; or is located in a country that is included in the EU list of non-cooperative jurisdictions.

However, the CFC Rule will not apply in the following situations:

- The income of the foreign subsidiary or permanent establishment consists of more than 70% of non-passive income.
- The foreign subsidiary or permanent establishment does have a substantial economic activity.

2.4 Implementation of Dutch Anti-Hybrid Rules (ATAD 2)

On 17 December 2019, legislation implementing the EU Anti-Tax Avoidance Directive 2 (ATAD 2) in Dutch tax law was adopted and came into effect as of 1 January 2020 (i.e., financial years starting on or after 1 January 2020).

The Dutch Anti-Hybrid Rules are aimed at neutralizing hybrid mismatches between associated enterprises that result in deduction/noninclusion or double deduction outcomes through the following rules:

- Deduction/noninclusion (DNI) situations: The primary rule provides that a Dutch taxpayer being the payor cannot deduct a payment if this payment is not included in taxation at the level of the payee, and the cause of the noninclusion at the payee level is a hybrid mismatch. Under the secondary rule, where the Dutch taxpayer is the payee, any income of that Dutch taxpayer that would normally have been exempt will in principle be taxed in the Netherlands if the state of the payor allows for a deduction in a hybrid mismatch situation.
- Double deduction (DD) situations: The primary rule provides that a Dutch taxpayer cannot deduct a certain payment if this payment can also be deducted in another state as a result of a hybrid mismatch, and that other state can be regarded as the payor state. If the Netherlands is regarded as the payor state, the deduction is allowed at the level of the Dutch taxpayer as long as the other state

disallows the deduction. The payor state is the state in which the payment arose or in which the expenses or losses are incurred.

- Reverse hybrid entity rule (effective 1 January 2022): Reverse hybrid entities are entities that are held for 50% or more by participants in (a) a state(s) that consider(s) the entity as nontransparent while the entity is considered transparent in the state in which the entity is incorporated, established or registered. Under the Dutch Anti-Hybrid Rules, such entities should be subjected to tax in the state of incorporation, establishment or registration.

The Dutch Anti-Hybrid Rules only apply if there is a DD or DNI situation, as explained above. However, if such situation is neutralized by double inclusion (DI) income, the consequences of the Dutch Anti-Hybrid Rules should generally not apply.

2.5 Share-for-share merger facility

If the Dutch participation exemption does not apply, it is possible to apply the share-for-share merger facility.

In the event a Dutch taxpayer transfers shares to another company in exchange for shares in the acquiring company ("share-for-share merger"), the transferring company may defer taxation of any capital gain on the transferred shares. This deferral is subject to specific conditions. One of the main conditions is that the acquiring company must obtain more than 50% of the voting shares in the transferred company.

If the Dutch taxpayer decides to defer taxation of the capital gains, the shares that the taxpayer receives in return must be recorded in its fiscal books for the same value as the shares that were transferred.

Due to the implementation of the EU Merger Directive, it is also possible to apply for the share-for-share merger facility if a foreign taxpayer resident in the EU acquires shares in another EU resident company through a share-

for-share merger. Both companies involved in the merger must be qualified corporations under the EU Merger Directive.

Taxation of the capital gain will not be deferred if the business merger is predominantly aimed at the avoidance or deferral of taxation.

2.6 Legal merger facility

For Dutch corporate income tax purposes, if a company is merged into another company and ceases to exist, whereby the shareholders in the disappearing company receive shares in the acquiring company, the disappearing company is deemed to have transferred all its assets and liabilities to the acquiring company. Subject to certain specific requirements, the levy of any capital gain on the assets and liabilities so transferred can be deferred for Dutch corporate income tax purposes. Both companies should be qualifying companies under the EU Merger Directive and resident in the Netherlands or in an EU member state. Other conditions for the application of the legal merger facility are similar to the conditions for a business merger.

IV. Tax regime for restructuring operations

This is an optional tax regime in order to ease corporate reorganizations. The Dutch tax system provides for a well-established tax regime based on the principles of nonintervention by the tax authorities and of tax neutrality that can further be described as follows:

Eligible restructuring operations	**Merger**	Through a share transaction
		Through an asset and liability transaction
		Through a legal merger

	Demerger	Total demerger
		Partial demerger
	Transfers (contributions) of assets	A company or another enterprise still exists, but transfers one or more independent parts of its business to another company in exchange for shares of the latter.
		A shareholder otherwise contributes assets to a company in return for shares.
	Share purchase transactions	Shares in a company can be acquired by means of a purchase or by means of an exchange of shares. In general, the acquisition of shares will be capitalized in the balance sheet of the acquiring company. Various valuation methods may be used, depending on the nature of the shares. For example, listed shares, held as a

		portfolio investment, will generally be valued at the lower of cost price or fair market value. Shares that are held as participation are, in practice, valued at the lower of cost price or going concern value.
Direct taxation of merger and demerger	• As a rule, any profit realized in the context of a transfer of assets/liabilities in the case of a merger/demerger is subject to Dutch corporate income tax. Realized hidden reserves, goodwill and fiscal reserves that are not retained following the merger/demerger will be added to taxable profits in the year of the merger or division. • However, a rollover facility is available. The realization of a taxable profit can be fully avoided by transferring the tax claim to the acquiring company/companies. • If certain conditions are met, no special approval of the tax authorities is required. Otherwise, a joint request needs to be made before the merger/demerger.	

	• In a merger/demerger, no tax consequences will arise for the shareholder. • For Dutch corporate income tax purposes, the acquirer values the assets received in accordance with their value before the date of the transfer. • Specific rules apply in order to avoid double taxation.
Indirect taxation	In an asset deal, the transfer of the assets is regarded as several distinct supplies of goods, each of which is, in principle, subject to VAT at the appropriate rate. However, no VAT is due when the sale of assets constitutes a TOGC. Apart from VAT, transfer tax could be levied.
Anti-avoidance rules	The tax-free rollover facility will apply only if the merger or division is not implemented in order to avoid or defer income tax, and if the merger is driven by commercial motives, such as the reorganization or rationalization of the activities of the companies involved.
Preservation of tax losses	In the case of mergers/demergers, the tax losses of the absorbed entity may be transferred to the absorbing entity, subject to certain limitations.

Merger goodwill/Step-up	In the case of a tax neutral merger, the fiscal book values of the transferred assets remain the same; in other cases, the fair market value would be taken into account.
Pre-transaction carve-outs	It is possible to make pre-transaction carve-outs under the special tax regime under one of the following alternatives: • Total demerger: A company splits up all its net assets into two or more portions. Two or more preexisting or new companies will inherit such assets. • Partial demerger: A company spins off one or several parts of its net assets corresponding to branches of activity (i.e., groups of elements that comprise a single autonomous business unit) and transfers them en bloc to one or several preexisting or new companies, leaving at least one branch of activity in the transferring company. • Financial demerger: An entity spins off participations held in the capital of other entities (in which it holds majority participations) and transfers them to a preexisting or new company, but keeps other participations of similar characteristics or a branch of activity.

	Please note that if (part of the) shares in the demerged companies are sold to a third-party buyer within three years after the demerger, the demerger is deemed to have been predominantly aimed at the avoidance or deferral of taxation and, therefore, retroactively treated as not tax neutral.
Formal requirements	This special tax regime is applicable upon the election of the taxpayers. Pre-transaction approval from the Dutch tax authorities may be required, for instance, to avoid recapture rules being triggered.
Transfer pricing	It should be noted that business restructurings may trigger transfer pricing consequences in the Netherlands. Whether this applies to a specific transaction depends on the facts and circumstances. Moreover, in the 2018 Transfer Pricing Decree, the Dutch tax authorities indicated that specifically in the case of post-acquisition business restructurings, they consider the "acquisition files" an essential part of transfer pricing documentation for a business restructuring, which should be submitted to the Dutch tax authorities upon request.

V. Special investment regimes

Dutch special tax regimes ***Fiscale Beleggingsinstelling*** **(FBI) Fiscal portfolio/passive investment vehicle**	There are two special tax regimes for investment entities. The following legal forms may apply in the FBI tax regime: 1. NVs and BVs 2. a fund for a joint account (*Fonds voor Gemene Rekening* or FGR) 3. a comparable foreign entity established under the laws of an EU member state or other jurisdiction • The FBI is subject to Dutch corporate income tax, but at the rate of 0%. Capital gains may be added to a tax-free reinvestment reserve. There is no capital duty; gearing limitations, an activity test and other restrictions apply. • Various conditions apply (with respect to the composition of the FBI's investors) in terms of maximum interest that a single investor is allowed to hold. • Profits must be distributed within eight months after the fiscal year-end, except for capital gains profit added to the reinvestment reserve. All classes of shares must share equally in the profits.

	• An FBI is required to withhold and remit 15% Dutch dividend withholding tax on distributions to its shareholders. However, in general, an FBI can make use of double tax treaties. Distributions sourced from the reinvestment reserve are free from dividend withholding tax. • The FBI is not permitted to engage in active investment activities. It cannot run a business, except for certain auxiliary services that can be carried out by a subsidiary of the FBI in relation to the real estate owned by the FBI.
Vrijgestelde Beleggingsinstelling (VBI) Exempt portfolio/passive investment vehicle	The following legal forms may apply to the VBI regime: 1. NVs 2. FGRs 3. a comparable foreign entity established under the laws of an EU member state or other jurisdiction • The VBI is not subject to Dutch corporate income tax. In addition, due to the announced change of policy of the Dutch Ministry of Finance, the VBI may also be entitled to tax treaty protection. No capital duty or any other levy is imposed. • The VBI must function as an investment institution for collective

	investments. For this reason, a VBI cannot have only one investor. A VBI should apply risk diversification. • There is no obligation to distribute profits. • Distributions made by the VBI are not subject to Dutch dividend withholding tax.

Poland



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At a glance

Corporate income tax rate (%)	9 (for small taxpayers with revenues not exceeding EUR 1.2 million or new taxpayers, with exceptions, but only in the first year of business activity) 19
Local income tax rate (%)	N/A
Capital gains tax rate (%)	19
Tax losses carryforward (years)	5
Tax losses carryback (years)	N/A
Limitations on transfer of tax losses	Yes
Domestic withholding tax rate on dividends (%)	19 or 0[1]
Domestic withholding tax rate on interest (%)	20 or 0[2]
Capital duty (%)	0.5
Transfer tax rates (%)	
Sale of movable and real estate assets	2[3]

[1] Domestic law exemptions based on the transposition of the relevant EU directive.
[2] Domestic law exemptions based on the transposition of the relevant EU directive.
[3] In certain cases, the sale may be subject to VAT instead of transfer tax.

Sale of property rights (including shares)	1[4]
Standard VAT rate (%)	23
Neutral tax regime for restructuring operations	Yes
Tax consolidation	Yes
VAT grouping	No

I. Acquiring the investment

1. Acquisition through an asset deal

1.1 Corporate income tax

In the case of an asset deal, a step-up in basis can be achieved by the acquirer. As a general rule, the tax depreciation basis of all fixed and intangible assets acquired by virtue of a sale agreement is established by reference to the purchase price paid by the acquirer; also, the tax base for assets that are not fixed and/or intangible assets subject to depreciation is established by referring to the purchase price paid.

Specific rules apply if fixed and intangible assets are acquired under a transaction classified as a sale of enterprise or the so-called organized part of an enterprise. In such a case, if goodwill arises under such a transaction (goodwill being defined as the difference between the purchase price of the enterprise or organized part of the enterprise, and the fair market value of all assets making up the enterprise or organized part of the enterprise), then the tax depreciation basis of all fixed and intangible assets is their fair market value. In addition, goodwill itself may be

[4] In certain cases, the sale may be subject to VAT instead of transfer tax.

depreciated by the acquirer over a period of at least five years. On the other hand, if no (or, in practice, negative) goodwill is recognized, the tax depreciation basis of all fixed and intangible assets amounts to the difference between the purchase price and the value of assets not classified as fixed or intangible assets.

In an asset deal, it is generally possible to offset the financing costs (if any) against the income from the acquired business.

As the transfer of assets will normally be subject to corporate income tax in the hands of the seller and, as a result, allow for a step-up in basis in the hands of the purchaser, one can expect that, compared to a share deal, the price due under an asset deal will be higher (as it will take into account the step-up achieved by the buyer compared to the deferred tax issue it would face in the case of a share deal).

1.2 VAT

The sale of assets is normally subject to VAT at the standard rate of 23%. The transfer of certain assets (e.g., in certain cases, receivables, shares and real estate) is out of scope or exempt from VAT, and the transfer of liabilities is out of the scope of VAT.

In particular, the sale of buildings is generally VAT-exempt, except in situations when it is supplied within the framework of the first occupation (as defined in the VAT law) or before the lapse of two years following the first occupation. In the case where this exemption can apply, the parties may opt for the sale to be subject to VAT (upon fulfillment of certain additional conditions).

In the event the above exemption is not applicable, the sale of a building would also be VAT-exempt if: (i) the building was acquired by the seller without a right to deduct the input VAT on such acquisition; and (ii) the seller did not incur expenses for the renovation of the building that amounted to at least 30% of the initial value of the building (unless the

building was used by the seller for the purposes of activities taxed with VAT for a period of at least five years after the renovation). However, in the case of the discussed exemption, it is not possible to opt for the sale to be subject to VAT.

The VAT treatment of a building also applies to the land on which the building stands.

The VAT due on the transfer is normally paid by the purchaser to the seller, who will remit such VAT to the tax authorities. If the purchaser is entitled to fully deduct input VAT, the payment of VAT on the transfer will merely be a pre-financing cost. However, if the purchaser is not entitled to fully deduct the input VAT, the nondeductible VAT due on the transfer will constitute an actual cost.

As an exception to these rules, the transfer of assets and liabilities under an asset deal will be fully out of the scope of VAT if it relates to an enterprise or an organized part of an enterprise (i.e., a transfer of going concern (TOGC) exemption). Whether the transferred items constitute an "enterprise" or an "organized part of an enterprise" will be determined by the seller. The seller must transfer to the purchaser a combination of components, allowing the latter to autonomously carry on an economic activity (i.e., the statutory prerequisites allowing the classification of the elements as an enterprise, or an organized part of enterprise must be met while these elements are still in the hands of the seller). If all elements relating to a business are transferred, the TOGC exemption will normally apply. If certain components of the business are not part of the transfer (in particular, certain intangible assets or liabilities), it may be advisable to seek confirmation of the application of the TOGC exemption through a formal tax ruling.

Rate	23%
Basis	Agreed-upon transfer price

	Special rules could apply to transactions between certain related entities (in the event one of the parties does not have a full right to deduct VAT).
Date of payment	Depends on the situation of the seller; generally on a monthly basis (within 25 days after the end of the month), but sometimes on a quarterly basis (within 25 days after the end of the quarter) for certain companies
Liable person	Generally the seller, but VAT is borne by the purchaser.
Recoverability	Deductibility of VAT will depend on the activity of the purchaser. Deductible VAT is to be entered as a credit item in the periodic VAT return. If the deductible VAT for the period concerned exceeds the VAT due, a refund can be requested. The refund is normally given within 60 days.
Exemption	TOGC – tax ruling often advisable to confirm the application of the exemption

1.3 Transfer tax

Certain civil law transactions related to things located and property rights executable in Poland are subject to tax on civil law transactions ("**Transfer Tax**"). Also subject to Transfer Tax are transactions that concern things located (or property rights executed) abroad if the acquirer is a Polish tax resident and the transaction is executed in Poland.

Transfer Tax is applicable only to the civil law transactions listed in the closed catalog of taxable transactions, covering in particular: (i) sale agreements; (ii) exchange agreements; (iii) loan agreements; (iv) irregular deposit agreements; (v) donations; (vi) establishment of a mortgage; (vii) increase in the capital of the companies; and (viii) partnerships, as well as some other transactions.

Generally, a transaction is not subject to Transfer Tax if at least one party to the transaction is a VAT taxpayer with respect to this transaction (i.e., it is taxed with VAT or exempt from VAT on this transaction). Therefore, if at least one party to a transfer of assets transaction (usually the seller) is taxed with VAT or is exempt from VAT on this transfer, then the transaction is not subject to transfer tax. However, there are certain exceptions to this rule (e.g., VAT-exempt sale/exchange of real estate or VAT-exempt sale of shares that are still subject to transfer tax).

Moreover, as a transfer of assets and liabilities within the framework of an "enterprise" or an "organized part of an enterprise" is entirely out of the scope of VAT, such transfer is subject to Transfer Tax.

Rate	2% for sale/exchange of movable and real estate assets 1% for sale/exchange of property rights (including shares and arguably, goodwill)
Basis	Fair market value of the transferred asset
Date of payment	Within 14 days following the date of conclusion of the sale agreement
Liable person	The purchaser (In the case of sale agreements concluded in the form of notarial deeds, a notary public acts as tax remitter of the due transfer tax.)

Tax deductibility for corporate income tax	As a general rule, the transfer tax paid on the transfer of assets may be recognized by the purchaser as a tax-deductible cost. In the case of acquisition of assets being subject to tax depreciation, the amount of the transfer tax increases the tax depreciation basis and does not result in a one-off deduction.

1.4 Other acquisition costs

Notary fees	Generally, only on the transfer of real estate and certain other assets (e.g., an enterprise); the exact amount of notary fee depends on the purchase price of the assets subject to the transaction (sale).
Mortgage registration duties	Entering a mortgage into a land and mortgage register of a given real estate is subject to a court fee amounting to PLN 200 and a transfer tax amounting to PLN 19 or 0.1% of the debt guaranteed by the mortgage (depending on the type of mortgage).
Tax deductibility for corporate income tax	Generally, other costs relating to the acquisition of an asset may be tax-deductible either immediately or through a tax depreciation write-off.

1.5 Transfer of tax liabilities

The purchaser of assets qualifying as an enterprise or an organized part of enterprise can be held jointly liable for almost all tax arrears of the seller

related to the seller's business activity, up to the value of the acquired enterprise or an organized part of an enterprise.

Joint liability can be avoided if a "clean" certificate (i.e., a certificate confirming that the seller has not defaulted on its tax obligations and has no tax arrears) is obtained from the relevant authority. In order to enjoy the "full" protection of the "clean" certificate, it is crucial to acquire the enterprise or an organized part of enterprise within 30 days following the date of issuance of the certificate.

2. Acquisition through a share deal

2.1 Corporate income tax

Unlike the situation in an asset deal, a purchaser cannot benefit from a step-up in basis of assets making up the business if a business is acquired through a share deal. From the perspective of the Polish corporate or individual seller, the capital gains on the sale of the shares will be subject to 19% corporate income tax or personal income tax (PIT). There is no universal participation exemption regime under which such capital gains could be exempt from taxation.

For foreign sellers (both individuals and entities) of shares, capital gains will also be subject to income tax (corporate income tax /PIT) at the rate of 19% if the capital gain is deemed to be from a Polish source. Foreign sellers can also be protected from Polish taxation under the relevant tax treaty.

If the foreign seller is domiciled in a jurisdiction defined by the Polish tax rules as a tax haven jurisdiction, 19% withholding tax on the payment may be applicable.

Starting on 1 January 2018, the rules targeting debt push-down structures were introduced. Under the new rules, interest and other debt financing costs incurred in order to acquire shares of a company are not tax-deductible to the extent that such costs would be deducted against

revenues from the business activities of the acquired company (in particular, as a result of a merger, in-kind contribution, conversion of legal form or fiscal unity). In addition, interest on profit participation loans is excluded from tax-deductible costs.

2.2 VAT

The sale of shares is normally out of the scope of (or exempt from) Polish VAT.

In practice, there are significant controversies related to the deductibility of the input VAT incurred in the framework of a share deal (e.g., VAT on advisory fees). Polish tax authorities present the approach that such input VAT (especially input VAT on advisory services) cannot be recovered by the seller, as the sale of shares is out of the scope of VAT. Such an approach may be considered controversial, and following the European Court of Justice's (ECJ) rulings, the position that as long as such input VAT constitutes a general overhead cost for the seller conducting the activities taxed with VAT, it should be recoverable under VAT law is defensible. The tax authorities may agree to the deduction of input VAT if a strong link between the acquisition and the supplies subject to VAT is proved.

2.3 Transfer Tax

Sale of shares in a Polish company is subject to 1% Transfer Tax in Poland, irrespective of the residency of the parties to the agreement and the place where the sale agreement was signed.

2.4 Tax losses' preservation

The tax loss carryforward of a company that has been subject to a change of control (i.e., the target) will continue to be carried forward despite such a change of control, pursuant to general rules.

2.5 Transfer of tax liabilities

In the case of a share deal, all (hidden) tax arrears of the acquired company (i.e., the target) in the past will be inherited by the purchaser.

Exercising due diligence is therefore of utmost importance. The statute of limitations in Poland is generally five years following the end of the year during which the deadline for paying the tax liability lapsed.

2.6 Transaction costs

If the acquirer is a Polish company, transaction costs relating to the acquisition of shares will normally be deductible at the level of that company. A tax ruling may be recommended regarding the types of costs that are not capitalized to the value of shares acquired but treated as current overhead costs.

The corporate income tax law distinguishes between two separate sources of revenues: (i) capital gains and (ii) other revenues. Both types of revenue are subject to corporation tax at the same rate, but the taxable base is calculated separately for capital gains and other revenues. Therefore, the transaction costs could be deductible only against income from capital gains.

As indicated above, if the acquirer is a holding company (with no activities taxed with VAT), the deductibility of the input VAT on these transaction costs is likely to become an issue, and planning may be needed to avoid or reduce the extra cost.

3. Financing the investment

3.1 Deductibility of financing expenses

General treatment

First of all, financing expenses need to meet the general deductibility conditions that apply to any expenses, which, in a nutshell, require that such expenses (and therefore the transaction) be incurred in order to generate taxable income or to secure or retain the existing sources of income, and be related to the business activity of the purchaser.

Apparently, the interest expenses need to meet the arm's length test (under transfer pricing requirements). There are also interest barrier rules in Poland in relation to all kinds of debt (both to related and unrelated entities).

With respect to acquisition financing, financing expenses will, as a general rule, be fully tax-deductible in the hands of a Polish acquirer if the transaction is structured as an asset deal.

If the transaction is structured as a share deal, the issue might prove trickier, as from 1 January 2018, the new source of income — income from capital gains — was introduced to the Corporate Income Tax Law. Therefore, the interest costs related to the financing of acquisition of shares and related to income from the sale of shares can only be deducted against income from capital gains as defined by the Corporate Income Tax Law. The recognition of interest (in relation to the financing of acquisition of shares) against income from capital gains should be possible on a cash basis. This approach is supported in private rulings in which the treatment of interest (incurred in relation to the acquisition of shares) as tax-deductible upon payment is confirmed.

Obviously, in the case of a share deal, the acquirer needs to have sufficient taxable income to offset the financial charges.

Thin capitalization rules	Interest deductibility restrictions based on Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market ("**ATAD Directive**") were implemented on 1 January 2018 and are fully applicable to all loans starting from 1 January 2019. The new interest barrier rules are applicable not only to financing from related entities, but also to financing from unrelated parties. The annual limit of deductibility of the amount of interest and other debt financing costs is calculated in reference to 30% of EBITDA for a tax year, as defined in the tax law. The limitation applies to the excess of debt financing costs over the taxable interest income (including capitalized interest and other revenues economically equivalent to interest) in a tax year. A taxpayer is obliged to exclude from the tax-deductible costs the costs of debt financing in the part in which the excess of debt financing costs exceeds 30% of the amount calculated as the excess of: (i) the total revenues from all revenue sources (less interest income) over; (ii) the sum of tax-deductible costs (less depreciation charges recognized in the tax year under tax-deductible costs) and debt financing costs.

	The excess of debt financing costs over the described limit is nondeductible. The definition of debt financing costs covers all kinds of costs related to obtaining from other entities (including unrelated entities) financial resources and the use of such funds, in particular, interest (including capitalized or included in the initial value of the asset), fees, commissions, bonuses, interest portion of the leasing installment, penalties and fees for delay in payment of liabilities, and costs of securing liabilities, including costs of derivative financial instruments, regardless of who they were incurred for. However, the limit is applicable only to the excess of debt financing costs over interest income exceeding the threshold of PLN 3 million. Non-deducted costs may be deducted within the next five tax years, in accordance with the described rules. Moreover, the limit is not applicable to the range of financial enterprises (e.g., national banks; credit unions; credit institutions; domestic or foreign insurance companies; domestic or foreign reinsurance companies; open investment funds and alternative investment funds operating under the Investment Fund Act). The interest barrier rule is not applicable to certain costs of

	financing of long-term public infrastructure projects.
Arm's length principle	In order to be deductible, the applicable interest rate on the related debt must be in compliance with the arm's length principle, which is the fundamental requirement of transfer pricing regulations in Poland (taking into account, in particular, the specific circumstances of the case, and in particular, the duration of the loan and the financial condition of the borrower); transfer pricing rules apply if the lender is a related entity. Under certain circumstances, an interest rate that would be considered too low (i.e., below market rates) could — regardless of whether the lender is a related party — lead to actual taxation at the level of the Polish borrower of the "free of charge benefit" received, amounting to the difference between the market rate and the interest rate actually applied. The same applies to funding through an interest-free loan.
Other limitations on the deductibility	As indicated above, in order for the financing expenses to be deductible, those expenses (in particular, the interest) must be incurred in order to receive future income or to secure or retain the existing sources of income, and they must relate to the business activity of the purchaser. Moreover, there is a usury law in Poland, according to which an interest rate on the

	loan may not exceed four times the level of interest rate on Lombard loans provided by the National Bank of Poland.

3.2 Withholding tax on interest

Under the corporate income tax law, interest earned in the territory of Poland by tax nonresidents are subject to a withholding tax of 20% unless a relevant treaty on the avoidance of double taxation provides otherwise. The application of the treaty benefits is conditional upon delivery to the Polish tax remitter of the residence certificate of the nonresident being an interest recipient. In particular, there are several countries in which the tax treaties provide for full exemption of interest from withholding tax in Poland. The list covers countries such as France, Spain and Sweden.

No withholding tax applies to interest paid to Polish corporate tax residents (such entities are taxed on the interest received on a general basis).

Poland has fully implemented the Interest and Royalties Directive. As a result, interest and royalty payments made to qualified associated companies that are tax residents in the EU (and whose permanent establishments are located in the EU) are fully tax exempt.

The application of the exemption is conditional upon the delivery to the Polish tax remitter ("WHT agent") of the certificate of residence of the nonresident being an interest recipient and the written statement of the interest recipient confirming that the interest recipient: (i) is not a tax-exempt entity under the tax laws of its country of residence; and (ii) is a beneficial owner of the interest.

Starting from 1 January 2019, the rules for withholding tax collection significantly changed and a due care standard for withholding tax remitters applying tax exemptions or lowered tax rates was introduced.

Furthermore, starting from 2021, in case of payments exceeding in one tax year PLN 2 million to one foreign recipient of payment, the withholding tax will have to be collected by the WHT agent at statutory rates (19%/20%). This means that, as a rule, application of reduced rates or tax exemption by the WHT agent (at source) will not be possible.

The foreign recipient (as a taxpayer or, in certain cases, a WHT agent) will have the right to apply for a refund of withholding tax to the Polish tax authorities. When filing the request for a refund, the taxpayer (or WHT agent) is obliged to file the documentation supporting the payment and also to submit evidence that the conditions for applying the reduced rates or tax exemption were met (such documentation will need to contain proof of beneficial ownership and business substance in the country of residence of the income recipient). As a rule, withholding tax should be refunded within six months of the filing of the refund application.

In specific cases, however, the WHT agent will be allowed to apply the reduced rate or tax exemption at source. This will be possible in cases where: (i) the WHT agent submits a written statement to the Polish tax authorities (under pain of criminal fiscal liability of the management board and additional tax liability of the WHT agent) that it holds all documentation required to apply the reduced tax rate/exemption as well as confirming that all additional requirements have been met (regarding the beneficial ownership status and business substance of the recipient) or (ii) the taxpayer obtains an opinion from the Polish tax authorities authorizing it to apply a tax exemption (such opinion generally gives protection for 36 months).

3.3 Debt push-down

In Poland, the most typical way of achieving debt push-down previously was to have the target merged into a leveraged acquisition vehicle (or to have the acquisition vehicle merged into the Target — the so-called downstream merger). As a rule, a merger is a tax-neutral transaction.

However, if a merger is performed without any justified business/economic reason and the predominant reason for a merger is tax avoidance or evasion, then the tax authorities may deny tax neutrality in such a case.

As an alternative to the merger, the target (and potentially, also the Target's subsidiaries) were transformed into partnerships. As the income of partnerships is effectively consolidated at the level of the corporate partners (the acquisition vehicle could be entitled to 99% of the profit of partnerships), the interest costs would, in the past, have reduced the tax base from the operations of the Target.

However, starting on 1 January 2018, the rules targeting debt push-down structures were introduced. Under the new rules, interest and other debt financing costs incurred in order to acquire shares of a company are not tax-deductible, to the extent that such costs would be deducted against revenues from the business activities of the acquired company (in particular, as a result of a merger, in-kind contribution, conversion of legal form or fiscal unity). In addition, interest on profit participation loans is excluded from tax-deductible costs.

In the past, debt push-down structures involving leveraged capital reductions or share redemptions were also used. Due to the unfavorable position of Polish tax authorities and unfavorable jurisprudence, these structures are no longer used. Also, after a resolution by seven judges of the Supreme Administrative Court dated 12 December 2011 (II FPS 2/11), debt-financed payment of dividends is no longer a feasible debt push-down structure.

In addition, in July 2016, general anti-abuse rules (GAAR) were implemented in Poland. The assessment of potential debt push-down structures in view of potential risk under the GAAR is strongly recommended.

II. Holding the investment

1. Main tax costs to be considered

Taxable income	Taxable revenues less deductible expenses (i.e., interest expenses, depreciations, etc.) are subject to corporate income tax at the standard rate of 19%. Until 31 December 2017, corporate income tax was charged by reference to the total amount of income earned from all sources of revenues earned during a tax year. Starting on 1 January 2018, the Corporate Income Tax Law distinguishes between two separate sources of revenues: (i) capital gains and (ii) other revenues. Both types of revenues are subject to corporate income tax at the same rate but the taxable base is calculated separately for capital gains and other revenues.
Depreciation	Depreciation is allowed in respect of certain tangible fixed assets (except land), as well as intangible fixed assets, on the basis of their normal useful life; the assets are depreciated over periods of time provided in the law. However, taxpayers are generally allowed to extend, or shorten, the period of the depreciation with regard to tangible and intangible fixed assets (in the latter's case, only with respect to certain kinds of tangible

	fixed assets and only to the extent provided by law).
Write-offs or capital losses on shares	Write-offs on shares are not deductible for Polish tax purposes. Capital losses on shares are deductible only if they are realized upon the alienation of those shares.
VAT	As a general rule, all supplies of goods and services are subject to VAT. The standard Polish VAT rate is 23%. Reduced rates (8% or 5%) and exemptions may apply. Input VAT incurred on supplies generally constitutes a cost for corporate income tax purposes if it is not recoverable under the VAT rules.
License business tax	N/A
Other taxes	Real estate tax is calculated annually (at the rate determined by local authorities). It is imposed on the owner of land, a building or any other building structure (e.g., a parking lot). The tax base is: • in the case of land and buildings, their usable area • in the case of other building structures: o the value of a building structure determined for

	purposes of tax depreciation as of 1 January of each year (gross value not decreased by depreciation write-offs) o the fair market value of the structure if the building structure is not subject to tax depreciation The tax rate (determined by local authorities) is: • in the case of land and buildings, the amount in Polish zloty per square meter (with maximum rates set under the law separately for various types of land and buildings — in particular PLN 0.95 and PLN 23.90, respectively, for land and buildings used for business purposes) • in the case of other building structures, a certain percentage of the tax base (which may not exceed 2%) Any real estate tax paid constitutes a deductible expense for corporate income tax purposes. Other taxes may apply to certain lines of business (e.g., excise tax, hydrocarbon tax and financial institutions tax).

2. Distribution of profits

Withholding tax on dividends distributed by a Polish company	As a general rule, withholding tax on dividends is levied at the rate of 19%, subject to a possible tax treaty reduction. An exemption from withholding tax (based on the Parent-Subsidiary Directive) applies when the following conditions are met: • The dividend is paid to a company that is a tax resident in Poland or in another EU/EEA country or in Switzerland. • The dividend recipient does not enjoy full tax exemption in its country of residence. • The company receiving the dividend holds at least 10% of shares in the company distributing the dividend (a minimum holding requirement). In the case of a Swiss company, there is a 25% minimum holding requirement. • The company receiving the dividend holds shares in the company distributing the dividend for an uninterrupted period of at least two years (a minimum duration requirement). • The exemption may be denied with respect to dividends and dividend-like income arising from transactions that are lacking justified economic

	(business) reasons and are done solely or primarily for the purpose of utilizing the exemption. Such anti-abuse restrictions are applicable to income earned beginning on the first day of a tax year starting after 31 December 2015. • Starting from 1 January 2021, the rules for withholding tax collection significantly change in case of payments exceeding PLN 2 million to one foreign recipient in one tax year. As a rule, application of reduced rates or tax exemption by the WHT agent (at source) will not possible (with exceptions). Please refer to point 3.2 above.
Taxation of dividends received by a Polish company	Both domestic and foreign dividends received by a Polish company are subject to 19% tax. In the case of dividends received by a Polish company from another Polish company, the latter is obliged to withhold the tax from the gross amount of the dividend paid. In the case of dividends received from non-Polish companies, no withholding tax mechanism applies and the dividends are accumulated by the Polish company with its other sources of income. The gross amount of foreign dividend is subject to tax in Poland, but the Polish company (dividend recipient) may credit any

	amount of withholding tax applied by the subsidiary against the Polish corporate income tax due on that incoming dividend. A Polish company receiving dividends from a subsidiary is also entitled in certain cases to underlying tax credit. Moreover, dividends received by the Polish company from another Polish company or from a company that is a tax resident in another EU/EEA country or in Switzerland may be tax-exempt if the following conditions are met: • The Polish company receiving the dividend holds at least 10% of the shares in the company distributing the dividend (a minimum holding requirement). In the case of a Swiss company paying the dividend, there is a 25% minimum holding requirement. • The Polish company receiving the dividend holds these shares in the company distributing the dividend for an uninterrupted period of at least two years (a minimum duration requirement). Excluded from the exemption are dividends (or other dividend-type income) in the event such dividends can be treated as tax-deductible costs or otherwise decrease the tax base or tax liability of the non-Polish subsidiary. Moreover, anti-abuse restrictions

	(as described above) apply, beginning on the first day of a tax year from 31 December 2015.

III. Selling the investment

1. Asset deal

Capital gain taxation	Any gain realized upon the transfer of assets will normally be subject to tax in the hands of a corporate seller at the standard corporate income tax rate of 19 (9)%. The 9% rate is not applicable to revenues allocated to capital gains basket (e.g., sale of shares or sale of certain IP). If the net gain is to be distributed to the shareholder of the Polish company entering into an asset deal (instead of the shareholders entering into a share deal), one should also take into account the 19% withholding tax that is due upon liquidation of the Polish company on the amount of the net liquidation gain.
Selling costs/Transfer Taxes	The transfer of assets will generally attract VAT unless the TOGC exemption applies. If the transfer is out of the scope of VAT (e.g., TOGC), the transaction may be subject to Transfer Tax in Poland. Generally, costs incurred by the seller in relation to the transfer are taken into

	account to calculate the net gain that will be subject to corporate income tax.
Sale by corporate nonresidents	Any gain realized by a foreign corporate upon disposal of assets forming part of a Polish permanent establishment is taxable in Poland at the normal corporate income tax rate. The same applies in relation to any gain realized upon disposal of Polish real estate property (irrespective of whether the latter is part of — or constitutive of — a permanent establishment).

2. Share deal

Capital gain taxation	Capital gains on shares realized by a Polish company will normally be subject to tax in the hands of a corporate seller at the standard 19% corporate income tax rate. It is unclear under the Corporate Income Tax Act if capital gains realized upon the disposal of shares in a Polish company may be seen as income derived from a Polish source and thus be taxable in Poland, irrespective of the place of tax residency of the parties to the share sale agreement. However, in practice, such capital gain may often be exempt on the basis of a tax treaty between Poland and the country of the investor.

Selling costs/Transfer Taxes	Generally, a 1% Transfer Tax is due upon the disposal of the shares of a Polish company. Normally, costs incurred by the seller in relation to the transfer of the shares are taken into account to calculate the net gain that will be subject to corporate income tax.
Sale by corporate nonresidents	Capital gains on shares realized by corporate nonresidents will normally be subject to tax in the hands of a seller at the standard corporate income tax rate. The capital gain is calculated as the difference between the price paid to such corporate nonresident seller for the shares, and the acquisition costs of such shares previously paid by the seller upon acquisition. In practice, such capital gain may often be exempt on the basis of a tax treaty between Poland and the country of the investor. If the foreign seller is domiciled in a jurisdiction defined by the Polish tax rules as a tax haven jurisdiction, the 19% withholding tax on the payment may be applicable.

IV. Tax regime for restructuring operations

A number of restructuring operations, such as a merger, demerger or an in-kind contribution of enterprise or an organized part of an enterprise can take place in Poland under a tax neutrality regime.

Specific rules also apply with respect to the transfer (and the further ability to offset) of the tax loss carryforward of companies or businesses involved in a tax-neutral reorganization. Generally, under these rules, in the case of a merger, demerger or conversion of a legal form, the transfer of tax loss carryforwards of a disappearing company to a company that is a legal successor of the first one is not allowed. However, an exception applies to the conversion of a legal form of a limited liability company to a joint stock company, and vice versa.

In Poland, it is not possible to transfer tax loss carryforwards of companies in the event of an in-kind contribution of an enterprise or an organized part of an enterprise (i.e., transfer of business).

Most tax-neutral restructuring operations are also out of the scope of VAT (provided, of course, that the conditions for the TOGC exemption are met).

Merger or demerger	Can be entirely tax-neutral (rollover regime); however, if a merger or a demerger is performed without a justified business/economic reason, it is presumed that the primary reason for such a merger or a demerger was only tax avoidance or tax evasion, and the tax authorities may deny tax neutrality. In addition, cross-border mergers or demergers with an EU company can be tax-neutral. Polish tax law does not contain any specific rules in this respect, so general tax neutrality rules apply. The surviving entity is allowed to use its tax losses that are carried forward, pursuant to

	general rules (but the tax losses of disappearing entities are forfeited).
Contribution of enterprise or an organized part of an enterprise (TOGC)	The contribution of a TOGC is also tax-neutral (i.e., no tax liability arises in the field of income tax, VAT and transfer tax). Starting on 1 January 2018, anti-abuse rules were introduced so that the neutrality of the contribution can be denied if the contribution is performed without a justified business/economic reason. There is no transfer of losses (incurred by the contributor) to the receiving company, while losses of the latter are to be carried forward, pursuant to general rules.
Impact of foreign reorganization transactions on Polish assets	N/A. In particular, change of control does not impact the tax losses carried-forward position of Polish subsidiaries. An issue might potentially arise in the event of an indirect disposal of shares of a Polish company holding real estate property or a company admitted to trade on a regulated market in Poland.
Filialization of a Polish establishment	An in-kind contribution of a Polish establishment of a foreign company to a Polish company is a tax-neutral transaction (rollover regime), provided that the establishment is classified as an enterprise or an organized part of an enterprise (TOGC). If such an establishment cannot be

	classified as such, any gain realized (or crystallized) on that occasion is taxable.
Exchange of shares	If a Polish company (or natural person) realizes a share-for-share exchange, the gain realized (or crystallized) on that occasion may be exempt, provided that the conditions for the exchange of shares exemption stipulated in the Polish Corporate Income Tax Act/Personal Income Tax Act are satisfied. This exemption is based on the provisions of the Merger Directive. If the conditions for the above-mentioned exemption are not met, any gain realized (or crystallized) by a Polish company (or natural person) involved in an exchange of shares transaction (i.e., contributing shares into another company) is taxable. Starting from 1 January 2017, the anti-abuse rules relevant for mergers and demergers are also applicable to exchange of shares.
Exit tax	Beginning in 2019, a so-called exit tax was introduced in Poland as a result of the implementation of the ATAD Directive. Exit tax is imposed on all taxpayers in case of: (i) transfer of assets, (ii) change of tax residence or (iii) transfer of permanent establishment of a taxpayer outside the territory of Poland. The tax basis is defined as the positive difference between market and tax value of

	assets. Exit tax imposed at a 19% rate is applicable (under the Corporate Income Tax Law). As a rule, tax needs to be paid by the seventh day of the month following the month in which income arose. A dedicated tax return should be filed within the same timeframe. Refund of exit tax is possible provided that within five years from the exit, the residency is changed back to Polish/transferred assets will return to Poland.

V. Special holding/investment regimes

Polish closed-end investment fund	Tax-exempt, regulated Polish investment funds ("**Closed-End Investment Funds**") may, in practice, be used as "private" holding vehicles, with only one investor holding 100% of investment certificates in such a fund. The Closed-End Investment Fund may effectively be used as a holding and financing vehicle for portfolio companies. It is no longer feasible to use investment funds with a structure under which profits earned by partnership (also profits from active business) and allocated to the investment fund are fully tax-exempt.

Polish alternative investment company	Beginning from 2019, income of alternative investment companies earned from the disposal of shares is tax-free, provided that the alternative investment company that sells shares has held directly not less than 10% of shares in the capital of the company whose shares are subject to disposal for an uninterrupted period of two years.
Holding companies investing in companies conducting R&D activities	Income earned by the holding company from the disposal of shares in a company conducting R&D activities purchased in the years 2016-2023 will be exempt from tax under certain conditions. One of the conditions is that the holding company holds at least 10% of the shares directly for an uninterrupted period of two years.

Russia



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At a glance

Corporate profits tax (%)	20
Local income tax rate (%)	N/A
Capital gains tax rate (%)	20[1]
Tax losses carryforward (years)	Indefinite[2]
Tax losses carryback (years)	No
Domestic withholding tax rate on dividends (%)	15
Domestic withholding tax rate on interest (%)	20[3]
Capital duty	No
Transfer tax rates (%)	No
Standard VAT rate (%)	20
Neutral tax regime for restructuring operations	Yes

[1] There is a capital gains exemption for sale of certain equities subject to special requirements — please see Section III.2 below.

[2] For the tax years from 2017 to 2021, the amount of losses carried forward should not exceed 50% of the corporate profits tax base calculated for the relevant tax year.

[3] An increased 30% rate could apply to income from certain governmental bonds and corporate securities of foreign legal entities acting in the interest of nondisclosed third parties, unless such foreign legal entities provide aggregate information on applicable tax benefits for such third parties.

Tax consolidation	No[4]

I. Acquiring the investment

1. Acquisition through an asset deal

1.1 Corporate profits tax

Generally, the company acquiring assets may have a step-up in basis, as the assets will be recognized for tax purposes at the acquisition price (depreciable assets may thus be further depreciated on that acquisition price).

In the case of the acquisition of all of a target company's assets, the asset deal may be recognized as an acquisition of an enterprise as a property complex and will be subject to state registration. The buyer recognizes the excess of the acquisition price of the enterprise over its net asset value as a price markup (in substance, representing goodwill), subject to straight-line depreciation over a five-year period for tax purposes. The excess of the net asset value over the enterprise's acquisition price is recognized as a discount on the price and is included in the buyer's income; subject to 20% Russian corporate profits tax at the time of the transfer's state registration.

1.2 VAT

Generally, the realization of assets in the Russian territory is subject to VAT at a rate of 20%. Transfer of land is VAT-exempt.

Special VAT rules apply to the sale of an enterprise as a property complex. VAT is calculated for each type of asset at the computed rate of 16.67%. For the calculation of VAT liability, the value of each asset type is

[4] The existing tax consolidation regime will be abolished from 2024.

multiplied by an adjustment coefficient, depending on the sale price of the property complex.

Rate	The computed tax rate of 16.67% applies to the sale of an enterprise as a property complex.
Basis	The value of each type of asset for the sale of an enterprise as a property complex
Date of payment	General: On a monthly basis (by equal installments not later than the 25th day of each month, for the three months following the reporting quarter)
Liable person	The seller; economically, VAT is borne by the buyer
Recoverability	Generally, VAT paid by the buyer (the input VAT) may be deducted from VAT accrued by the buyer (the output VAT) in its periodical tax return. If the input VAT exceeds the output VAT, at the taxpayer's request the positive difference may be either refunded or offset against future VAT and other federal taxes. VAT refunds are only available to registered Russian taxpayers; there is no separate VAT tax registration in Russia. A foreign company directly acquiring an asset in Russia from a Russian seller will incur Russian VAT, which cannot be offset or reclaimed from the Russian budget in the absence of Russian tax registration, and becomes an additional cost.

1.3 Transfer tax

Russia does not apply any transfer taxes.

1.4 Other acquisition costs

State duty for the: registration of rights to, transactions with, or mortgage on an enterprise as a property complex	0.1% of the value of the enterprise as a property complex, but not more than RUB 60,000
State duty for the registration of rights to real estate	RUB 22,000
Tax deductibility for Russian corporate profits tax	Business costs (consulting, legal) related to the acquisition are generally deductible for profits tax purposes.
Withholding tax obligation on the disposal of real estate located in Russia	The sale of a real property located in Russia by a foreign company that does not have a Russian permanent establishment is treated as Russian-sourced income and will be subject to 20% Russian withholding tax, unless eliminated by an applicable double tax treaty. A Russian buyer or a foreign buyer that has a permanent establishment in Russia (Russian tax agents) applies the withholding. An enterprise as a property complex is considered real property under Russian law.

1.5 Tax credits

There are no special tax credits for asset deals in Russia.

1.6 Transfer of tax liabilities

There is no transfer of tax liabilities in the case of asset deals in Russia.

2. Acquisition through a share deal

2.1 Corporate profits tax

The buyer is not subject to Russian corporate profits tax on the purchase of shares. A buyer may not depreciate or otherwise deduct the acquisition price of the shares unless it subsequently sells or otherwise disposes of the shares. In the case of a share deal, the buyer does not get a step-up basis in the underlying assets of the target.

2.2 VAT

Transfers of shares are exempt from Russian VAT. Russia does not apply any transfer taxes to the sale of shares.

2.3 Tax credits and other tax benefits

There are no special tax credits for share deals in Russia.

2.4 Tax losses' preservation

There is no change in shareholder or in business provisions to limit the use of the loss carryforward in Russian tax legislation.

2.5 Transfer of tax liabilities

In a share deal, the tax liabilities of the acquired company remain with the acquired company. Therefore, a pre-acquisition due diligence exercise is of utmost importance.

2.6 Transaction costs

Under the Russian Tax Code, the cost of shares includes both their purchase price and other expenses related to the acquisition. In addition, the timing for recognizing expenses relating to the acquisition of shares is the date of alienation of those shares.

3. Financing the investment

3.1 Deductibility of financing expenses

Russian tax legislation provides for the following limitations on interest deductibility:

Thin capitalization rules	Thin capitalization rules, revised as of 1 January 2017, apply to Russian companies with respect to the following loans: • from a foreign related party, i.e., an individual or a company (previously only loans from corporations counted) that: (i) owns, directly or indirectly (via other companies), 25% or more of a Russian borrower (previously 20%); or (ii) owns more than 50% consecutively in each preceding company in a direct holding chain of a Russian borrower • from a person (either foreign or Russian) related to the foreign participant (including direct or indirect participants, subsidiaries and sister companies)

	• from any other persons if the debt is guaranteed or otherwise secured by any person mentioned under the previous two categories; the court may also consider other debts as "controlled debts" if it is proven that the payment was effectively transferred to persons covered by one of the above categories The Russian Tax Code introduces a 12.5-to-1 debt-to-equity ratio limit for banks and leasing companies and a 3-to-1 debt-to-equity ratio limit for all other companies. Interest on debt in excess of the limitation is nondeductible and treated as a dividend subject to Russian withholding tax, which may be reduced by an applicable double taxation treaty. Starting on 1 January 2016, loans from an unrelated bank guaranteed or otherwise secured by a foreign participant of the debtor or its related person are exempt from thin capitalization rules if there has been no payment on such guarantee or security. Starting on 1 January 2017, the following two additional exemptions from the "controlled debt definition" have been introduced: • loans from a Russian-related person, provided that such a person does not have a comparable (based on amount

	and term) loan from a foreign participant or its related person • loans from foreign special purpose vehicles — issuers of eurobonds that are residents in tax treaty countries (For the period from 1 July 2014 to 31 December 2019, with regard to foreign currency loans provided prior to 1 October 2014 with maturity dates that did not change, the ruble exchange rates for thin capitalization purposes will be based on the Russian Central Bank rates set on 1 July 2014 (USD 1 = RUB 33.8434; EUR 1 = RUB 46.1827) and exchange rate differences will not be considered when calculating the taxpayer's capital.) Starting from 1 January 2019, an intercompany loan is not counted as controlled debt, if: (1) the loan funds an investment project in Russia; (2) there are no payments under the loan for at least five years; (3) the lender owns, directly or indirectly, 35% or less of the shares (participation interest) in the Russian borrower; (4) the foreign lender is incorporated (tax resident) in a tax treaty jurisdiction. An investment project is defined as a construction of a new (i.e., put into operation after 1 January 2019) production

	facility in Russia for production of goods (provision of services).
Arm's length principle	Starting on 1 January 2015, interest deductibility became governed only by the transfer pricing rules (i.e., with respect to borrowings that qualify as "controlled transactions" for transfer pricing purposes). The safe harbor limitations apply, depending on the loan currency. Starting in 2016, the applicable range for all ruble loans is from 75% to 125% of the Russian Central Bank key rate (which is currently 4.5%). For loans denominated in euro, the applicable range is from EURIBOR plus four percentage points to EURIBOR plus seven percentage points; for loans denominated in US dollars, from LIBOR plus four percentage points to LIBOR plus seven percentage points.

3.2 Withholding tax on interest

Russian withholding tax may be levied on interest paid to a foreign lender. The general withholding tax rate on interest is 20%, subject to any reduction or elimination available under an applicable double tax treaty (e.g., provided that the recipient is the beneficial owner of income and has duly provided its tax residency certificate and a written confirmation of the beneficial ownership right to the interest income to the borrower before the payment date).[5]

[5] The Russian Government is in the process of renegotiating double tax treaties with certain jurisdictions with a goal to increase withholding tax rates on dividends and interest. The relevant jurisdictions currently include Cyprus, Malta, Luxembourg

3.3 Debt push-down

Debt push-down may be achieved through the merger of a Russian leveraged acquisition vehicle and a target company. The companies may need to demonstrate a clear business purpose for the transaction, which may be difficult to do (currently, there is a trend toward strengthening economic justification requirements).

II. Holding the investment

1. Main tax costs to be considered

Taxable income	Income less deductible business expenses (i.e., interest expenses, depreciation) is subject to Russian corporate profits tax at a standard rate of 20%.
Depreciation	Depreciation is allowed in respect of fixed assets and real property (except land) and intangible assets based on their useful life in accordance with the Russian tax legislation. Russian tax legislation provides for a lump sum deduction in the amount of 30% of the initial book value of newly acquired fixed assets with a useful life from three to 20 years, and 10% for other assets. If the taxpayer alienates any fixed asset during the first five years of its use to an affiliated company, the lump sum deduction must be recaptured.

and the Netherlands, but the list of affected jurisdictions could be expanded further.

	The threshold level for assets recognized as depreciable property is RUB 100,000. Starting on 1 January 2018, taxpayers may opt for an investment tax deduction instead of depreciation (subject to certain conditions and if enacted by regional tax laws).
VAT	Generally, the realization of goods, works and services in the Russian territory is subject to VAT at the general rate of 20%. A 10% VAT rate is applicable to limited types of goods, such as pharmaceuticals, certain foodstuffs and children's products. A 0% tax rate applies to export sales.
Other taxes	**Property tax** — Russian and foreign entities pay corporate property tax on the following assets: • real property recorded on the balance sheet of the company, if the tax base with regard to such assets/property is determined as depreciated book value of the assets/property • real property owned by the company and located in Russia, if the tax base with regard to such property is determined as the cadastral value of the property Property tax is a regional tax (i.e., its imposition is regulated by the legislation of the relevant region in Russia subject to the Russian Federation) imposed where the

	property is located, at a maximum rate of 2.2%, if the tax base is determined as depreciated book value of the property, or 2%, if the tax base is determined as the cadastral value of the property. The tax base is generally calculated based on the depreciated book value of the assets, determined according to Russian statutory accounting rules (and not tax accounting rules). The tax base of certain types of real property, such as business and shopping centers, offices, trading premises, catering and consumer services premises, as well as property owned by foreign entities with no permanent establishment in Russia or properties that are not used for the activities of such permanent establishments, is calculated based on their cadastral value, which is determined by a state cadastral assessment. The cadastral value should be close to the market price. Land tax — Companies that own land plots in Russia are subject to Russian land tax (charged on the cadastral value of the land plot). Land tax is a local tax and local representative authorities establish its rate, but it may not be higher than 0.3% for agricultural and residential land, and 1.5% for other types of land plot.

2. Distribution of profits

Withholding tax on dividends distributed by a Russian company to a foreign shareholder	The rate is 15%, subject to double tax treaty provisions; the lowest dividend withholding tax rate under the double tax treaties concluded with Russia is 5%.[6]
Taxation of domestic and foreign dividends received by a Russian company	Dividends received by a Russian company from Russian and foreign companies are subject to 13% corporate profits tax. A 0% rate applies to dividends received by a Russian company from another Russian company or a foreign company if, on the day the corporate decision to pay the dividends is made, the following conditions were met: • The recipient of the dividends has owned the shares for not less than 365 days. • The recipient of the dividends owns not less than 50% of the shares in the company paying the dividends. • The foreign company distributing the dividends is not located in a jurisdiction included in the list of

[6] The Russian Government is in the process of renegotiating double tax treaties with certain jurisdictions with a goal to increase withholding tax rates on dividends and interest. The relevant jurisdictions currently include Cyprus, Malta, Luxembourg and the Netherlands, but the list of affected jurisdictions could be expanded further.

	offshore jurisdictions adopted by the Russian Ministry of Finance.

III. Selling the investment

1. Asset deal

Capital gain taxation	Standard Russian corporate profits tax rate: 20%
Selling costs/transfer taxes	The transfer of assets will trigger VAT. Costs incurred by the seller in relation to the transfer of assets are generally taken into account in calculating net gain, subject to Russian corporate profits tax. No transfer tax applies in Russia.
Sale by corporate nonresidents	The sale of assets of Russian companies is subject to 20% Russian profits tax. Foreign companies that sell assets attributable to a Russian permanent establishment are also subject to the general 20% Russian profits tax rate. Any gain of foreign companies from the sale of Russian movable property assets is not recognized as Russian-sourced income and is not subject to Russian withholding tax. Net income from the sale of Russian real property assets by a foreign company that does not have a permanent establishment in Russia is subject to 20% withholding tax,

	unless reduced or exempt under a relevant tax treaty.

2. Share deal

Capital gain taxation	Standard Russian corporate profits tax: 20% A 0% tax rate applies to income from realization or other disposal methods (including redemption) of: (a) participation interests and non-publicly traded shares in Russian companies continuously held by a Russian shareholder for more than five years; or (b) publicly traded shares in a Russian company, provided that the company derives less than 50% of its value (directly or indirectly) from real property located in Russia continuously held by a Russian shareholder for more than five years; or (c) publicly traded shares in Russian high-tech companies continuously held by a Russian shareholder for more than one year ("participation exemption").[7]
Selling costs/transfer taxes	The sale of shares is VAT-exempt. Costs incurred by the seller in relation to the transfer of shares are taken into account in

[7] The Russian Government is currently reviewing the applicable capital gains exemptions. It is proposed (the relevant bill is under review in the Russian Government) to eliminate the exemption with regard to shares specified in clause (b) above and allow taxpayers to apply the exemption described in clause (a) only on condition that the Russian companies derive less than 50% of their value (directly or indirectly) from real property located in Russia.

	calculating net gain, subject to Russian corporate profits tax. No transfer tax applies.
Sale by corporate nonresidents	Foreign companies realizing gains from the sale of shares in Russian or foreign companies attributable to their Russian permanent establishment are also subject to the 20% Russian corporate profits tax. Gains realized by foreign companies, without a Russian permanent establishment, from the sale of non-publicly traded shares (participation interests) in companies (Russian and foreign) — more than 50% of whose assets consist, directly or indirectly, of real property located in Russia, as well as derivatives of such shares (participation interests) — are treated as Russian-sourced income, and are thus subject to the 20% Russian withholding tax, unless reduced or eliminated under an applicable tax treaty. Gains of foreign companies from the sale of shares in other Russian companies not attributable to their Russian permanent establishment are not treated as Russian-sourced income and thus are not subject to Russian taxation.

IV. Tax regime for restructuring operations

There are tax-neutral restructuring options in Russia that may be considered:

Corporate reorganizations	Under Russian law, a company may be reorganized by way of consolidation, merger, split-up, spin-off or transformation. Cross-border reorganizations are not possible in Russia. Corporate reorganizations are generally tax-neutral for both the companies being reorganized and the shareholders. The acquiring entity has a carryover basis for tax purposes in the property received through legal succession in the course of corporate reorganizations. If a company is dissolved as a result of a reorganization, its successor in interest has the right to utilize the loss carryforward available to the company that is dissolved, unless the utilization of tax losses is the main purpose of the reorganization. The transfer of assets in the course of corporate reorganizations is not subject to VAT. In certain cases, the successor is required to restore VAT previously offset by the company being reorganized, for example, when the transferred assets are used by the successor in non-taxable transactions or when the successor is exempt from VAT under special tax regimes.

Contribution of assets into the charter capital/other property contribution	The contribution of assets into the charter capital of a Russian company is tax-exempt for both the contributing shareholders and the company itself. The company contributing assets to the charter capital of a subsidiary is required to restore the corresponding input VAT previously offset with respect to such assets. The free-of-charge transfer of property by a shareholder that holds more than 50% of the recipient company is tax-exempt. The exemption applies if the received property (except for cash) is not transferred to third parties within one year from the date of its receipt. Asset contributions by any shareholder of a company made in accordance with Russian civil law procedure are also tax-exempt.
Pre-transaction carve-outs	Russia does not apply any special tax regime to pre-transaction carve-outs. A pre-transaction carve-out may be carried out in the form of a tax-neutral reorganization (e.g., split-up, spin-off) or a tax-free contribution of assets into the charter capital of a new or an existing entity. However, any gain realized on the subsequent sale of the shares of the carve-out entity is taxable under the general rule.

	In the case of a sale of assets, general Russian corporate profits tax and VAT apply.

V. Special holding regimes

Russian holding companies	A Russian holding company may benefit from a 0% tax rate on dividends received from Russian or foreign companies and 0% on capital gains from the sale of certain Russian companies' shares (see Sections II.2 and III.2 above).
International holding companies	There is a special tax regime for international holding companies that are registered in certain Russian territories as a result of redomiciliation and meet applicable requirements. An international holding company enjoys 0% tax rate on capital gains from shares of foreign and Russian companies if (a) it holds at least 15% of such shares for at least 365 days, (b) such shares were not acquired as a result of charter capital contribution or reorganization performed 365 days prior to or after redomiciliation of the international holding company in Russia, (c) less than 50% of the assets of the relevant company directly or indirectly consist of real property located in Russia, and (d) the relevant foreign company is not registered in the jurisdiction from the "offshore" list of the Russian Ministry of Finance.

	An international holding company enjoys 0% tax rate on dividend income in case of holding at least 15% of the distributing company for at least 365 days if it is not registered in the jurisdiction from the "offshore" list of the Russian Ministry of Finance. Public international holding companies also enjoy a 5% withholding tax rate on dividends distributed to foreign residents (until 2029).

South Africa



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At a glance

Corporate income tax rate (%)	28
Local income tax rate (%)	N/A
Tax losses carryforward	Currently, this can be carried forward indefinitely provided the taxpayer is carrying on a trade.
Tax losses carryback	N/A
Limitations on transfer of tax losses	Yes
Domestic withholding tax rate on dividends (%)	20
Domestic withholding tax rate on interest (%)	15
Capital gains tax (%)	22.4 (effective rate)
Transfer tax rates (%)	
Sale of shares	0.25
Sale of South African real estate	3-13
Standard VAT rate (%)	15
Neutral tax regime for restructuring operations	Yes
Tax consolidation	No

I. Acquiring the investment

1. Acquisition through an asset deal

1.1 Corporate income tax

Where assets are acquired from a third party, the acquisition cost of the assets is treated as the base cost of the assets. Where assets are acquired from another South African tax resident company forming part of the same group of companies,[1] the assets will be treated as having been transferred for a consideration equal to their base cost, and the transaction will therefore give rise to neither a gain nor a loss; that is, the transfer will be tax neutral. Where assets are acquired from a connected party that is not another South African tax resident company forming part of the same group of companies, the assets will be treated as having been transferred at their fair market value.

Capital allowances can be claimed for certain assets. When a business purchases a capital asset for which capital allowances are available, it can deduct a proportion of the cost of the asset each year as an expense in the calculation of its taxable profits. The rate of the allowance varies according to the nature of the asset.

The most common types of assets qualifying for capital allowances are plant and machinery. Expenditure on plant and machinery qualifies for capital allowances at 20% per annum on the cost of the asset. In certain circumstances, the allowance is 40% in the first year. Allowances are limited to the cost of the asset. An allowance is also available for

[1] A group of companies for this purpose excludes any company incorporated in a foreign country, unless it has its place of effective management in South Africa, and any company that has its place of effective management outside South Africa even if it is incorporated in South Africa.

expenditures actually incurred on the acquisition of intellectual property.[2] The annual allowance is 5% of the expenditure in the case of a patent, copyright or similar property and 10% in the case of a design or similar property.

1.2 VAT

VAT is charged on a taxable supply of goods or services in South Africa. However, the transfer of all the assets of a business, or a separately identifiable part of a business, can be done as a transfer of a going concern for VAT purposes, which would qualify for VAT at a rate of 0%.

1.2.1 Transfer of a going concern

For the zero rating to apply, the following conditions must be met:

- The supplier and recipient, at the time of the conclusion of the agreement for the disposal of the going concern, must agree in writing that such enterprise, or part thereof, will be an income-earning activity on the date of transfer.
- The assets that are necessary for carrying on such enterprise, or part thereof, must be disposed of by the supplier to the recipient.
- The supplier and recipient, at the time of conclusion of the agreement for the disposal of such enterprise, or part thereof, must agree in writing that the consideration agreed upon for that supply is inclusive of VAT at a rate of 0%.
- The supplier must be VAT-registered, and the recipient must also be VAT-registered (or become so as a result of the transfer).

[2] Intellectual property includes any invention, patent, design, copyright, or knowledge connected with the use of such property or the right to have such knowledge imparted.

- If only part of the business is transferred, such part must be capable of operating independently from the part not transferred.

It is also possible to supply an enterprise that is mainly taxable (greater than 50%) and partly non-taxable as a going concern. In these circumstances, VAT at a rate of 0% will be applicable to the entire supply of the going concern, but VAT will be paid by the recipient/buyer in respect of the part of the enterprise that is non-taxable.

If the above conditions are not met, the VAT liability of each individual asset transferred needs to be determined to establish which assets are subject to a standard rate of VAT and which, if any, are subject to a reduced rate of VAT or a VAT exemption.

Rate	15%
Basis	General rule: Sale price. Special rule: The South African Revenue Service (SARS) may determine an alternative value (usually, the market value) if: (a) the price is less than an open market value; (b) the supplier and recipient are connected persons; and (c) the recipient is not entitled to fully recover VAT.
Date of payment	VAT returns must be submitted on a monthly, bimonthly, quarterly or sixth-monthly basis (tax period), depending on the vendor's VAT enterprise. The VAT return is due 30 days after the end of the vendor's tax period.
Liable person	The supplier (vendor)

Recoverability	VAT is fully recoverable, provided the vendor carries on a fully taxable business in South Africa. Input tax is credited against output tax in the relevant tax period. Input tax in excess of output tax can be claimed from SARS as a refund. If the transfer is of a going concern, the supplier and recipient will be entitled to claim input tax related to the supply.

1.3 Transfer taxes

The transfer of shares and marketable securities attracts securities transfer tax at a rate of 0.25%. The transfer of real estate attracts transfer duty at rates of between 3% and 13%.

1.3.1 Securities transfer tax

Rate	0.25%
Basis	Greater of the consideration or fair market value
Date of payment	Within two months from the date of transfer
Liable person	Issuer
Recoverability	Recoverable from the purchaser

1.3.2 Transfer duty

Rate	3%[3] to 13%

[3] Above the value of ZAR 1 million.

Basis	Greater of the consideration or fair market value
Date of payment	Within six months of the date of acquisition
Liable person	Purchaser
Recoverability	N/A

1.4 Other acquisition costs

Transfer fees[4]	Approximately ZAR 50,000[5]

1.5 Transfer of tax liabilities

The tax liabilities associated with a business may not be transferred with the other liabilities of the business in an asset sale. The tax liabilities remain the responsibility of the seller.

1.6 Tax losses

Tax losses may not be transferred between group companies.

2. Acquisition through a share deal

2.1 Corporation tax

On an acquisition of shares from a third party, the acquisition cost of the shares is treated as the base cost of the shares. Where shares are acquired from another South African tax resident company forming part of the same group of companies, the shares will be treated as having been transferred at their base cost and, as such, the transaction will give rise to neither a gain nor a loss; that is, the transfer will be tax neutral. Where

[4] Payable for transferring the property into the purchaser's name.
[5] Below the value of ZAR 1 million.

shares are acquired from a connected party that is not another South African tax resident company forming part of the same group of companies, the shares will be treated as having been transferred at fair market value.

2.1.1 Group relief group

The newly acquired company will be in a group relief group with another company if it is part of the same group of companies. A "group of companies" refers to two or more companies in which one company (controlling group company) directly or indirectly holds shares in at least one other company (controlled group company), to the extent that:

- At least 70% of the equity shares in each controlled group company are directly held by the controlling group company, one or more other controlled group companies, or any combination thereof.
- The controlling group company directly holds at least 70% of the equity shares in at least one controlled group company.

2.1.2 Merger

It is possible to merge two South African companies under South African corporate law. A merger is achieved pursuant to an agreement between two or more companies resulting in, for example:

- the formation of one or more new companies that together hold all of the assets and liabilities that were held by any of the merging companies immediately before the implementation of the agreement, and the dissolution of each of the merging companies
- the survival of at least one of the merging companies, with or without the formation of one or more new companies, and the vesting in the surviving company or companies, together with such new company or companies, of all of the assets and liabilities that

were held by any of the merging companies immediately before the implementation of the agreement

2.2 VAT

The transfer of ownership of existing shares is tax-exempt for VAT purposes. As a result, no expenses to which VAT is applicable will be permitted as claims for input tax purposes.

Rate	VAT-exempt
Recoverability	The supplier vendor will not be entitled to recover input tax that is directly attributable to the transfer of existing shares.

2.3 Securities transfer tax

The transfer of shares or marketable securities attracts securities transfer tax at a rate of 0.25%.

2.4 Tax losses

Tax losses may not be transferred between group companies.

2.5 Transfer of tax liabilities

Any tax liabilities of the company in which the shares are acquired will remain liabilities of that company.

2.6 Transaction costs

Transaction costs will typically increase the tax base cost in the shares.[6]

[6] In the case of a listed share only, one-third of the interest on any loan used to buy the share is to be included in the base cost.

3. Financing the investment

3.1 Deductibility of financing expenses

Typically, interest on debt incurred by a taxpayer is deductible for income tax purposes, provided that the funds raised are used in the production of income (i.e., not to produce exempt income) and for the purposes of trade. Interest expenditure and interest income are required to be spread over the term of the finance arrangement for income tax purposes. The ability to obtain a tax deduction in respect of interest payments is restricted by the following rules:

Thin capitalization rules	The debtor must not be thinly capitalized. The thin capitalization rules fall under the transfer pricing guidelines, which do not specify any debt-equity safe harbor rules. Instead, SARS has indicated that it will follow a risk-based audit approach, where the following will have an increased risk: a debt-to-EBITDA ratio of greater than 3:1; a rand-denominated loan, where the weighted average interest rate is 2% higher than JIBAR;[7] and a foreign currency-denominated loan, where the interest rate is 2% higher than the weighted average base rate in that country.
Arm's length principle	All debt between related parties must be on arm's length terms.

[7] Johannesburg Interbank Average Rate.

Formula rules	First, a limitation is imposed on the amount of interest that can be deducted by a taxpayer. The limitation applies to debts directly or indirectly owed to a creditor that is in a controlling relationship with the debtor. If the amount of interest paid by the debtor is, among other things, not subject to tax in the hands of the person to whom the interest accrues, the actual amount of interest to be permitted as a deduction will be limited by the application of a formula. Second, the deduction of interest incurred in respect of debts applied to finance certain acquisitions of equity shares in an operating company, as well as to finance the acquisition of assets where such acquisition is effected in terms of some of the corporate reorganization rules, is limited, by the application of a formula, in the year in which the transaction is entered into as well as the five years immediately thereafter.
Other restrictions on deductibility	There are general anti-avoidance provisions that may apply to set aside the tax effect of transactions that are characterized by means that would not have been employed for bona fide business purposes and were entered into solely or mainly to obtain a tax benefit. Penalties and interest are chargeable in respect of the increased tax liability resulting from an avoidance scheme that is successfully challenged by SARS. The courts, on the basis of

	South African common law, may also set aside sham or disguised transactions to determine the appropriate tax treatment, without recourse to the statutory anti-avoidance rules. The hybrid debt and hybrid interest provisions recharacterize any amount of interest accrued by a company in relation to a "hybrid debt instrument" and "hybrid interest" as a dividend *in specie*. The implications for a debtor that makes hybrid payments are that it will not be permitted a deduction of interest expenditure that it has incurred. Furthermore, the recharacterization of the interest to a dividend *in specie* may give rise to a dividends tax liability for the debtor making payment of the interest. The creditor who receives hybrid payments will be deemed to have received payment of a dividend *in specie*. The tax implications of the creditor will therefore be determined with reference to the provisions that deal with the accrual and exemption, if relevant, of dividend income.

3.2 Withholding tax on interest

While residents will usually be taxed on interest income, an exemption applies to any amount of South African-sourced interest received by, or accrued to, any nonresident unless the debt from which the interest arises is effectively connected to a permanent establishment [8] in South Africa. The interest withholding tax applies to all South African-sourced interest

[8] A permanent establishment is generally considered to be a fixed place of business through which the business of an enterprise is wholly or partly carried on.

payments made to nonresidents and is imposed at the rate of 15% of the amount of interest paid. Interest income is generally from a South African source if it is attributable to an amount incurred by a resident, or if the interest is derived from the use of funds in South Africa by any person. Any amount of South African-sourced interest that is paid by any person to a nonresident will therefore give rise to an interest withholding tax liability in the recipient's hands, and an obligation to withhold in the payer's hands, subject to the application of various exemptions and double tax treaty relief.

II. Holding the investment

1. Main tax costs to be considered

Taxable income	Net income less deductible expenses (i.e., interest expenses, depreciation, etc.) is subject to corporate income tax at 28%.
Depreciation	Capital allowances may be available (see Section I.1.1, "Corporation tax"). An allowance is also available for expenditure actually incurred in the acquisition of intellectual property.
VAT	Generally, VAT is levied at 15% of the supply of goods or services in the course or furtherance of a vendor's enterprise. In particular circumstances, VAT at a reduced rate (i.e., 0%) or VAT exemptions may apply.

2. Distribution of profits

Withholding tax on dividends distributed by a South African company to a foreign shareholder	A dividend withholding tax of 20% applies to any dividend paid by a resident company or by a nonresident company. The tax is imposed on the beneficial owner of the dividend and not on the company, with the exception of *in specie* dividends. The payer of the dividend, or regulated intermediary, is obliged to deduct the 20% withholding tax from the payment. The treaty rate is the maximum allowable rate to be charged by the treaty countries; where this rate is higher than the domestic tax rate, the latter will apply.
Taxation of domestic dividends received by a South African company	Dividends received from South African companies will be exempt from corporate income tax, provided that the dividends are not caught within the anti-avoidance rules.
Taxation of foreign dividends received by a South African company	Dividends received from foreign companies will be exempt from corporate income tax, provided that the South African company holds at least 10% of the equity shares and voting rights in the foreign company.

III. Selling the investment

1. Asset deal

Selling costs	See Section I, "Acquiring the investment."
Capital gains tax	22.4% (effective rate)

Sale by corporate nonresidents	Nonresidents are only subject to capital gains tax on the following categories of assets: • immovable property or any interest or right of whatever nature of the nonresident individual to or in immovable property situated in South Africa • equity shares in a company when 80% or more of the market value of those equity shares is directly or indirectly attributable to immovable property in South Africa • a vested interest in a trust if 80% or more of the market value of that vested interest is directly or indirectly attributable to immovable property in South Africa • the assets of any permanent establishment of a nonresident in South Africa

2. Share deal

Selling costs	See Section I.2, "Acquisition through a share deal."
Capital gains tax	22.4% (effective rate)
Sale by corporate nonresidents	A nonresident is not subject to capital gains tax on the sale of shares. There is, however, an exception to this rule for property-

	owning companies. The sale of shares owned by a nonresident in a property-owning company will be subject to capital gains tax if that nonresident directly or indirectly owns, together with any connected individual, 20% or more of the equity shares in that company, and 80% or more of the market value of those equity shares at the time of disposal is attributable directly or indirectly to immovable property in South Africa.

IV. Tax regime for restructuring operations

1. Tax-free restructuring

South Africa has various statutory provisions that allow for tax-free corporate reorganizations. These corporate rollover relief provisions enable a group of companies to structure the group without incurring any tax implications. The premise for these provisions is that, where the group or the shareholders have retained a substantial interest in the assets transferred, it is appropriate to permit the tax-free transfer of the assets to the entity where they can be most efficiently used for business purposes. There are, however, no provisions that currently allow the losses of one company to be set off against the profits of another company.

The current corporate reorganization transaction can be summarized as follows:

1.1 Intragroup transaction

An intragroup transaction occurs where any asset is disposed of by a company (transferor company) to another company (transferee company), and both companies form part of the same group of companies on the

date of the intragroup transaction. The transferee company must hold an asset as a capital asset if the transferor company held it as a capital asset, and it must hold it as trading stock if the transferor company held it as trading stock. The transferor company is deemed to dispose of the asset for an amount equal to its base cost on the date of the disposal. The transferee company is deemed to acquire it on the same date that the transferor company acquired it, at the same cost. The acquisition of an asset by a company through an intragroup transaction is exempt from transfer duty, donations tax and securities transfer tax. The transferee company can continue to claim the allowances on any allowance assets transferred.

1.2 Asset-for-share transaction

An asset-for-share transaction occurs where a person, other than a trust, transfers an asset to a resident company in exchange for equity shares in the transferee company. Typically, this would trigger capital gains tax, as the transfer would be a disposal. However, the disposal is deemed to take place at base cost to the transferor, and the transferee company is deemed to have acquired the asset on the date the transferor acquired it. A capital gain only arises when the transferee company subsequently disposes of the asset.

1.3 Amalgamation transaction

An amalgamation transaction occurs where a company (amalgamated company) disposes of all its assets to a South African resident company by an amalgamation, conversion, or merger and the existence of the amalgamated company is terminated. Typically, this is a dividend distribution occasioning a capital gains tax and dividend withholding tax liability. However, the disposal is disregarded for capital gains tax and dividend withholding tax purposes.

1.4 Unbundling transaction

An unbundling transaction occurs where a company distributes to its shareholders the shares it holds in another company. Typically, this is a dividend distribution triggering capital gains tax and dividend withholding tax. However, provided certain conditions are met, the transfer takes place at base cost to the transferor and no capital gains tax or dividend withholding tax is payable.

1.5 Liquidation transaction

A liquidation transaction occurs where a company (liquidating company) distributes all its assets (other than assets used to settle any debts incurred by it in the ordinary course of its trade) to its holding company in anticipation of or during its liquidation, winding-up or deregistration. The holding company must, on the date of the disposal, be a resident company holding at least 70% of the equity shares of the liquidating company. The liquidating company is deemed to dispose of the assets at cost and does not therefore realize a capital gain. The holding company is deemed to acquire the assets at the same time the liquidating company acquired the assets. The holding company can claim the allowances on any allowance assets transferred and will realize a recoupment when it subsequently disposes of the assets. The assets must, however, be allowance assets in the hands of both the liquidating company and the holding company.

V. Foreign branch profits

South African-sourced income of nonresidents, including the income of South African branches of foreign companies, is taxed at a rate of 28% on the taxable income derived by such branch. There is no tax on undistributed profits. Companies that distribute after-tax profits by way of dividends are subject to withhold dividends tax at the rate of 20% of the amount of any dividend paid by such company. However, the distribution of profits by branches of foreign companies is not subject to

dividend withholding tax. There is no further tax payable on the remittance of South African branch profits offshore. These profits would have been taxed in South Africa.

VI. Foreign exchange controls

South Africa has foreign exchange controls, which are administered by the South African Reserve Bank's (SARB) Financial Surveillance Department and authorized dealers. Authorized dealers are commercial banks that have been appointed by the minister of finance, and such appointment gives these banks the right to buy and sell foreign exchange, subject to conditions and within limits prescribed by the Financial Surveillance Department. Authorized dealers are not the agents of the Financial Surveillance Department, but act on behalf of their customers. All South African residents are subject to exchange controls. Transactions between a subsidiary in South Africa and its holding company outside of South Africa, as well as between a local branch of a company in South Africa and its head office outside of South Africa, are regarded as being between a resident and nonresident, and are therefore subject to the approval of the SARB.

1. Endorsement of controlled securities

In terms of the Exchange Control Regulations, no person may acquire or dispose of a "controlled security" without the permission of the SARB. "Controlled security" is defined as any security that is registered in the name of a nonresident, or of which a nonresident is the owner, or in which a nonresident has an interest. The control of the acquisition or disposal of controlled securities is exercised by placing the endorsement "nonresident" on all securities owned by nonresidents or in which nonresidents have an interest. The effect of this endorsement is to ensure that in the event of a disposal by the nonresident of its interest in the security, the payment may be transferred abroad or credited to a nonresident account.

2. Remittance of royalties, license fees and patent fees

Any agreement between a resident and nonresident to the effect that the resident will pay royalties, license fees or patent fees requires prior exchange-control approval. The payment of royalties to a nonresident for the manufacture of goods in South Africa must be approved by the Department of Trade and Industry. The payment of any other royalties must be approved by the SARB. Approval will generally not be granted for the payment of minimum royalties or upfront royalties.

3. Remittance of management fees

An authorized dealer may, against the production of documentary evidence confirming the amount involved, approve the payment of a management or administration fee by a resident to a nonresident. The amount paid must be reasonable in relation to the services provided by the nonresident to the resident. The payment of such fees will usually not be readily approved where other payments to the nonresident, like royalties, have already been approved. Management fees calculated on the basis of a percentage of turnover, income, sales or purchases will generally not be approved.

4. Remittance of dividends and interest

Dividends may be transferred to nonresident shareholders without prior SARB approval, provided the shares have been endorsed "nonresident" as described above. Authorized dealers will require documentary proof that the company has profits (e.g., audited financial statements) before authorizing the remittance of the dividends.

The rate and terms at which interest may be remitted must be approved by either the SARB or an authorized dealer at the time the loan is introduced. Prior exchange-control approval for the terms of repayment of the capital portion of the loan is also required. The interest rate charged on

the funding must fall within certain prescribed limits. In determining the prescribed limits, the SARB will consider all the interest, including penalty interest, and any other fees paid by the borrower to the lender in respect of the funding.

Spain



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At a glance

Corporate income tax rate (%)	25
Local income tax rate (%)	N/A
Capital gains tax rate (%)	25
Tax losses carryforward (years)	No time limit[1]
Tax losses carryback (years)	N/A[2]
Limitations on transfer of tax losses	Yes[3]

[1] In addition to the absence of a time limit on the offset tax losses, the most notable feature is the restriction of the amount of tax loss carryforward that can be offset to 70% of the pre-offset taxable income. In all cases, the offset may be up to EUR 1 million.
Notwithstanding the above, the limitation of the amount of unrelieved losses incurred in previous years that may be carried forward against the taxable base is reduced for companies with a net turnover amount of at least EUR 20 million during the 12 months prior to the date of commencement of the tax period. The limits are the following (the minimum threshold of EUR 1 million remains unchanged): (i) 50% for companies with a turnover between EUR 20 million and EUR 60 million in the 12 months prior to the commencement of the taxable year; and (ii) 25% for companies with a turnover of at least EUR 60 million in the 12 months prior to the commencement of the taxable year.
[2] However, small companies with a net turnover below EUR 10 million in the 12 months prior to the commencement of the taxable year may create an income-leveling reserve, allowing a maximum reduction in the taxable income of 10% (capped at EUR 1 million). This reserve must be reversed in the subsequent five tax years in which losses are incurred and thus it operates de facto as a carryback provision. Amounts not reversed against losses in such a term (for five tax years) will have to be reversed in the fifth year.
[3] In general terms, the existing rules limit the use of tax loss carryforward (subject to certain exceptions and special rules) in the case of companies that were acquired

Domestic withholding tax rate on dividends (%)	19[4]
Domestic withholding tax rate on interest (%)	19[5]
Capital duty (%)	Exemption upon incorporations, capital increases and contributions in kind (otherwise, 1%)
Transfer tax rates (%)	
Sale of movable assets	4
Sale of real estate assets	6[6]
Sale of shares of real estate-oriented company	6[7]
Standard VAT rate (%)	21

for the purposes of offsetting their tax losses and the business activities of which are modified or broadened.

[4] Subject to tax treaty provisions and EU legislation.

[5] Exempt for interest paid to lenders resident within the EU (not a tax haven jurisdiction). Subject to tax treaty provisions.

[6] A sale may be subject to VAT as opposed to transfer tax. Transfer tax is attributed to the autonomous regions in Spain and they have the legal competence to alter the general tax rate applicable to transfers of real estate located in their territory. Some of them have established different tax rates, between 6% and 11%.

[7] In transactions involving shares in entities in which more than 50% of their assets are real estate, transfer tax or VAT will only apply where the transaction (of non-quoted securities) was carried out to fraudulently avoid the payment of taxes. This is presumed to occur, unless proven otherwise, when the indirectly transferred real estate is not used in economic activities.

Neutral tax regime for restructuring operations	Yes
Tax consolidation	Yes

I. Acquiring the investment

1. Acquisition through an asset deal

1.1 Corporate income tax

In an asset deal, the step-up of the acquired assets can be amortized for tax purposes and goodwill can be amortized at a maximum rate of 5%.

1.2 VAT

As a general rule, all supplies of goods or services carried out by entrepreneurs or professionals in the course of their business activities are subject to VAT. Within Spain, VAT is not applicable in the Canary Islands, Ceuta and Melilla. However, the Canary Islands levy a type of VAT (*Impuesto General Indirecto Canario*) on taxable supplies of goods and services within the autonomous community.

Notwithstanding the above, the transfer of a going concern is not subject to VAT, provided that certain requirements are met and regardless of the corporate income tax regime applied to the transaction.

There is a reduced rate of 10% applicable to certain supplies of goods and services. There is also a "super-reduced rate" of 4% that applies, for instance, to essential food items, books, newspapers and magazines, or certain government-subsidized housing.

Spanish real estate transactions are subject to VAT at rates of 21% for business premises, 10% for residential property and 4% for council housing on the acquisition of the following:

- the first purchase of completely built property (new work and/or building held by the promoter for less than two years after the completion date on the day of the first sale)
- the second purchase of property, to the extent that the waiver of the VAT exemption is applicable

Rate	21%/10%/4%
Basis	General rule: sale price Special rules: transactions between related entities, self-consumption, swaps, etc.
Date of payment	General: on a quarterly basis (within 20 days after the end of the quarter) On a monthly basis (within 20 days after the end of the month or 30 days if the taxpayer is engaged in the immediate supply of information system) for qualified companies (i.e., net turnover above EUR 6,010,121.04 in the prior taxable year)
Liable person	The seller
Recoverability	VAT is 100% deductible if the purchaser carries out an activity subject to VAT. Input VAT can be deducted from output VAT in each quarterly/monthly tax return. At the end of the year, the remaining VAT can

	either be refunded or offset from future output VAT. If the refund option is chosen, it takes approximately six months to obtain the refund after 30 January of the following calendar year. VAT taxpayers may ask for the VAT refund on a monthly basis, provided that certain requirements are met.

1.3 Transfer tax

Inter vivos transfers of all classes of assets and rights are subject to transfer tax, provided that they are not subject to VAT.

Rate	This tax is applied at the rate of 6%,[8] depending on the autonomous region involved in the transfer of real estate, and 4% on the transfer of movable assets.
Basis	Market value
Date of payment	General: within 30 working days after the date of transfer of the ownership
Liable person	Purchaser
Tax deductibility for corporate income tax	Deductible from corporate income tax under tax depreciation rules

[8] Transfer tax is attributed to the autonomous regions in Spain, which also have legal competence to alter the general tax rate applicable to transfers of real estate located in their territory. Some of them have established different tax rates, which range from 6% to 11%.

1.4 Other acquisition costs

Notary fees	Variable from 0.01% up to 0.12% on the purchase price
Mortgage registration fees and stamp duties	Registration fees: approximately 75% to 80% on the notary fees Stamp duties: from 0.5% up to 1.5%[9]
Stamp duties	When the acquisition is subject to VAT (not to transfer tax), stamp duties are due on the purchase of registrable assets (real estate, patents, licenses, etc.). General tax rates: • 0.5%, unless Spanish autonomous regions alter the general tax rate • 1.5% (2% for some Spanish autonomous regions) on the transfer price if the waiver of the VAT exemption is applicable Special tax rates: from 0.1% up to 1% (under certain circumstances and depending on where the real estate is located)
Tax deductibility for corporate income tax	Deductible from corporate income tax under the tax depreciation rules
Withholding tax obligation on disposal of real estate located in Spain	If the seller is a nonresident, the purchaser is obliged to withhold 3% of the gross amount to be paid on account of the seller's Non-Resident Income Tax (NRIT).

[9] As of 9 November 2018, stamp duties arising from mortgage registration are not a deductible expense for corporate income tax purposes.

1.5 Tax credits

Capitalization reserve	The Spanish Corporate Income Tax Act designates the capitalization reserve as an incentive to reinvestment and the capitalization of the companies. This measure allows the reduction of the tax base by 10% of the increase in their equity (the reduction cannot exceed 10% of the taxable income before the reduction), insofar as: i) this increase is maintained over a five-year period; and ii) a separate reserve is recorded in an amount equal to the reduction, which must be restricted over a five-year period.
Other tax credits	Other tax credits are available in connection with the acquisition of certain assets (research and development assets, etc.).

1.6 Transfer of tax liabilities

The tax liabilities of the seller can be transferred to the buyer of assets under certain circumstances (in this respect, tax clearance certificates can be requested from the Spanish tax authorities). The statutory limitation period in Spain is generally four years, and five or 10 years in the case of criminal offenses.

2. Acquisition through a share deal

2.1 Corporate income tax

Since 2015, the participation exemption regime also applies to domestic capital gains. Thus, the traditional mechanism to avoid double taxation in a share deal has been abolished (given that the seller will not typically be

taxed on the gain derived from the sale of the shares), including the specific provisions of the merger tax regime allowed in a post-acquisition merger, the tax-free step-up of the underlying assets and/or goodwill amortization. However, a transitional provision has been included, retaining the former regime for acquisitions made before 1 January 2015.

2.2 VAT and transfer tax

As a general rule, the transfer of shares is exempt from transfer tax and VAT, except for the disposal of shares of a real estate-oriented company, which is subject to transfer tax under certain conditions.

Definition (transfer tax purposes)	In transactions involving shares in entities with assets that are more than 50% real estate, transfer tax or VAT will only apply where the transaction (of non-quoted securities) was carried out to fraudulently avoid the payment of taxes. This is presumed to occur, unless proven otherwise, when the indirectly transferred real estate is not used in economic activities.
Rate	VAT rate: 21%, 10% or 4% Transfer tax general rate: 6%[10]
Basis	Market value
Discount granted by the vendor	Negotiable

[10] Transfer tax is attributed to the autonomous regions in Spain, which also have legal competence to alter the general tax rate applicable to transfers of real estate located in their territory. Some of them have established different tax rates, which range from 6% to 11%.

2.3 Tax credits and other tax benefits

Capitalization reserve	See Section 1.5, "Tax credits."
Financial goodwill deduction	As from 1 January 2015, goodwill embedded in the shares will not be tax deductible.

2.4 Tax losses preservation

Tax losses may be lost as a result of the transfer of dormant or asset-holding Spanish companies or as a result of a post-acquisition material change or increase of the transferred company's activity.

2.5 Transfer of tax liabilities

In a share deal, the buyer indirectly inherits tax liabilities embedded in the acquired company. As explained above, the statute of limitations period in Spain is four years and five years in the case of criminal offenses.

2.6 Transaction costs

Transaction costs will typically increase the tax basis in the shares.

3. Financing the investment

3.1 Interest barrier rules

Under the Spanish interest barrier rules, net financial expenses are deductible up to 30% of the operating income or EUR 1 million, whichever is greatest. Net financial expenses exceeding this limit can be carried forward and deducted (subject to the same limits) indefinitely.

There is an additional limitation to the deductibility of interest in leveraged buyout (LBO) transactions. According to this provision, when calculating the 30% operating income limit to deduct the interest accrued by the acquiring company on the debt borrowed to acquire the target entities,

the operating income of the target entities (i) that have joined (in the following four tax periods) the acquiring company's tax group, or (ii) that have been merged (in the following four tax periods) into the acquiring company should be excluded to determine said limit.

This restriction will not apply if the debt does not exceed 70% of the purchase price of the shares and if it is reduced, from the time of acquisition, by at least the proportion relating to each one of the following eight years until the debt reaches 30% of the purchase price.

If the net financial expenses in a tax year do not reach the 30% limit, the difference between the net financial expenses and the 30% limit will be added to the 30% limit during the five subsequent years until the difference is effectively deducted.

Interest barrier rules are not applicable to financial/insurance companies and securitization funds.

Financial expenses derived from debts with group companies taken up to fund i) acquisitions from group companies of shares, or ii) equity contributions in group companies are generally not tax deductible, unless there are valid economic reasons for such transactions.

Arm's length principle	The arm's length principle should be respected in any case where the lender and the borrower are related parties for Spanish tax purposes.
Other limitations on the deducibility	Financial assistance: Both joint-stock companies (*sociedades anónimas* or SAs) and limited liability companies (*sociedades limitadas* or SLs) are prevented from providing financial/fund assistance or guarantees for the acquisition of their own

	shares or participations in their parent company.

3.2 Withholding tax on interest

A withholding tax may be levied on interest paid to a foreign lender. There is no withholding tax on interest paid to an entity or an individual resident of an EU member state, provided that such state does not qualify as a tax haven.

Non-EU residents (entities or individuals) are subject to a 19% withholding tax. This rate may be lowered under tax treaty provisions.

Furthermore, the Spanish Non-Resident Income Tax Act also sets forth the following exemptions for interest obtained by a nonresident other than through a permanent establishment:

- Spanish public debt
- interests of nonresident accounts
- interests derived from bonds issued by Spanish securitization funds
- preferred shares, to the extent that certain requirements are met

3.3 Debt push-down

Tax consolidation and post-acquisition mergers have traditionally been used to offset interest on debt funding the acquisition against operating profits obtained by the acquired Spanish company. However, it is important to bear in mind that these alternatives are currently limited by the new interest deduction restrictions applicable to LBO transactions described in Section 3.1.

3.3.1 Tax consolidation/group relief

In order for two companies to belong to the same tax group, a minimum of 75% stake is needed (70% in the case of a listed subsidiary). Besides holding 75% of the corporate capital, according to the Spanish Corporate Income Tax Act, the parent company must hold the majority of the voting rights of the consolidated entities.

The main advantage of filing a consolidated tax return is that it allows the group to defer recognition of income in intragroup transactions, thus preventing pricing problems. The main provisions of this special tax regime may be summarized as follows.

A tax group is formed by a parent company and its dependent entities. The parent company of the tax group could be a resident or nonresident entity and the tax group would be formed by subsidiaries that must be Spanish resident entities with the form of joint-stock companies (SAs), limited liability companies (SLs) or limited partnerships (*sociedades comanditarias por acciones*) or permanent establishments of nonresident subsidiaries (not a resident of a tax haven). The parent company could also be a permanent establishment in Spain. In cases in which the parent company is a nonresident entity, the tax group must designate a representing entity.

No more than 75% of the share capital of the parent company may be owned by another company and the parent must own at least 75% of the share capital of the subsidiaries, directly or indirectly, since the first day of the tax period in which the tax consolidation regime is to be applied. Such 75% participation must be held during the entire consolidation period, except where the subsidiary is wound up. Once a group is subject to the tax consolidation regime, if the parent company acquires qualifying control (i.e., 75%) over a new subsidiary, the new subsidiary will become a member of the tax consolidated group in the following taxable year. Conversely, if a subsidiary fails to meet any of the requirements for consolidation, it will be excluded from the group in the taxable year in which the failure occurs.

A newly incorporated company will belong to the group in the year in which it is incorporated.

No company within a tax group may be exempt from corporate income tax or subject to a corporate income tax rate different from the corporate income tax rate applicable to the parent company (exception: credit institutions; in this event, the tax rate applicable to the whole group will be 30%). No company within a group may be, at the end of the tax period, in a temporary receivership or bankruptcy situation, nor should it have losses that result in net equity falling below 50% of share capital (unless the impairment position is rectified before the end of the accounting year in which the annual accounts of the company are approved, so that the 50% test is respected).

The board of directors or equivalent body of each entity (not the general shareholders' meeting, as was previously required) of all the group companies must agree to file consolidated tax returns prior to the beginning of the first taxable year in which the group is to file a consolidated tax return. The failure to adopt these decisions prevents the application of the consolidated tax regime. If the group already exists and a new company joins the group, only the board of directors of the joining company must decide to be part of the tax consolidation group prior to the end of the first taxable year in which the company is taxed within the tax group. The failure to adopt this decision will lead to economic penalties. The parent/representing company must notify the tax authorities of the decision prior to the beginning of the first taxable year in which the group is to file a consolidated tax return. All the modifications of the composition of the group in that taxable period must be reported to the tax authorities through the tax return of the first payment on account corresponding to that taxable year, identifying the companies that have become part of the consolidated group and/or those that no longer belong to the group.

The right to file consolidated tax returns is lost if the tax group, through its parent company/representing company, fails to submit the consolidated annual accounts to the tax authorities.

The tax period of the group will coincide with that of the representing company/parent company.

Group companies will be jointly and severally liable for corporate income tax purposes, excluding penalties.

When the tax grouping regime applies:

- Only the net income of the group is subject to corporate income tax. Thus, losses generated by same group companies can be offset against the profits of others. However, tax losses generated by a company prior to becoming part of the tax group can be offset limited to 70% of the individual taxable base of that company. The thresholds with regard to the interest barrier rules are calculated by reference to the tax group. As explained in Section 3.1, it should be noted that there are specific limitations for LBO transactions.

- Intragroup payments of dividends, interests and royalties are exempt from withholding tax.

- The parent company or the designated representing company must file the consolidated corporate income tax return, despite the fact that each company that belongs to the tax group must submit an individual corporate income tax return, without having to pay the tax due resulting from its individual tax return.

- This tax regime allows the tax group to defer the taxation of intragroup transactions.

The loss of the regime of tax consolidation requires the integration in the tax base of the group of the deferred transactions and the allocation

between the companies belonging to the tax group of tax credits generated during its existence.

3.3.2 Post-acquisition merger

For "Tax-free" mergers under the neutral tax regime for restructuring operations (See Section IV, "Special tax regime for reorganizations").

Please note that, as mentioned in Section 3.1, there are special restrictions with respect to LBO transactions.

II. Holding the investment

1. Main tax costs to be considered

Taxable income	Worldwide net income less deductible expenses (i.e., interest expenses, depreciation, etc.) is subject to corporate income tax at the standard rate of 25%. As a general rule, business income derived by Spanish companies is not subject to withholding tax. However, certain exceptions may apply.
Depreciation	Depreciation is allowed in respect of all tangible fixed assets (except land). Intangible fixed assets are depreciated depending on the basis of their normal useful life. To the extent that its normal, useful life cannot be estimated, the tax depreciation rate will be 5%. In the case of goodwill, tax depreciation may be deducted 5% per year. The Spanish Corporate Income

	Tax Act has simplified the depreciation tables.
Other special taxes	Business tax: This tax is applicable to companies with a turnover higher than EUR 1 million per year. The calculation of this tax depends on the local council where the company is established. Provincial rates and national rates may also apply. Real estate tax: Annual percentage is determined by local authorities and applied to the cadastral value of a property. Tax on buildings, premises and works: This tax is levied on the real and effective cost of the building, premises and works at a maximum rate of 4%.
Other special tax measures	
Corporate income tax prepayments	Corporate income tax prepayments for companies with a turnover above EUR 10 million in the prior fiscal year will consist of the greater of either: (i) a 24% rate on the partial taxable base corresponding to the first three, nine and 11 months of the ongoing taxable year; or (ii) a 23% rate (increased to 25% for financial entities and companies engaged in the exploration and exploitation of hydrocarbons) on the positive accounting result of the first three, nine and 11 months of the ongoing taxable year.

Minimum reversal of impairment losses	As from 1 January 2013, the deduction applicable to the depreciation of participations was eliminated. The new rule provides that those impairment losses deducted for tax purposes prior to 1 January 2013 and pending reversal will be incorporated into the taxable base, at least in equal parts, in each of the five years beginning on or after 1 January 2016.
Limitation on domestic and international tax credits	With effect for tax periods beginning as from 1 January 2016, a limitation of 50% of the tax due (tax payable before application of tax credits) applies to the aggregate amount of domestic and international tax credits for the avoidance of double taxation, which are generated in the taxable year and pending application from previous years, to companies with a net turnover of at least EUR 20 million in the 12 months prior to the commencement of the taxable year.
Capital losses (applicable to all kinds of Spanish taxpayers)	With effect for tax periods beginning as from 1 January 2017, losses arising from the transfer of stakes in entities will not be deemed deductible for corporate income tax purposes, provided that said stakes have granted the right to obtain exempt income, both to dividends or capital gains made in the transfer of shares. Likewise, losses arising from the transfer of stakes in entities that are residents in tax havens or subject to a tax on profits with a nominal rate lower

	than 10% will not be deemed deductible for corporate income tax purposes. In addition, final losses of a subsidiary (losses realized when a subsidiary ceases to exist) continue to be tax deductible, subject to certain limitations, unless the liquidation occurs due to a corporate reorganization.

2. Distribution of profits

Withholding tax on dividends distributed by a local company to a foreign shareholder	19%, subject to treaty provisions No withholding tax is applicable in the case of distribution to an EU parent company (or a company that is a resident in the European Economic Area (EEA), subject to additional conditions) to the extent that the following requirements are met: (i) significant stake of at least 5% (or an acquisition cost higher than EUR 20 million) of the Spanish distributing entity maintained for one year (a commitment to keep the shares for at least one year is possible), the one-year holding period can be computed taking into account the period in which the holding was owned by other entities that meet the requirement under Article 42 of the Commercial Code for entities to form part of the same group of companies; (ii) the form of the parent company must be listed in the appendix of the EU Parent-Subsidiary Directive; (iii) the parent company must be subject to corporation tax in its state of

	residence; and (iv) the profits are not distributed as a consequence of the liquidation of the subsidiary. This exemption is not applicable if non-EU/EEA residents hold (directly or indirectly) the majority of the voting rights of the EU/EEA parent company, unless the formation and operations of the parent company are driven by valid economic and substantial business reasons.
Taxation of domestic dividends received by a Spanish company	The Spanish participation exemption regime could generally be applicable to the extent that the following requirements are met (subject to numerous exceptions and special rules): • Significant stake: The recipient company must own at least 5% of the participated entity (or, alternatively, must have an acquisition cost higher than EUR 20 million). • Such stake has been held for more than one year (a commitment to keep the shares for at least one year is possible). Specific restrictions are applicable when the investment is not in an operating company directly but through holding companies. Dividends not eligible for the participation exemption are taxed at the standard rate of 25%.

Taxation of foreign dividends received by a Spanish company	The Spanish participation exemption regime could be applicable under the same conditions described above for domestic dividends, although certain additional requirements would be applicable, including the following: • Subject to tax test: The foreign entity is subject to and not exempt from a tax identical or similar to corporate income tax at a nominal rate of at least 10%. This requirement is deemed to have been met when a tax treaty is applicable. • The participation exemption is not applicable when the foreign entity is a resident in a tax haven, unless the entity is a resident in an EU territory and it can be proved that its incorporation and business operations are aligned with valid economic reasons and that business activities are carried out. • Dividends not eligible for the participation exemption are taxed at the standard rate of 25%.

III. Selling the investment

1. Asset deal

Selling costs	See Section I, "Acquiring the investment." The transfer of real estate will also trigger local tax on the deemed increase in value of urban land.
Capital gains taxation	Standard corporate income tax rate: 25%
Sale by corporate nonresidents	Acting without a permanent establishment in Spain: 19% Note that, as a general rule, capital gains arising from the transfer of movable property located in Spain derived by EU residents are exempt from tax (provided that the EU residents do not reside in a tax haven). In most cases, capital gains derived by nonresidents without a permanent establishment are not subject to withholding of NRIT (although certain exceptions apply). Acting with a permanent establishment in Spain: See "Capital gains taxation" above, in this section.

2. Share deal

Selling costs	See Section I, "Acquiring the investment."
Capital gains taxation	General: 25% Spanish entities can generally apply the participation exemption to gains derived from the transfer of shares of Spanish or foreign companies under the same participation exemption requirements applicable to the dividends, subject to certain exceptions and special rules.
Sale by corporate nonresidents	Acting without a permanent establishment in Spain: 19% Capital gains derived by EU residents are generally exempt from tax (except tax havens). However, the exemption does not apply when: (a) there is a transfer of shares or participation in corporations or other entities, the assets of which consist mainly, directly or indirectly, of real property located in Spain; (b) the seller (only applicable for individuals) has owned, directly or indirectly, at least 25% of the capital or net worth of the entity at any time during a 12-month period prior to the transfer; or (c) in the case of corporations, if the requirements for the Spanish participation exemption regime are not met.

	Acting with a permanent establishment in Spain: See "Capital gains taxation" above, in this section.

IV. Special tax regime for reorganizations

The purpose of this tax regime is to ease corporate reorganizations. The Spanish tax system provides for a well-established tax regime based on the principles of nonintervention by the tax authorities and tax neutrality, as follows:

Eligible restructuring operations	**Merger**	Through takeover
		Through the creation of a new company
		Upstream merger + downstream
	Demerger	Total demerger
		Partial demerger
		Financial demerger

	Contribution of assets	Transfer of branches of activity Special contribution in kind, in which a company or an individual transfers assets (including shares) to a Spanish company in exchange for securities, provided that: (i) after the contribution in kind, the contributor holds at least 5% of the stake in the acquiring company; and (ii) certain requirements are met.
	Share-by-share exchange	In a share-by-share exchange, a company acquires a stake in the share capital of another: (i) obtaining the majority of the voting rights in that company; or (ii) increasing a preexisting majority in voting rights.

Direct taxation	Capital gains or losses derived from the transfer of assets are not included in the tax base of the personal income tax, NRIT and corporate income tax of taxpayers. For tax purposes, the acquirer values the assets received in accordance with their historical value (i.e., tax basis is rolled over).
Indirect taxation	Transfers of groups of elements that make up a single autonomous business unit are not subject to VAT, provided that certain requirements are met and regardless of the direct tax regime applied to the transaction. The above-mentioned transactions are exempt from transfer tax and capital duty.
Anti-avoidance rules	Business purpose test: This special tax regime will not be applicable when the reorganizations are made mainly for the purpose of tax fraud or tax evasion. This will be deemed the case when the reorganization does not have a valid business purpose.
Preservation of tax losses	In mergers and demergers, the tax losses of the absorbed entity may be transferred to the absorbing entity, subject to certain limitations.
Merger goodwill/step-up	See Section I.2.1.

Pre-transaction carve-outs	It is possible to undertake carve-outs under the special tax regime under any of the following alternatives: • Total demerger: A company splits up all its net assets into two or more portions. Two or more preexisting or new companies inherit such assets. • Partial demerger: A company spins off one or several parts of its net assets corresponding to branches of activity (i.e., groups of elements that make up a single autonomous business unit) and transfers them to one or several preexisting or new companies, leaving at least one branch of activity in the transferring company. • Financial demerger: An entity spins off participations in the capital of other entities, which entitles it to the majority of their share capital, and transfers them to a preexisting or new company, leaving in the transferring company at least other participations of similar characteristics or one branch of activity. In this respect, it should be taken into account that the Spanish tax authorities have indicated in several rulings that if these transactions are made to mitigate the taxation of a subsequent sale, they are not eligible for the tax neutral regime since they do not meet the "business purpose" test.

Formal requirements	This special tax regime is the general regime for restructuring transactions that will apply, unless the taxpayer submits a waiver to the Spanish tax authorities within three months following registration in the Commercial Registry.

V. Special holding regimes

Spanish entities holding foreign securities (*Entidades de Tenencia de Valores Extranjeros* or ETVEs)	A special tax regime exists for Spanish entities holding shares/participations in foreign subsidiaries. We can summarize this tax regime as follows. Income (dividends and capital gains) obtained by the ETVE from qualifying foreign subsidiaries is exempt from corporate income tax in Spain, provided that the Spanish participation exemption requirements are met (see Section II.2, "Holding the investment" and Section III, "Selling the investment"). To entities that were already applying the ETVE regime in the tax periods that commenced before 1 January 2015, the shareholding threshold would also be met if the acquisition value were greater than EUR 6 million (as opposed to the general rule of EUR 20 million otherwise applicable). Dividends distributed by the ETVE, which are derived from income obtained from qualifying foreign subsidiaries, are as follows:

	• Dividends received by resident corporations: Spanish participation exemption can be applied for (see Section II.2, "Holding the investment"). • Dividends received by nonresidents (except tax havens) corresponding to exempted reserves stemming from foreign participated companies will not be deemed to have been obtained in Spain and thus will not be taxable in Spain. Dividends not meeting this requirement will generally be taxed at a 19% rate (unless a tax treaty or the EU parent subsidiary provisions are applicable). Capital gains obtained on the transfer of the holdings in the ETVE are as follows: • Capital gains obtained by resident corporations: Spanish participation exemption can be applied for (see Section III.2, "Selling the investment"). • Capital gains obtained by nonresidents (except tax havens): The part of the gain corresponding to undistributed exempted reserves stemming from foreign participated companies or to the underlying eligible foreign participated companies will not be deemed to have been obtained in Spain and thus will not be taxable. Capital gains not meeting

	this requirement will be taxed under the rules mentioned in Section III.2.
Private equity/venture capital entities	In broad terms, private equity/venture capital companies and funds (*Sociedades de Capital-Riesgo* and *Fondos de Capital-Riesgo*) are defined as entities whose main purpose is to promote nonfinancial companies (in principle, those not quoted on a stock exchange) by acquiring temporary participations in the capital of such companies. Under their special tax regime, the amount of a taxable gain arising from the transfer of a participation could benefit from the Spanish participation exemption, or alternatively (if the Spanish participation exemption requirements are not met) such taxable gain is reduced by 99% if the transfer takes place between the second and the 15th year (both inclusive) after the acquisition.

Sweden



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At a glance

Corporate income tax rate (%)	21.4
Local income tax rate (%)	N/A
Capital gains tax rate (%)	21.4
Tax losses carryforward (years)	Indefinite[1]
Tax losses carryback (years)	No
Limitations to transfer of tax losses	Yes
Domestic withholding tax rate on dividends (%)	30[2]
Domestic withholding tax rate on interest (%)	None
Capital duty (%)	None
Transfer tax rates (%)	
Sale of movable assets	None
Sale of real estate assets	4.25[3]
Sale of shares of real estate-oriented company	No
Standard VAT rate (%)	25

[1] Restrictions apply if a change of ownership occurs.
[2] Subject to tax treaty provisions, domestic and EU legislation.
[3] When the purchaser is a private individual, the corresponding rate is 1.5%.

Neutral tax regime for restructuring operations	Yes
Tax consolidation	Yes

I. Acquiring the investment

1. Acquisition through an asset deal

1.1 Income tax

1.1.1 Buyer's position

In the event of an asset deal, acquired assets, including goodwill, can be amortized for tax purposes at a maximum rate of 30%, but in no event over a period shorter than five years. Depreciation rates for buildings vary depending on the nature of the building. The maximum rate is 5%, unless exceptional conditions make a higher percentage justifiable.

For the purchaser, the acquired tangible and intangible assets, including goodwill, are capitalized at their fair market values (usually determined by the purchase price paid). For this purpose, the parties should agree on a detailed allocation of the purchase price to the assets purchased. The allocation agreed on by the parties is not binding for tax purposes, but serves as an indication. In an arm's length transaction, it's also likely that the allocation will serve as a basis for the buyer's accounting.

If the parties have not agreed on an allocation, the buyer's accounting, according to Swedish GAAP, is likely to also govern the tax treatment.

In an asset deal, any existing tax losses remain with the transferring entity. The same applies to tax liabilities. No tax liabilities will be transferred to the buyer as a result of the asset sale.

1.1.2 Seller's position

Any sale is taxed as any other business income at a corporate tax rate of 21.4% (to be reduced to 20.6% for financial years commencing after 31 December 2020), except if real estate is sold and provided the real estate is not regarded as inventory. Under this circumstance, real estate profit is calculated in accordance with the capital gain rules. Real property constituting a business asset (e.g., if the owner conducts construction work on real estate, including the owned property) rather than a capital asset is treated as inventory, and profits are calculated accordingly.

For an individual, the sale of a sole trader business is subject to tax as business income using a maximum marginal rate of approximately 55% plus social security fees of 28.97% (income year 2020), with the latter being deductible for income tax purposes.

1.2 Continuity for tax purposes

A transfer of assets will, as a main rule, be made at fair market value. In a situation where an asset or a business is sold for a consideration below fair market value, the seller is subject to withdrawal tax of an amount corresponding to the difference between the agreed-upon purchase price and the fair market value. In a transaction between independent parties, it is assumed that the agreed-upon purchase price corresponds to the fair market value, but where the parties are affiliated, this is not always the case and withdrawal taxation can become a reality.

In order to facilitate business restructurings, the Swedish Income Tax Act (ITA) contains rules that, under certain conditions, allow for a sale of assets below fair market value without triggering withdrawal taxation. In order to avoid withdrawal taxation, the conditions in the act must be strictly adhered to.

A transaction below market value incorporates transactions whereby an asset is transferred free of charge or against a price below fair market

value, without the lower price being motivated by business reasons. If the consideration is below the tax base value of the assets, which is normally the net book value of the assets in the business, the consideration will be assessed at tax base value for income tax purposes even if the actual consideration was lower. In order to ensure a tax-neutral asset sale, the consideration should be set no lower than net book value.

In order to avoid withdrawal taxation, the seller and the buyer must be of a certain qualified nature and subject to tax in Sweden. The rules apply to corporations, both Swedish and foreign, provided the foreign corporation has a Swedish permanent establishment to which the transaction relates. The rules do not apply to partnerships, but they do apply to private individuals.

Following the acquisition, the buyer will immediately be liable for tax in Sweden for a business of which the acquired asset is a part. If there is no fiscal unity between the seller and the buyer (i.e., if the seller and the buyer are not entitled to tax consolidation through group contributions), then the asset transfer must relate to an entire business or a separate line of business. The test here is more or less identical to the concept of a going concern under the transfer of going concern (TOGC) exemption for VAT, as further described below.

There must not be any tax losses carried forward by the buyer, although in a case of fiscal unity between parties, this restriction may not apply. It is also possible for the buyer to waive the tax losses carry forward in order to acquire the assets for a consideration below market value. Both parties must have the same accounting currency (i.e., the Swedish krona or the euro).

These relatively favorable provisions have been introduced so that assets or a business can be transferred from one owner to another without triggering immediate income tax, and so that the tax liability is deferred

until the assets actually leave the corporate sector or are transferred abroad, under circumstances where the rules can no longer apply.

The rules provide for a tax-efficient way of spinning off separate lines of business in cases where a seller wants to retain a part of its business but wants to get rid of another part. The seller can, for example, incorporate a subsidiary and transfer one line of business to that subsidiary for the book value of the sold assets, whereupon the newly incorporated subsidiary is sold at market price without triggering any tax on the profit, as the share sale will be subject to the participation exemption regime, as further described below.

1.3 VAT

1.3.1 TOGC

As a general rule, all supplies of goods or services are subject to VAT. Swedish VAT is due if such transactions are (deemed to be) supplied in Sweden.

In an asset deal, the transfer of the assets is, in principle, regarded as several separate supplies of goods, each of which is, in principle, subject to VAT at the appropriate rate. However, the applicable EU VAT Directive, as implemented through the Swedish VAT Act, provides for a special regime regarding a transfer of a totality of assets/business or a distinct part thereof as a going concern. The Swedish TOGC rules in the VAT Act were updated in 2016 and fully correspond to Articles 19 and 29 in the EU VAT Directive. As a matter of law, a TOGC is not deemed to be a sale for VAT purposes. In the event the TOGC relief applies but VAT is nevertheless invoiced by the seller, this VAT will qualify as "incorrectly charged VAT." Such VAT is not recoverable for the buyer and will therefore constitute a cost for the buyer (unless corrected).

Where the asset deal meets the conditions listed below, it qualifies as a TOGC under the Swedish VAT Act:

- The assets constitute a whole or well-separated part of the business and must be sold as part of the transfer of a "business" as a "going concern."
    - Where only part of the "business" (assets) is sold, it must be capable of operating separately.
    - A mere transfer of assets, such as the sale of products, is not sufficient in order to qualify as a TOGC. The assets must really constitute a whole or well-separated part of the business.
- The buyer must intend to operate the business or the part of the business transferred.
    - The buyer must, therefore, not intend to immediately liquidate the activity concerned.
    - There may, in some cases, be a series of immediately consecutive transfers of "business."
    - The assets transferred must be utilized in a VAT-liable business of the buyer. However, it is not necessary for the buyer to already be pursuing the exact same type of economic activity as the seller prior to the transfer.
- The seller must be registered for VAT in Sweden, and the buyer must be registered for VAT or become VAT-liable in Sweden (or be VAT-liable in the country outside Sweden where the business is continued) through the acquisition of the assets.

Even though the TOGC itself is not a sale for VAT purposes, the costs relating to such TOGC (e.g., consultancy fees) in principle qualify as general costs. In the opinion of the Swedish Tax Agency, a parent company's sale

of shares in a subsidiary, where the parent company has been involved in the management of the subsidiary by supplying VAT-liable services, would constitute an economic activity per se. That economic activity is, however, exempt from VAT, and therefore, input VAT on consultancy costs would normally not be deductible as these costs, according to the tax agency, have a direct and immediate link to the sale of shares (i.e., consultancy costs constitute an actual cost component of the share sale). On the contrary, where there is a direct and immediate link between these costs and the general taxable activities of the business, VAT deductions are allowed. According to a ruling by the Supreme Administrative Court, in order for input VAT to be deductible for costs relating to a TOGC, assets other than just shares need to be included in the TOGC. A sole share transfer does not meet the TOGC criteria. Consequently, based on ECJ and Swedish case law, one may deduct the input VAT incurred in relation to a TOGC in accordance with the general rules (e.g., in accordance with the so-called pro rata calculation method, which is based on the proportion between the turnover for which a VAT deduction right exists and the total turnover for the entrepreneur), assuming the TOGC is not a sole share transfer.

The Swedish VAT regime for a TOGC is not optional. If the criteria for a TOGC are met, the regime applies to the asset deal and as a matter of law, no VAT will be chargeable by the transferor. It is therefore important to establish whether the asset deal qualifies as a TOGC or not.

When the asset deal does not qualify as a TOGC, the transfer of each individual asset triggers its own VAT consequences.

Please note that for VAT purposes, no invoice needs to be issued if the TOGC exemption applies.

1.3.2 Voluntary VAT liability for property lease and VAT adjustments for properties

Business premises under a lease agreement may be subject to voluntary VAT registration (i.e., VAT registration for the letting of premises, which is otherwise normally VAT-exempt). If the lessee is not VAT-liable, a VAT registration may not be obtained, unless the lessee is a governmental authority or a municipality. Where the annual VAT amounts related to new constructions, extensions and reconstructions for the premises exceed SEK 100,000 (joint amount for both landlord and tenant), these will be subject to the regulations related to adjustment of VAT. Adjustment means that in the event of large investments in the premises and any subsequent change to the use of the property (e.g., change of business from VAT-liable to VAT-exempt), previous deductions made for input VAT at the time of purchase must be adjusted under certain circumstances. The VAT deductions for the property are not only dependent on the circumstances at the time of the purchase, but also on the future use in VAT-liable or VAT-exempt activities. The correction period for real property is 10 years.

After a change in use, adjustment must be made for each year during the whole of the remaining correction period. The landlord must have information on any investments made during the year in order to assess the possible adjustment obligation for the premises. Further, if the tenant terminates the lease for the premises, the VAT adjustment liability is automatically transferred to the landlord. If the tenant instead transfers the lease, the adjustment liability is normally transferred to the new tenant. In such a situation, the tenant is obligated to hand over a document with information on the investments carried out, when the deduction was made and the size of the deduction. The tenant needs to keep track of the investments and VAT deductions made on the premises.

1.3.3 VAT summary

Rate	General rate: 25% Reduced rates: 0%, 6% or 12%
Basis	General rule: invoiced price Exception: adjustment to market value
Filing and payment	Depending on the annual VAT-liable turnover, VAT returns must be filed monthly, quarterly or annually. VAT returns must, in principle, be submitted on the first month after the filing period (mandatory monthly filing) or the second month after the filing period (voluntary monthly filing or quarterly filing). The VAT due must be paid at the same time.
Liable person	General rule: the seller Exception: reverse-charge VAT or self-assessed VAT (e.g., in the construction sector, intra-community acquisitions, acquisitions of services from abroad or local sales made by a foreign entrepreneur to VAT-registered buyers)
Recoverability	The costs relating to a TOGC should normally, under ECJ and Swedish case law, qualify as general cost in economic activity; hence, the input VAT on such costs may be deducted in accordance with the pro rata calculation method.

	Input VAT on other costs is deductible in accordance with the general rules for deductibility or recoverability. When entitled to deduct input VAT, the input VAT may be deducted from the VAT payable in the relevant periodical VAT return.
Voluntary VAT registration for property lease	The letting of premises is, as a main rule, VAT-exempt. Business premises under a lease agreement may, however, be subject to a voluntary VAT registration.

1.4 Transfer tax

In Sweden, transfer tax is levied on the transfer of Swedish real estate and freeholds (*tomträtter*).

The transfer tax rate is 4.25% for legal entity buyers and 1.5% for individual buyers. The tax base is the tax value (which should correspond to 75% of the fair market value of the property) or the consideration paid if the latter is higher than the tax value. The transfer tax should be paid by the buyer and the seller jointly and severally, but it is customary for the buyer and the seller to agree on who will effectively bear the tax (typically the buyer does). Transfer tax is not recoverable for the acquirer, but is included in the acquisition price for tax-deductible amortization purposes and in the acquisition cost for capital gains calculation purposes.

Transfer tax also applies in the event the transfer would, for VAT purposes, be part of the TOGC relief. However, real estate transfers are not subject to VAT.

Transfer tax does not apply to gifts, inheritance and certain other qualified transactions. In the event of a transfer within a group of companies, a tax deferral can be obtained.

Rate	1.5% or 4.25%
Basis	The tax base is the higher of the purchase price or the tax value.
Date of payment	Transfer tax is paid in connection with the registration of the transfer. Such registration will be applied for within three months from the acquisition.
Liable person	Buyer and seller, jointly and severally
Tax deductibility for corporate income tax	Amortized purchase price according to a set percentage is typically 2% to 5% of the part of the tax cost attributable to buildings. Purchase price attributable to land is not deductible.

2. Acquisition through a share deal

2.1 Corporate income tax

For corporate income tax purposes, the acquired shares are recorded in the books based on cost price. Acquisition costs are generally added to the fiscal cost price of the shares, since the acquisition costs that relate to the purchase of shares that qualify for the participation exemption regime are not tax-deductible.

If a Swedish company acquires direct or indirect ownership of more than 90% of the shares of another Swedish company, both companies can, subject to certain conditions, form a fiscal unity. Within a fiscal unity, one

company can transfer profits to another through the so-called group contributions. The contribution is treated as a cost for the contributor and income for the recipient. This mechanism can be used to achieve an efficient debt push-down (see Section I.3.3).

When selling shares in a corporation or a partnership, the tax implications depend on whether the seller is a corporation, a partnership or an individual.

Capital gains from the sale of shares or partnership interests by corporations are exempt from corporate income tax if the sold shares have been held for business reasons. Correspondingly, the acquisition cost is neither deductible nor depreciable. Non-listed shares/interests held as capital assets are always considered held for business reasons. Listed shares/interests held as capital assets are considered held for business reasons if the shares/interests have been held for at least 12 months and the holder does either of the following:

- controls at least 10% of the votes
- holds the shares as a result of the business conducted by the holder or an affiliate of the holder

For the purchaser, a share deal is somewhat unfavorable. As the shares bought in a business acquisition through a share deal will typically constitute shares held for business reasons, the acquisition costs can neither be deducted as a whole nor depreciated. The upside is, of course, that a future profit realized once the shares are sold is tax-exempt.

Most business expenses related to the ownership of shares are deductible, but costs related to the acquisition or sales are typically not. Financing costs, such as interest, are deductible, but interest deductibility limitations apply in the event of intragroup transactions where the lender is a company in a low-tax jurisdiction. Due to strict limitations, loss carryforwards can be utilized by the purchaser only in exceptional cases.

2.2 VAT and real estate transfer tax

The sale of shares is exempt from VAT. The sale of shares in a real estate company is not subject to real estate transfer tax. However, this rule is under review and we may see amendments to the legislation, applicable in cases where this is used for tax planning purposes.

2.3 Tax credits and other tax benefits

In the event of a share deal, there are generally no tax credits available.

2.4 Tax losses' preservation and the minimum tax rule

Losses cannot be carried back. It is possible, however, to make a tax deduction of a maximum of 25% of the annual profit to be deferred for not more than five years, which means that a profit in one year may be used to offset a loss during the next five years, which effectively leads to a similar result to a loss carried back.

There is no time limitation on the loss carryforward facility. The transfer of loss carryforwards is subject to relatively strict limitations. A negative impact on loss carryforwards follows from a "change of decisive control," meaning that:

- (i) A new party (or a small group of individuals during a limited time) has gained control over more than 50% of the votes in the loss company;
- (ii) The loss company has gained control over another company; or
- (iii) A loss company's parent has gained control over another company

It is not just changes in the immediate ownership that count; indirect changes in the group structure may also cause the losses to be forfeited or restricted. The restriction under (i) means that all losses exceeding twice the price paid for the shares that resulted in decisive control will be forever

forfeited, and the remainder of losses will be barred from setting off against group contributions for five years.

The restrictions under (ii) and (iii) only affect the right to offset the losses against group contributions for five years following the change in ownership.

In addition, in cases of mergers or demergers, there are restrictions regarding the right to utilize losses carried forward so that the general rules may not be circumvented. The merger-related restrictions may cause definite forfeiture of the losses to the extent they exceed twice the merger consideration, if any. The merger-related restrictions may also affect the right to set off gains in the merged entity against losses during a five-year period.

None of the restrictions on tax losses at ownership change would be triggered if all entities involved could exchange group contributions both before and after the ownership change.

2.5 Deductibility of negative net interest expenses

As of 1 January 2019, a general limitation on the right to deduct negative net interest applies in the corporate sector. According to the main rule, the right to deduct negative net interest is limited to an amount equivalent of 30% of the taxable EBITDA, where the latter stands for earnings before interest, taxes, depreciation and amortization.

As an alternative to the main rule, negative net interest may be deducted up to SEK 5 million. If net interest expenses are deducted according to the alternative rule by a company that is part of a group, the total/overall deduction within the group may not exceed SEK 5 million.

Negative net interest, which is not allowed to be deducted according to the main rule, may be carried forward during a maximum period of six years.

Furthermore, the right to utilize negative net interest that has been carried forward is forfeited at a change of ownership. It is therefore valuable that an acquisition is preceded by a review of potential remains of negative net interest.

2.6 Transfer of tax liabilities

In the event of a share deal, the company itself will maintain its corporate identity and will remain unaffected, even if there is a change of shareholders, save that tax losses carried forward may be restricted. The tax liabilities will remain with the company. The purchaser, therefore, will assume (indirect) responsibility for all known and unknown tax liabilities. This liability is restricted by the statute of limitations regarding the assessment of tax liabilities, which is generally six years from the end of the calendar year during which the fiscal year ended, and up to 10 years in the event of criminal tax fraud. Once assessed, a tax debt becomes statute-barred after five years. The tax agency can, however, apply for an extension of the statute of limitations to be granted by the tax courts.

3. Financing the investment

3.1 Deductibility of financing expenses

Apart from general interest deduction limitation restrictions up to 30% EBITDA, described above, Sweden has a number of interest deduction limitations targeting specific situations: interest on subordinated debt, interest on intragroup loans, interest on participating debenture and anti-hybrid provisions. Interest deductibility is assessed under the targeted rules prior to calculation of deductibility of under 30% EBITDA rule.

In 2009, Sweden introduced certain restrictions on the deduction of interest on loans applicable in situations where a Swedish company borrowed funds for an intragroup acquisition of shares. The rules were amended in 2013 such that not only loans for intragroup share acquisitions, but also all intragroup loans, were restricted. As of 1 January 2019, the rules

have been amended further in order to comply with the Anti-Tax Avoidance Directive (ATAD).

The background of the interest deduction limitations on intragroup loans is that the tax agency has identified that intercompany loans have been used for tax evasion schemes and that the business transactions that took place were often made more or less for pure tax reasons (and no other business reason).

A typical situation is as follows: A Swedish company borrows money from an affiliated entity in a low-tax jurisdiction and buys a profitable, operating Swedish company or a business with the borrowed amount. The interest expense accrued by the Swedish borrower is offset against profits generated by the business in the acquired Swedish company through group contributions — the fiscal unity described above. The interest received by the foreign affiliate is not taxed because that company is a resident in a tax haven. The only reason for the loan structure is thus to gain tax benefits.

In order to put an end to this tax leakage, the provisions state that a company may only deduct interest expenses relating to a debt to an affiliated company if certain conditions are fulfilled. The rules also cover back-to-back loans.

Interest expenses relating to intragroup loans may be deducted in any of the following situations:

- If the beneficial owner of the interest income is an entity within the European Economic Area (EEA)
- If the beneficial owner of the interest income is an entity resident in a country, with which Sweden has a tax treaty covering all types of income, and the recipient is covered by the treaty

- If the income that corresponds to the interest expense is taxed at least 10% (effective tax rate) according to the legislation of the country of residence of the affiliated entity that is the beneficial owner of the interest income, if the interest income would have been the only income of the entity

However, no deduction is allowed, if the intragroup debt was put in place exclusively or almost exclusively (i.e. >90-95%) to achieve a substantial tax benefit for the lender or the group.

Further, if the debt is related to an intragroup acquisition of shares, both the intragroup acquisition and the debt would have to be based on essentially (i.e. ≥ 40%) sound business reasons.

The restriction has no link to the capitalization of the borrower, but is applied irrespective of capitalization. On the other hand, Sweden has no thin capitalization rules that restrict interest deductions in general.

3.2 Withholding tax on interest

Sweden does not impose any withholding tax on interest payments.

3.3 Debt push-down

A way of achieving deductibility of interest expenses incurred for the acquisition of a company may be the establishment of a tax group between the acquiring company and the target company. By doing so, the income of the target group may be offset against any expenses at the level of the parent company. However, as a drawback, pre-existing tax loss carryforwards at the level of the group may not be used in the next five years following the transaction.

Another way to offset business expenses of the acquiring company against the positive income of the target company is to merge the target company and the acquiring company. A merger can most often be

concluded without negative tax ramifications and can be completed within four to six months. As described in Section I. 2.4, merger-related restrictions on tax losses carried forward may cause definite forfeiture of the losses, to the extent they exceed twice the merger consideration, if any, and may also affect the right to set off gains in the merged entity against losses during a five-year period.

II. Holding the investment

1. Main tax costs to be considered

Taxable income	Net income less deductible expenses (i.e., interest expenses, depreciation, etc.) is subject to corporate income tax at a statutory rate of 21.4%.
Depreciation	Acquired goodwill and assets in an asset deal can be amortized for tax purposes over a minimum period of five years. Costs for assets with a low-value or short life span may be deducted immediately.
VAT	As a general rule, the supplies of goods or services carried out by entrepreneurs or professionals in the course of their business activities are subject to VAT at the general rate of 25%. Reduced rates (12%, 6% and 0%) and exemptions may also apply. Input tax may be deductible, depending on the activities of the entrepreneur. Transactions between entities of the same VAT group are disregarded for VAT, as are the transactions between a head office and

	its branch (i.e., a permanent establishment), albeit that transfers of goods must still be reported even if made between the head office and a branch.
License business tax	N/A
Other taxes	Real estate tax is levied on business premises and other nonresidential buildings. Calculation of real estate tax is based on tax value, calculated so that each building will have a tax value equivalent to approximately 75% of the market value. Tax rates vary from 0.2% to 1%. For residential buildings, there is a municipal charge of SEK 6,000 for each house, but at most 0.75% of the tax value, subject to indexation each year, such that the charge is increased by the corresponding increase or decrease of the basic income amount determined for each year, as compared to the basic income amount determined for 2008. For 2020, the maximum municipal charge is SEK 8,349. For residential flats, the charge is SEK 1,200, at most 0.4% of the tax value, subject to indexation each year, such that the charge is increased by the corresponding increase or decrease of the basic income amount determined for each year, as compared to the basic income amount determined for 2008.

	Stamp duty is levied on the registration of mortgages. The standard tax rate is 2% of the mortgage. Indirect taxes (excise duty) are levied on the consumption of tobacco, beer, wine, distilled spirits, minerals and oils. Tax is payable on sales of beer, wine and spirits within Sweden. Energy tax is to be paid on electric power. Energy and carbon dioxide tax shall be paid on all fuels used for powering engines and for certain fuels used for heating purposes (e.g., petrol, oil, coal and liquefied petroleum gas, with a few exceptions). Other excise duties include gambling tax, premium tax on group life assurance policies, advertising tax, lottery tax, tax on chemicals in certain electronic products, white goods and other electronic goods such as for example computers, tablets, phones, routers, and television tax on pesticides, fertilizers and natural gravel.

2. Distribution of profits

Withholding tax on dividends distributed by a Swedish corporation	In general, dividend distributions are subject to Swedish withholding tax at a statutory rate of 30% if paid to recipients not liable for tax in Sweden. When withholding tax is reduced or exempt under tax treaties, the lower amount may be withheld provided that the tax residency of

	the recipient is supported by a tax residency certificate. Withholding tax may be repaid if the dividends are exempt from Swedish dividend withholding tax under local law, i.e., if the recipient is: • a company resident in an EU member state: (i) holding at least 10% of the Swedish distributing entity; and (ii) recognized as a company in Article 2 of the EU Parent-Subsidiary Directive • a foreign company subject to corporation tax in its state of residency at a "similar level" (approximately 12%) as that of a Swedish company, and dividends come from "business-related shares," according to the Swedish participation exemption regime • a partnership or an otherwise tax-transparent entity, to the extent the distribution had been exempt from withholding tax, had the partner or taxable person itself received the distribution Anti-abuse provisions under Swedish legislation or double taxation treaties may limit the right to dividend withholding tax relief.

Taxation of (domestic and/or foreign) dividends received by a Swedish corporation	In general, dividends received are subject to Swedish corporate income tax at a statutory rate of 21.4%. However, dividends received from a qualifying shareholding may be exempt under the participation exemption, provided that the shares in the distributing company are held as capital assets, and: (i) the distributing company is unlisted; (ii) the distributing company is listed and the receiving company has held at least 10% of the voting rights of the distributing company for a continuous period of at least one year; or (iii) the distributing company is listed and the receiving company holds less than 10%, but the shares are considered held for "business reasons" and the shares have been held for a continuous period of at least one year (see Section III.2.1).

III. Selling the investment

1. Asset deal

Selling costs	See Section I.1. Indirect tax: See Sections I.1.3 and I.1.4. TOGC exemption may apply. If an asset deal encompasses real estate/property lease, VAT or transfer tax consequences may arise. If real estate is subject to a direct sale, stamp duty will be payable.

Income taxation	Statutory corporate income tax rate: 21.4% Subject to certain conditions, taxation of the gain may be deferred using the business transfer scheme (see Section III. 1.1). In an asset deal, losses on assets are deductible for corporate income tax purposes, whereas capital losses on a shareholding are generally not deductible for Swedish corporate income tax purposes under the participation exemption regime (see Section III.2.1).
Sale by corporate nonresidents	Acting without a permanent establishment in Sweden: only tax on immovable property, but subject to tax treaty provisions. Acting with a permanent establishment in Sweden: unrestricted tax liability.

1.1 Business merger facility

The taxation of gains realized on the transfer of assets and liabilities — comprising an enterprise or an independent part of an enterprise — in return for shares in the acquiring company ("**Business Merger**") can be deferred and "rolled over" to the acquiring company, provided that certain requirements are met.

Both companies should be subject to Swedish corporate income tax, and in order to effectively roll over the capital gain, the acquiring company is required to assume the same position for tax purposes as the transferring company regarding the transferred assets and liabilities. The income must not be exempt under a tax treaty and the remuneration paid for the assets must correspond to the full fair market value and may not fall below the tax residual value of the sold assets (net book value). The total period for

the accounting year of both companies during which the Business Merger is executed may not exceed 18 months.

Tax losses carried forward with the buyer may not be utilized for five years following the year in which the business transfer occurred.

2. Share deal

Selling costs	See Section III.2.1. Share deals normally encompass shares held for business reasons. Since a gain on such shares is exempt from corporate income tax, related costs are consequently nondeductible. Indirect tax: See Section I.2.2. The sale of shares is exempt from VAT.
Capital gain taxation	In general, capital gains are subject to a statutory rate of 21.4% corporate income tax. However, capital gains derived from shares in a qualifying subsidiary may be exempt under the participation exemption regime (see Section III.2.1). Conversely, capital losses on shares in a qualifying subsidiary are not deductible for Swedish corporate income tax purposes under the participation exemption regime (see Section III.2.1).

Sale by corporate nonresidents	Acting without a permanent establishment in Sweden: Generally, taxation of capital gains on shares is allocated to the country of residence of the shareholder based on the applicable tax treaty. Acting with a permanent establishment in Sweden: See Capital gain taxation in Section III 2.

2.1 Participation exemption

The Swedish participation exemption provides for a full exemption of all benefits (dividends received and capital gains realized) derived from a qualifying shareholding in a subsidiary. A shareholding generally qualifies for the participation exemption in the following scenarios:

(i) The shares held are not listed.

(ii) The shares are listed, they represent at least 10% of the total number of votes, and they have been held for a period of 12 months or more.

(iii) The shares are held as a result of the holder's own business or the business conducted by another company that is affiliated with the shareholder because of common ownership or organization, and they have been held for a period of 12 months or more.

Shares held for trading purposes (not capital assets) are not considered as qualifying shareholding.

2.2 Share-for-share merger facility

In situations where participation exemption is unavailable, an alternative may be to defer tax through a share-for-share sale facility.

In the event a taxpayer transfers shares to another company in exchange for shares in the acquiring company ("**Share-For-Share Sale**"), the transferring company may defer taxation of any capital gain on the transferred shares. This deferral is subject to specific conditions. One of the main conditions is that the acquiring company must obtain more than 50% of the voting shares in the transferred company and keep that voting ratio during the entire year of the Share-For-Share Sale.

If a corporate taxpayer decides to defer taxation of the capital gains, the gain realized at the time of the Share-For-Share Sale will be paid when the received shares are sold.

For an individual, the tax base in the sold shares is transferred to the new shares and taxation occurs once the new shares are sold.

2.3 Legal merger facility

For Swedish corporate income tax purposes, if a company is merged with another company and ceases to exist, whereby the shareholders in the disappearing company receive shares in the acquiring company, the dissolving company is deemed to have transferred all its assets and liabilities to the acquiring company. The acquiring company will assume assets and liabilities in a tax-neutral way and the merger is thus normally exempt from taxation. Both companies must be qualifying companies under the EU Merger Directive and reside in Sweden or in an EU member state.

Switzerland



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At a glance

Standard corporate income tax rate (%)	Approximately 11 to 23[1]
Local/municipal rates (%) (if any)	N/A[2]
Special tax regimes/tax features available	Patent box regime, as well as a super deduction for R&D expenses
Tax losses carryforward (years)	7
Tax losses carryback	N/A
Tax consolidation regime (for corporate taxation)	N/A

[1] Corporate income tax is levied at the federal, cantonal and communal levels. Therefore, the company's overall tax burden depends considerably on its canton and municipality of residence. The rate mentioned refers to the minimum/maximum corporate income tax rate levied on net profits before tax for federal, cantonal and communal taxes.

[2] This is already included in the general corporate income tax rate. Besides corporate income tax, some cantons may levy special local taxes, such as municipal business tax in Geneva. Besides corporate income tax, at the cantonal and communal level a capital tax is levied on the equity of corporations (i.e., share capital, paid-in capital, legal and other reserves, retained earnings and the portion of the debt exceeding the permitted amount). The rates vary widely depending on the corporation's legal domicile or where its assets are located, ranging between 0.001% (Uri) to 0.525% (Basel-Stadt). Reductions apply for the equity to be allocated to specific asset categories like qualifying participations. Many cantons provide for crediting the cantonal corporate income tax against the capital tax, thus effectively eliminating the latter (which results in a mere minimum tax).

Thin capitalization rules	Yes
Standard withholding tax rate on dividends (%)	35[3]
Standard withholding tax rate on interest (%)	35[4]
Standard withholding tax rate on royalties (%)	N/A
Capital duty (%)	1[5]
Transfer duty (%)	0.15 or 0.3[6]

[3] Dividends from additional paid-in capital (reserves from capital contributions) are exempt from withholding tax.
[4] Only on certain types of interest (e.g., obligations, bonds and loans that qualify as bonds or are secured by Swiss real estate or collective financing schemes).
[5] The duty is due on contributions to the equity (including to the capital reserves) of Swiss companies with a general exemption on the first CHF 1 million of capital paid in (whether in an initial or subsequent contribution); further exemptions are available (such as for restructuring and reorganization transactions, in each case subject to specific requirements).
[6] Due on the transfer (sale or purchase) of securities against consideration, provided that a Swiss securities dealer (as defined in the Swiss Federal Stamp Duty Act) participates as a contracting party or intermediary in the transaction. The ordinary rate is 0.15% of the consideration paid for domestic securities (issued by a Swiss resident) and 0.3% for foreign securities (issued by a non-Swiss resident). Certain exemptions apply with regard to restructuring transactions.

Sale of real estate assets	0 to approximately 3.3[7]
Sale of shares of a real estate company	0 to approximately 3.3[8]
Ruling practice	Yes
Participation exemption	Yes (indirect exemption)
Tax neutrality regime for restructuring operations/reorganizations	Yes
Standard VAT rate (%)	7.7
VAT grouping	Yes

I. Acquiring the investment

1. Acquisition through an asset deal

1.1 Corporate income tax

In an asset deal (with a Swiss company acting as acquirer),[9] a step-up of the acquired assets can be amortized for tax purposes and does not

[7] Depending on the particular canton or municipality where the real estate is situated.

[8] Depending on the particular canton or municipality where the real estate is situated.

[9] The same applies if a foreign entity acts via its Swiss permanent establishment.

require a post-acquisition restructuring. Goodwill acquired in the context of an asset deal can be depreciated, in general, over a period of five years.

The costs of financing an acquisition are also fully tax-deductible. If the financing is provided by an affiliated company or is provided by third parties but guaranteed by a related company, the federal tax regulations on the maximum debt-to-equity ratio(s) must be observed and interest payments must comply with the arm's length standards.[10]

According to the Swiss Federal Tax Administration's capitalization practice, each asset class has to be underpinned by a specific equity portion, e.g., the maximum borrowing ratio is not expressed as a general percentage between debt and equity, but different maximum borrowing ratios are allowed for different classes of assets.[11] As a rule, and although this depends on the balance sheet structure, the minimum equity of a Swiss company should amount to an aggregate of at least 15-30% of the book or fair market value of the assets.

Interest payments to related parties on any excess amount above the maximum allowable debt as outlined ratio, or that do not comply with the arm's length standard, will be added to the company's taxable income as requalified hidden profit distributions. This results in tax adjustments, in particular at the corporate income tax level, but also at the withholding tax level. Furthermore, the portion of the debt exceeding the permitted amount is treated as so-called hidden equity and will be classified as equity for tax purposes and, therefore, be subject to the cantonal and municipal capital tax.

[10] Circular No. 6 of 6 June 1997 of the Swiss federal tax authorities on thin capitalization rules and annual circular letters on safe haven interest rates for loans between related parties.

[11] For instance, 100% may be borrowed against cash, 85% (with minimum equity of 15%) against current assets, and 80% to 50% (with minimum equity of 20% to 50%) against fixed assets.

If real estate or shares in a real estate company are transferred, the realized capital gain may be subject to either real estate capital gains tax or ordinary corporate income tax (depending on the canton(s) in which the real estate is situated and the canton(s) in which the seller(s) is/are situated).

1.2 VAT

As a rule, all supplies of goods or services carried out by natural persons or legal entities in the course of their business activities are subject to VAT. In a corporate transaction, VAT is due on a sale of assets and liabilities that qualify as a business or as part of a business. Notwithstanding the aforementioned, a group of assets and liabilities composing a single autonomous business unit may be transferred between two Swiss VAT-payers by using a notification procedure instead of invoicing VAT, if both the seller and buyer are VAT subjects (transfer of a going concern (TOGC)).

In real estate transactions, the transfer of real estate, in principle, is exempt from VAT, but may be subject to VAT by way of opt-in (while the notification procedure remains available), except if the buyer intends to use the building for purely private purposes.

Rate	7.7% (standard)
Basis	General rule: sales price
Special rules: transactions between related parties, self-consumption, etc.	The VAT basis for transactions between related parties is the fair market value of the delivery/service.

Date of payment	In general: within 60 days after the end of the VAT reporting period (generally quarterly) In special cases: on a monthly basis or once every six months
Liable person	The supplier of goods/provider of services
Recoverability	Taxpayers subject to VAT may be eligible for a full or partial refund of the input VAT, if they perform activities subject to VAT that qualify for input tax deduction.

1.3 Transfer taxes

In Switzerland, special transfer taxes (not VAT) apply in the following two cases: (i) cantonal transfer tax on the transfer of real estate; and (ii) federal stamp tax on the transfer of securities by a professional securities dealer as an intermediary or party.

Rate for the transfer of real estate	*Real estate transfer tax* The tax is levied on the transfer of Swiss real estate or on the disposal of shares in a real estate company (depending on the particular canton) by the canton in which the real estate is situated. The rates vary between cantons (and in some cases between municipalities) and generally range between 0% and 3.3% of the fair market value of the transferred real estate. Certain cantons have abolished this tax (e.g., Zurich). *Real estate capital gains tax*

	Capital gains from the disposal of real estate are either subject to the ordinary cantonal and communal corporate income tax or to a separate real estate capital gains tax, depending on the canton in which the real estate is situated. The tax rates vary between cantons. Cantons imposing a real estate gains tax generally allow reductions based on the ownership periods, respectively, levy surcharges for short-term gains (i.e., the real estate is sold within the first four or five years).
Rate for the transfer of securities (by professional securities dealers)	The sale or purchase of securities (in particular shares and bonds) for consideration is subject to transfer stamp tax at a rate of 0.15% for domestic securities and 0.3% for foreign securities, if a securities dealer (as defined in the Swiss Federal Stamp Duty Act) is involved, either as a party or as an intermediary.[12]
Basis	Sales price or fair market value of the real estate for the real estate transfer tax; sales price for the transfer stamp tax.
Liable person	Regulary, buyer with regard to the real estate transfer tax; securities dealer with regard to the securities transfer tax

[12] Securities dealers are, among others, banks, actual dealers in securities, or companies that hold securities with a book value of more than CHF 10 million according to their latest balance sheet (prior to the transaction); however, transfer stamp tax only applies to Swiss-domiciled securities dealers.

Tax deductibility for corporate income tax	Deductible for corporate income tax (both real estate transfer tax as well as securities transfer tax)

1.4 Other acquisition costs

Notaries' fees and land register charges	A notarial deed is required for the transfer of real estate. The exact notaries' fees depend on the canton in which the notarial deed is executed and on the purchase price of the disposed real estate. Land register charges are due for changes to the land register and are levied where the real estate is situated. In case of restructurings, the fees are, in general, substantially lower.
Mortgage registration fees	The mortgage registration fees vary between cantons.
Tax deductibility for corporate income tax	Deductible for corporate income tax
Withholding tax obligations on the disposal of real estate located in Switzerland	In case of a real estate transfer, the notaries in some cantons may have to withhold transfer taxes, capital gains taxes, notaries' fees and land register charges from the purchase price.

1.5 Tax credits

Other tax credits	Other tax credits are available in connection with the acquisition of certain classes of assets (assets with regard to renewable

	energy or with regard to research and development, etc.).

1.6 Transfer of tax liabilities

The buyer does not inherit any tax liabilities if a single asset or specifically identified assets are transferred. However, the buyer generally inherits the liabilities of a company, including tax liabilities, if the transfer of certain company's assets is part of a TOGC or a restructuring (mergers, demergers).

2. Acquisition through a share deal

2.1 Corporate income tax

While several considerations exist when negotiating the type of transaction, tax implications are the primary concern of a buyer in a share deal. In a share deal, the purchaser has to consider different tax issues relating to: (i) the assessment of the tax situation (assessment of the tax risks) of the target company; (ii) the possibility of deducting the acquisition costs (especially the interest on the financing debt); and (iii) the withholding tax treatment of dividends received from the target company.

Target companies may be subject to undisclosed or deferred tax liabilities for which no provision or inadequate provisions have been made in the accounts. These tax liabilities may be discovered in the course of a due diligence review and should be considered in the negotiation of the acquisition price.

Furthermore, in order to be covered against unexpected tax liabilities of the target company, it is customary for the purchaser to ask for specific representations and warranties and/or indemnities with respect to taxes (e.g., confirmation that all tax returns have been filed and all taxes are paid or accounted for). More generally, the buyer will seek indemnification

against any tax exposures of the target company, when the cause thereof predates the acquisition date.

From a tax perspective, a share deal is usually less attractive for the purchaser than an asset deal, as it does not allow an increase of the tax basis of the underlying assets acquired ("step-up" along with the possibility of depreciation).[13] Furthermore, the goodwill element contained in the share price cannot be recorded and depreciated. Shares recorded at acquisition price in the purchaser's accounts may be written off only if an impairment has to be accounted for. In this case, the impairment amount is tax-deductible (consequently, any subsequent catch-up of the impairment increases the tax base).

Swiss tax law does not provide for a tax consolidation regime for companies (except for VAT). Therefore, the buyer (if a Swiss company) can set off its financing costs (i.e., the interest on loans obtained to finance the acquisition) only against its own profits and not against income generated at the target company level.

Furthermore, if the purchaser benefits from participation relief on dividend income (e.g., in the case of a holding company or based on benefits from participation exemption on dividend income), the deduction of financing costs may not be effective, from a tax point of view.

For this reason, the purchaser may consider a merger of the target entity into the acquiring company. The Swiss tax authorities will, however, usually refuse to accept the deduction of financing costs, arguing that such a merger constitutes a tax avoidance scheme (at least if the merger is

[13] In contrast, a private individual seller will usually prefer a share deal. An asset deal is less attractive to a private individual seller as it triggers tax consequences on two levels (first, at the level of the selling company and second, at the shareholder's level upon the distribution of the gains realized on the asset sale by the company), even if the shareholder may benefit from a partial dividend taxation.

carried out within a period of five years as of the acquisition date). They consider the restructuring as a debt push-down, essentially motivated by tax reasons (i.e., to obtain a tax deduction of the financing costs).

To perform a debt push-down, the following approaches may be considered under certain circumstances (subject, especially, to restrictions on tax avoidance, and except for potential indirect partial liquidation issues if the target company was acquired from an individual):[14]

- merger of the target entity and the acquiring company (see, however, the Swiss tax authorities' practice mentioned above)
- sale of a subsidiary or other assets to the target company against debt
- equity-to-debt swap with respect to dividends/capital decrease not distributed in cash (limited by the amount of distributable reserves according to the statutory financial statements)
- asset push-up from target entity to acquiring company

If shares in a real estate company are disposed of, the capital gain is subject to either real estate capital gains tax or ordinary corporate income tax (depending on the canton(s) in which the real estate is situated). In this

[14] In case of an individual holding the shares of the target as private assets, the seller will most likely insist on a share deal (and not an asset deal) as this is significantly more favorable for them. A share deal enables the seller to realize a tax-exempt capital gain (and no taxation on company level). In contrast, in case of an asset deal, taxation is triggered at two levels: first, at the level of the selling company; and, second, at the shareholder's level upon the distribution of the gains realized on the asset sale by the company (even if the shareholder may benefit from a partial dividend taxation). A subsequent merger of the target into the acquiring company or similar measure may trigger a retroactive taxation of the shareholder similar to the taxes triggered by an asset deal (so-called indirect partial liquidation).

case, no capital gains taxation relief may be available, except in case of treaty protection.

2.2 VAT and transfer tax

As a rule, the transfer of shares is exempt from VAT.[15] The transfer of shares is not subject to any special transfer tax except for the transfer stamp tax, which is owed if a professional securities dealer is involved in the transaction as party or intermediary.[16]

Rate of the transfer tax (when shares are transferred or acquired by a Swiss securities dealer or if a Swiss securities dealer is involved in the transaction as an intermediary)	0.15% for domestic shares and 0.3% for foreign shares (no tax due if a participation of at least 20% is transferred between group companies)
Basis	Share price

2.3 Tax losses' preservation

In principle, a share deal has no impact on the tax losses at the target company's level. However, tax losses may be lost as a result of the transfer of a dormant and economically liquidated Swiss company.

[15] Input VAT related to the share transfer is nonetheless generally deductible for Swiss VAT purposes.

[16] Securities dealers are, among others, banks, actual dealers in securities or companies that hold securities with a book value of more than CHF 10 million as assets according to their latest balance sheet (prior to the acquisition); however, transfer stamp tax applies only to Swiss-resident securities dealers.

2.4 Transfer of tax liabilities

In a share deal, tax liabilities embedded in the acquired company are indirectly transferred to the buyer (e.g., deferred tax liabilities on the difference between the market value of the assets and their corresponding book value under the local statutory generally accepted accounting principles (GAAP,) i.e., tax book value).

With respect to any withholding tax liabilities of the target company, where the refundable withholding tax is increased to a higher rate than before the transaction, the buyer has to consider the so-called "old reserves" practice. The Swiss Federal Tax Authority may deny the reduction of the Swiss withholding tax (35%) on profit distributions to the buyer in accordance with certain anti-abuse rules.

In particular, this applies if there is, upon transfer, distributable substance from a commercial point of view, which is not needed for the acquired company's ongoing operations, and if the applicable withholding tax rate on dividend distributions to the seller (as former shareholder) would have been less favorable than the rate on distributions to the buyer. The (less favorable) rate applicable to the seller as a former shareholder will still apply when the reserves are distributed to the buyer (irrespective of the buyer's more favorable withholding tax rate). However, given plausible commercial or personal reasons for the transaction, the old reserves do not fall under the former regime (i.e., the less favorable withholding tax rate).

If there is such difference in the applicable withholding tax rates, it is usually recommended that the buyer obtains a tax ruling on the amount of old reserves that may not benefit from a more favorable Swiss withholding tax rate under the post-acquisition structure. Alternatively, the tax risk can be managed by negotiating a clause in the share purchase agreement, imposing a contractual obligation on the seller to bear the nonrefundable Swiss withholding tax on old reserves.

3. Financing the investment

3.1 Deductibility of financing expenses

As a rule, interest expenses are fully tax-deductible for Swiss corporate income tax purposes. However, interest payments on loans between related parties are subject to certain limitations such as the thin capitalization rules and the arm's length principle.

Thin capitalization rules	The Swiss tax practice does not state the maximum borrowing ratio as a general percentage between debt and equity, but provides for different maximum borrowing ratios to specific classes of assets. In case of loans or other financing forms between related parties, the borrowing Swiss company should dispose of the following minimum equity:[17] • 20%-30% of real property • 50% of fixed assets • 30% of long-term investments in other companies • 30% of intangible assets • 15% of current assets (inventory and debts) • 0% on cash and liquidities

[17] Figures or percentages based on the fair market value of assets.

Arm's length principle	The arm's length principle should be respected whenever the lender and the borrower are considered related parties for Swiss tax purposes.[18]

3.2 Withholding tax on interest

There is generally no withholding tax on interest paid by corporations or individuals to Swiss or foreign parties, except in the following limited cases:

- The loan on which interest is paid qualifies as a bond or as collective financing scheme or as a bank deposit.[19]
- The loan on which interest is paid is secured by Swiss real estate.
- Relief from withholding tax on interest may be granted under a tax treaty between Switzerland and the jurisdiction in which the lender is located. Relief from interest withholding tax may also be available under the automatic exchange of information (AEOI).

[18] The Swiss Federal Tax Administration publishes safe haven interest rates annually.
[19] For withholding tax purposes, the notion of bonds is broader than applicable from a financial or securities law point of view. Thus, written acknowledgements of debts issued in series (to more than 10 or 20 third-party lenders (other than banks)) may qualify as bonds, and advances received from more than 100 third-party lenders may qualify as bank deposits for withholding tax purposes.

II. Holding the investment

1. Main tax costs to be considered

Taxable income	Gross income less deductible expenses (e.g., interest expenses, depreciation, taxes) is subject to corporate income tax. Effective combined corporate income tax rates vary between approximately 11% and 23%, depending on the company's legal domicile[20] (including federal, cantonal and communal direct taxes on net profits before taxes).
Depreciation	Depreciations are recognized in respect of tangible fixed assets and intangible fixed assets. Depreciations must comply with accepted accounting practices. The declining balance and the linear methods are permitted. Official guidelines on the depreciation percentages admitted for tax purposes exist, but are not mandatory. Accelerated depreciations can be applied based on cantonal practices or if a significant loss of value occurs. Some cantons oblige the taxpayer to prove the economic depreciation.

[20] If the legal domicile and the effective place of management are in different cantons/municipalities and/or extra-cantonal permanent establishments exist, the overall profit has to be allocated to different cantonal jurisdictions.

Provisions	Provisions are allowed (the tax practice provides for flat percentages) on certain current assets (inventory and receivables) as well as with regard to anticipated future expenses, the cause of which arose in the current business year.
Tax deductibility of provisions or depreciations for the decline in the value of investments in other entities	Provisions or depreciations for a decline in value of investments in subsidiaries are, under certain conditions, fully tax-deductible. The Swiss tax authorities may require tax-effective appreciations if the cause for the depreciation or the provision no longer exists and the subsidiaries have regained value.
Tax grouping	Switzerland does not allow group consolidation for tax purposes (except for VAT); each entity is taxed separately. Furthermore, Swiss companies that hold shares in other Swiss or foreign companies are not allowed to claim a tax credit for taxes paid by their subsidiaries that results in an economic double taxation. Where an intermediary holding company receives dividend income, such income is effectively exempt through a tax reduction mechanism equivalent to an indirect exemption (the mechanism corresponds to a relief) to avoid double or triple economic taxation (participation exemption).

Annual capital tax	A cantonal capital tax (which regularly includes a communal tax) is levied annually on the cantonal and communal levels on the company's net equity (i.e., share capital, paid-in surplus, legal reserves, retained earnings and open reserves), as well as the so-called hidden equity, which are liabilities to related parties that qualify as equity for tax purposes (see thin capitalization rules). The tax rate varies from canton to canton and ranges between 0.001% (Uri) and 0.525% (Basel-Stadt). Reductions apply for the equity to be allocated to specific asset categories, such as qualifying participations. Many cantons provide for crediting the cantonal corporate income tax against the capital tax (in each case, including the communal tax), thus effectively eliminating the latter (which results in a mere minimum tax).
VAT	As a rule, all deliveries of goods or the provision of services carried out by natural persons or legal entities in the course of their business activities are subject to VAT at the general rate of 7.7%. Reduced rates (3.7%, 2.5%) and exemptions may apply.

Other taxes	Municipal business tax: The canton of Geneva levies a specific municipal business tax at a communal level that is calculated mainly as a percentage of turnover (rates vary depending on turnover classes). Real estate taxes: Certain cantons (including certain municipalities) levy an annual immovable property or land tax (*impôt foncier, Grundsteuer*). Generally, the tax is based on the taxable value of the property, that is, without taking into account any debts between related parties or mortgages. The rate varies between 0.05% and 0.2%.

2. Distribution of profits

2.1 General participation exemption

Both on the cantonal and federal corporate income tax level, the general participation exemption may apply to dividends received from substantial participations held in a Swiss or foreign company.

The participation exemption is not granted by a full, direct exemption of dividends, but through an indirect exemption by way of a tax reduction. To qualify for relief on dividend income, the Swiss company must: (i) own at least 10% of the share capital of another company (whether a Swiss or foreign resident); (ii) be entitled to at least 10% of the profits and reserves of such company; or (iii) the participation in such company must have a market value of at least CHF 1 million.

The participation exemption applies regardless of whether the income of the Swiss or foreign entity has been subject to local corporate income tax

and whether such an entity generates its income from an operational or a "passive" business activity.

2.2 Summary

Withholding tax on dividends distributed by a local company to a foreign shareholder	A federal withholding tax is levied on the gross amount of dividend distributions by Swiss companies to a foreign shareholder at a rate of 35%. Most double tax treaties provide for a reduction or elimination of the normal 35% rate on dividends for substantial corporate owners (as defined in the treaties) of the distributing entity.[21] No withholding tax will be levied on dividend payments to EU-domiciled corporate shareholders based on the AEOI agreement, provided that the company owns a minimum participation of 25% and the holding period of at least two years is fulfilled.[22]
Taxation of domestic dividends received by a local company	Pure holding companies are fully exempt from cantonal and communal corporate income taxes. Dividends received by a Swiss company qualify for the participation exemption if

[21] The Swiss tax authorities may, however, deny treaty benefits (i.e., the relief of Swiss withholding tax) if the foreign shareholder is: (i) thin-capitalized (based on Swiss understanding and practice); (ii) possibly does not have sufficient local economic substance; or (iii) acts abusively.

[22] Such relief is also subject to the foreign shareholder: (i) not being thin-capitalized (based on Swiss understanding and practice); (ii) having sufficient local economic substance; and (iii) not acting abusively.

	the underlying shares constitute a qualifying participation (i.e., represent an investment of at least 10% of the share capital or are entitled to at least 10% of the profits and reserves; or the investment has an aggregate market value of at least CHF 1 million). The participation exemption practically eliminates the taxation of dividend income (only subject to possible marginal taxation). The participation exemption is a reduction of the corporate income tax, which is first computed on the company's overall net income (after offsetting against tax losses carried forward) at the standard rate and then reduced in the proportion of the net participation income (including qualifying dividends and capital gains) according to the following formula: Tax relief (%) = net qualifying participation income x 100 ÷ net total income For computing the tax reduction, the net participation income comprises the gross dividends (including, among others, ordinary and extraordinary dividends, constructive dividends (but not stock dividends) and, under certain conditions, liquidation surplus and merger gains) minus: (i) unrecoverable foreign withholding tax; (ii) financing costs related thereto (e.g., interest on loans allocated proportionally); and (iii) 5% of the gross dividend deemed to cover

	administrative expenses for the management of the participations. However, the taxpayer can challenge this 5% lump sum allocation if it can demonstrate that the effective costs were lower (if the administrative costs can be reduced, the tax reduction on the dividend will be higher).

III. Selling the investment

1. Asset deal

The disposition of a domestic target company's assets results in the realization of a taxable capital gain or a tax-deductible loss amounting to the difference between the sales proceeds and the income tax value of the assets and liabilities transferred. This capital gain or loss is part of the profit-and-loss statement of the seller and is subject to tax, together with the ordinary income of the business year concerned, unless the Swiss company benefits from a special tax regime (e.g., a tax holiday). The gain may be offset against tax losses carried forward. Some cantons levy a separate real estate gains tax on the capital gains from the disposal of real estate and shares in a real estate company.

Selling costs	See Section I, "Acquisition through an asset deal."
Capital gain taxation	Net income, that is, gross gain minus deductible expenses (i.e., interest expenses, depreciation, etc.) is subject to corporate income tax. Corporate income tax — approximately 11% to 23%, depending on the canton the company is domiciled in (including federal,

	cantonal and communal direct taxes on net profit before the deduction of the corporate income tax itself). Real estate property: At the federal level – Capital gains are part of the taxable income and are subject to the federal corporate income tax. At the cantonal level – Depending on the canton in which the real estate is situated, the disposal of real estate is either subject to the ordinary cantonal and communal corporate income tax or to a separate real estate capital gains tax. The tax rates vary between cantons. Cantons imposing a real estate gains tax generally allow reductions based on the ownership periods, respectively, and levy surcharges for short-term gains (i.e., real estate is transferred within the first four or five years).
Sale by corporate nonresidents	As long as the nonresident does not act through a permanent establishment in Switzerland, the sale will generally not be subject to corporate income tax in Switzerland.[23] However, VAT may be due. If acting through a permanent establishment in Switzerland — see capital gains taxation in this section.

[23] Sales of Swiss real estate will nonetheless typically trigger corporate income tax and/or real estate capital gains tax.

Assets and liabilities, however, may also be transferred within the scope of an asset TOGC (*Transfert de patrimoine/Vermögensübertragung*) to the acquirer and benefit from the tax-neutral reorganization regime (see Section IV, "Tax regime for restructuring operations").

2. Share deal

A share sale has different tax implications, depending on whether the seller is an individual or a legal entity. Furthermore, for individuals, a distinction is made depending on whether the individual holds the shares in the target company as private or business assets.

As far as the seller is concerned, **capital gains** of **Swiss resident individuals** realized on the sale of **privately held participation rights are, in principle, tax-exempt**.[24] A private individual seller will, therefore, usually prefer a share deal. An asset deal is less attractive to a private individual seller as it triggers tax consequences at two levels (first, at the level of the selling company and second, at the shareholder's level upon the distribution of the gains realized on the asset sale by the company), even if the shareholder may benefit from a partial dividend taxation.

Under the theory of indirect partial liquidation, the Swiss tax authorities can reclassify tax-exempt capital gains, realized by private individuals selling shares as private assets, as taxable dividend income, and subject such income to ordinary income taxation for the seller. In principle, the indirect partial liquidation applies if the buyer refinances the purchase price, fully or partially, using the target company's funds.

[24] Profits from the sale of privately held shares in a real estate company will be subject to special real estate capital gains taxation in certain cantons.

An indirect partial liquidation is assumed if the following conditions are cumulatively met:

- Shares representing at least 20% of the share capital of a target company are sold.
- The seller is a Swiss private individual holding the shares as private assets and sells them to a legal entity established in or outside Switzerland or a private individual purchasing the shares as business assets.
- Within five years after the share deal, the target company distributes reserves that, at the execution of the sale, were distributable from a commercial point of view and that were not needed for its business operations. The following may be deemed a distribution:
    - The target company's reserves (accumulated prior to the acquisition) are distributed as a dividend.
    - The target company is merged with the acquiring company.
    - The target company grants a loan to the acquiring entity whose ability to repay the loan is questionable.
    - The target company guarantees the acquisition debt of the acquiring entity or grants collateral to the acquiring entity, and the enforcement of such collateral appears probable.
- The seller and the buyer cooperate in the distribution of the target company's preexisting reserves. This is deemed the case if the seller knows or should have known that non-business-relevant assets and distributable reserves are used to finance the acquisition and are transferred to the seller as part of the price.

If all of the above conditions are fulfilled, the capital gain realized by the seller will be partially or fully reclassified as taxable dividend income (in an amount equaling the distribution made). Such dividend income will benefit from the partial participation exemption granted at the federal level (40%) and from the respective relief on the cantonal and communal level (percentages vary between cantons).[25]

In order to manage this risk, the seller usually requests the insertion of an appropriate clause in the share purchase agreement imposing an obligation on the buyer to refrain from any act that might constitute an indirect partial liquidation and indemnifying the seller for any taxes payable resulting from a breach of such an obligation by the buyer.

The distribution of ordinary profits generated by the target company after the acquisition does not trigger any negative tax consequences for the seller under the indirect partial liquidation theory.

Capital gains on a sale of shares realized by a **Swiss resident individual holding shares as business assets** are taxable at ordinary income tax rates (subject to 50% relief at federal level and a respective cantonal/communal relief the percentages of which vary from canton to canton).[26]

Capital gains realized by a **Swiss-domiciled company on a disposal of shares** may benefit from the participation exemption on the federal and cantonal/communal level. Recaptured amortizations on the disposed shares do not benefit from the participation exemption and are ordinarily taxed.

[25] In the course of the Swiss corporate tax reform, the participation relief will be limited to 30% at the federal level and to a maximum of 50% at the cantonal level.
[26] *Ibid.*

If the seller or buyer (or an intermediary in the transaction) is a Swiss-resident professional securities dealer, transfer stamp tax may be due on the sale of shares (see Section I, 1.3, "Transfer taxes").

Selling costs	See Section I, "Acquisition through an asset deal."
Taxation of capital gains	Participation exemption: Tax reduction on capital gains realized on the sale of qualifying participations is applicable if the following requirements are met: a) Participation represents at least 10% of the share capital of another company (or grants rights to at least 10% of the profits and reserves of another company). b) The minimum holding period of one year is complied with. Computation of the gain subject to reduction: The tax reduction on capital gains will be calculated in the same way as for the dividend income (tax relief corresponding to the ratio existing between the net capital gains over total net profit).[27] Please note that the capital gains relevant for the calculation of the tax reduction do not necessarily correspond to the effective gains (i.e., the difference between transfer price and book value), but to the difference between the transfer price and the

[27] See comments in Section II.2.3.

	acquisition (investment) costs to allow a recapture of previous depreciations or provisions on participations. Net capital gain is the gross capital gain minus (i) financing costs related thereto (e.g., interest on loans allocated proportionally), and (ii) a 5% lump sum allocation of administration/management costs to the participations. However, the taxpayers can challenge this flat 5% lump sum allocation of administrative costs if they can demonstrate that the effective costs were lower (if the administrative costs can be reduced, the tax reduction on the capital gain will be higher). Finally, the tax relief does not apply to gains caused by a mere accounting revaluation.
Sale by corporate nonresidents	As long as the nonresident does not act through a permanent establishment in Switzerland, the sale will not be subject to corporate income tax. The sale of shares in a real estate company, however, may be subject to real estate capital gains tax in some cantons. A real estate company is a company that exclusively or principally acquires, manages, exploits or sells real estate.[28] If acting through a permanent establishment in Switzerland (to which the participation

[28] Exemptions from Swiss real estate capital gain taxation on the disposal of shares in a real estate company may be available under certain double taxation treaties.

	involved is allocated) – see capital gain taxation in this section.

IV. Tax-neutral regime for restructuring operations

Under the Swiss tax system, a company reorganization can generally be structured tax-neutrally.

Pursuant to this regime, it is possible to accomplish tax-neutral mergers, tax-neutral transfers of businesses, parts of businesses or fixed business assets necessary for exploitation within a Swiss group of companies, tax-neutral demergers of business operations, tax-neutral (cross-border) quasi-mergers and tax-neutral reinvestments of shares.[29] In addition, tax-neutral reorganizations are generally exempt from real estate transfer tax and real estate capital gains tax.

The basic requirements that apply to all types of tax-neutral restructurings differ depending on the type of the transaction. Having said that, the general requirements of a tax-neutral restructuring are as follows:

(i) All business assets and liabilities transferred in the course of a reorganization remain subject to Swiss tax liability.

(ii) The business assets and liabilities are transferred and are accounted for at tax book value.

The requirement of the continuing income tax liability in Switzerland is met for corporate income tax, but not for withholding tax, purposes if the transfer is made to a Swiss permanent establishment of a foreign entity.

[29] Intragroup transfers of businesses or fixed assets necessary for the business, as well as demergers of businesses to subsidiaries, are subject to a retention period of five years.

As long as the combined amount of the reserves of the transferring and of the acquiring company is not reduced in the course of the restructuring, no withholding tax is levied. However, withholding tax will be due when reserves are reduced or are effectively converted into nominal share value or into reserves from capital contributions in the course of the restructuring. Moreover, a cross-border merger always triggers a deemed liquidation for tax purposes if a Swiss company is taken over by a foreign company. However, not every cross-border restructuring leads to a realization of hidden reserves.

As a further requirement, a five-year disposal restriction period applies to certain forms of restructurings. The disposal restriction period implies that during a period of five years after the restructuring, the shares in the entities involved in the restructuring and transferred assets will not be sold; otherwise, the transferred hidden reserves will be taxed. There is no retention obligation for split-ups and spin-offs, whereas restriction periods are to be observed in the event of a business transfer from a sole proprietor to a legal entity, as well as in cases of an intragroup transfer of assets and liabilities, including specific forms of split-offs.

V. Summary

Eligible restructuring operations	**Merger**	Through takeover (absorption merger)
		Through the creation of a new company (triangular merger)
		Upstream/downstream merger

	Demerger	Total demerger
		Partial demerger
		Financial demerger
	Assets and liabilities transfer within a group *(Transfer de patrimoine/konzerninterne Vermögensübertragung)*	Certain assets and liabilities (qualifying as a business unit or as fixed assets necessary for the business activities of the Swiss target company) are transferred to another Swiss entity of the group.
	Share-for-share exchange (quasi-merger)	Exchange of shares in a restructuring transaction whereby a company: (i) exchanges its own shares for shares in a different company, thereby obtaining at least 50% of the voting rights in this company; or (ii) holds the majority of voting rights and acquires a further stake in the company and is compensated with newly issued shares in the acquiring company.
Direct taxation	Merger: A merger does not trigger corporate income tax at the level of the companies involved as long as the entity continues to be liable for tax in Switzerland and the assets and liabilities are	

	transferred at book value (for further details, see Section IV.1, "Principles and requirements"). A so-called emigration merger (i.e., a merger with a foreign company) is tax-neutral to the extent that net assets are allocated to a Swiss permanent establishment of the foreign absorbing company; however, withholding tax is generally due. A refund or reduction of withholding tax may apply, depending on the shareholders' domicile of the absorbed Swiss company and the applicable tax treaty. The tax consequences of a merger for the shareholders depend on whether the shareholders hold the participations as private or business assets. Takeover: In the case of an absorption of a subsidiary, possible merger gains or merger losses must be considered. Merger gains represent taxable income (subject to the participation exemption), whereas merger losses can be deducted only if they constitute **real losses** (and not covered by any hidden reserves; this may often be seen as an abusive use of the losses). Reverse merger: Fundamentally, similar tax principles apply to the takeover of a parent company by a subsidiary. Recapitalization merger: This reorganization form generates taxable income from the investment for the shareholders (constructive dividend), to the extent that the acquiring or acquired company are related entities and one of them has an accumulated deficit not covered by open or hidden

	reserves, and the reserves of the acquiring or acquired company are used to eliminate the accumulated loss of the company in need of restructuring. However, the current practice of the Swiss Federal Tax Administration regarding financial restructurings is not straightforward. It is uncertain as to what extent a restructuring, by way of which the acquiring entity would reduce its negative retained earnings, would fall in the category of financial restructuring mergers. This is highly important, as in case of a financial restructuring, any open or hidden reserves of the acquired entity could be considered distributions in kind to the shareholders (possibly preceded by a realization of hidden reserves) and thus be potentially subject to both withholding and income tax if hidden reserves are realized. Under recent case law, if there are economically reasonable grounds for a merger, the acquiring entity is eligible to carry forward the losses of the acquired company. Demerger: The different types of demergers are subject to identical tax provisions that apply to both symmetrical and asymmetrical demergers. In addition to the general requirements, a demerger is tax-neutral if the double business requirement is met (i.e., both the demerged entity and the entity that acquired a business must carry on a business). Demergers of holding, financing or real estate companies are possible under certain conditions. No disposal restriction period is imposed on a tax-neutral demerger, i.e., the participations in the transferring as well as the acquiring company can

	be disposed of immediately after the demerger. Furthermore, the trade-off of participations on the shareholders' level can be tax-neutral insofar as no increase in nominal value, compensation payments, or — if the participations are held as business assets — no book profits, result from the trade-off. Horizontal demergers (spin-out) by TOGC: An operational business unit or fixed assets necessary for the exploitation to a Swiss subsidiary, which is at least 20% controlled (spin-out), can be structured tax-neutrally; they are, however, subject to a disposal restriction period of five years during which the subsidiary cannot dispose of the acquired assets and liabilities and the parent company cannot sell the shares in the subsidiary. The intragroup transfer of assets and liabilities: Unlike a spin-out, it includes upstream or side stream transfers. In principle, the intragroup transfer of assets and liabilities follows rules similar to those governing a spin-out. Domestic legal entities and cooperatives that, according to the overall picture or the actual circumstances, have been consolidated under the common control of a legal entity or a cooperative, whether by means of majority of votes or by any other means, are considered a corporate group. Within a corporate group, as it is in the case of a spin-out, a going concern, an operational business unit and fixed assets, can be transferred tax-neutrally. A disposal restriction period of five years applies both to the assets transferred as well as to the common control of the Swiss entities involved.

	Participations of at least 20% and of the nominal capital of another legal entity and long-term assets can be transferred tax-neutrally to another Swiss entity provided both entities are directly or indirectly controlled by the same entity. A five-year disposal restriction period applies (as for the transfer of assets and liabilities), which is breached if the transferred participation/asset is directly or indirectly transferred or if the transferring and acquiring entities do not remain within the same group during the retention period. Swiss entities under common control are jointly and severally liable for any additional taxes resulting from the violation of the restriction period. In particular, this has to be considered when performing due diligence in case of a business purchase. A cross-border transfer of assets and liabilities can be conducted tax-neutrally as long as the Swiss permanent establishment remains subject to taxation (however, withholding tax may be triggered). Quasi-mergers: On the level of the companies, there are no particular tax issues, as both legal entities remain in existence and unaltered. For shareholders, however, the quasi-merger constitutes a sales transaction. This means that unlike in a merger, increases in nominal value of shares or reserves from capital contributions, as well as compensation payments, are tax-exempt for individual shareholders holding the participations as private assets (special provisions may apply). Regarding business assets, the trade-off of participations is

	tax-neutral as long as the general requirements applying to tax-neutral restructurings are met.
Indirect taxation	In general, restructuring transactions are subject to VAT, but the VAT obligation can regularly be fulfilled by notification.
Anti-avoidance rules	There are no specific anti-avoidance rules other than the usual regulations applied by the Swiss Federal Tax Administration regarding abusive corporate schemes.
Preservation of tax losses	In mergers, demergers and transfer of businesses, the tax losses of the absorbed or transferring entity may be, subject to certain limitations, transferred to the acquiring entity.[30]
Formal requirements	There are no specific formal tax requirements. However, it is recommended to obtain a confirmation of tax neutrality from the competent tax authority/authorities by way of a tax ruling prior to the restructuring.

[30] As a rule, tax losses may be preserved if the restructuring does not represent a case of tax abuse, which would be the case if the business that caused the loss has not been active prior to the restructuring and is not maintained within the acquiring entity, or if the restructuring is essentially motivated by the desire to preserve tax losses.

Turkey



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At a glance

Corporate income tax rate (%)	20 (it increased to a temporary rate of 22% for fiscal years 2018, 2019 and 2020)
Capital gains tax rate (%)	There is no separate capital gains tax; corporate income tax applies.
Tax losses carryforward (years)	5
Tax losses carryback (years)	N/A
Domestic withholding tax (WHT) rate on dividends (%)	15[1]
Domestic WHT rate on interest (%)	10[2]
Tax consolidation regime	No
Transfer tax rates (%)	N/A
Sale of real estate assets	2[3]
Sale of movable assets	VAT applies

[1] Subject to the provisions of an applicable double tax treaty, the WHT rate may be reduced. Furthermore, a withholding exemption may apply if at the time the income is made available, the conditions for the Turkish participation exemption are met.

[2] Interest on loans paid to financial institutions is subject to 0% WHT.

[3] This is a title deed charge, which should be paid by seller and buyer separately.

Sale of shares of a real estate-oriented company	N/A[4]
Standard VAT rate applicable to real estate (%)	18[5] Reduced rate: 1 or 8
Capital duty (%)	0.04 of the initial capital and further increased amounts of the share capital.[6]
Neutral tax regime for restructuring operations	Yes
Tax consolidation	No

[4] In some recent tax inspections, the inspectors considered the sale of a real estate company's shares an ordinary sale of real estate rather than a share transfer.
[5] The sale of real property by individuals is exempt from VAT in Turkey. VAT does, however, apply to the sale of real estate by corporate entities. According to the Council of Ministers Decision No. 2017/9759, which was published in the Official Gazette on 3 February 2017, for residential construction projects located within the metropolitan municipalities whose construction permit was obtained after 1 January 2017, the VAT that will apply are as follows: (i) 8% if their unit tax value per square meter is between TRY 1,000 and TRY 2,000 (including TRY 2,000) at the date on which their construction permit was obtained; and (ii) 18% if their unit tax value per square meter is over TRY 2,000; (iii) for others, VAT is applied at a rate of 1%. VAT does not apply to the sale of real property held for at least two years by corporate entities not engaged in real estate trading.
[6] About 0.04% of the share capital of a newly established limited liability or joint stock company and, in the case of a capital increase of these companies, 0.04% of the increased amount must be paid to the trade registry.

I. Acquiring the investment

1. Acquisition through an asset deal

1.1 Corporate income tax

In an asset deal, the acquirer can achieve a step-up in basis as the assets will be recognized for tax purposes at the acquisition price.

In the case of an acquisition of all or a substantial portion of the target company's assets, an asset deal may be deemed a "transfer of commercial enterprise" and be subject to registration at the relevant trade registry, as well as to publication in the Trade Registry Gazette. Although the "transfer of a substantial portion" is not clearly defined in the law, the following criteria are taken into consideration by scholars and in case law:

- whether the assets subject to transfer can be deemed a separate business line on its own
- whether the assets transferred are sufficient to ensure the continuity of the activities of an enterprise
- whether the transferor's capacity to operate in that business line is lost or significantly decreases after the transfer

Furthermore, in a decision dated 31 January 2011, the court of appeals[7] took into consideration the following items to determine whether the sale of immovable assets constituted a transfer of a substantial portion of the business: (i) the assets and liabilities of the transferor at the date of the transfer; (ii) the paid capital of the transferor at the date of the transfer; and (iii) the proportion of the transferred items in relation to the entire assets of the company.

[7] Decision No. E. 2010/5030 K. 2011/594 of the Turkish Court of Appeals 17th Civil Circuit (*Yargitay 17. Hukuk Dairesi*) dated 31 January 2011.

The acquirer recognizes the amount by which the acquisition price of the enterprise exceeds its net asset value as a price mark-up, which represents goodwill. Acquired goodwill can be amortized over five years for tax purposes, at the rate of 20% of the acquisition costs per year.

For other business assets, depreciation depends on the nature of the assets and their estimated useful life as determined by Ministry of Finance *communiqués*.

Depreciation of buildings is allowed for tax purposes.

The basis for the amortization of the acquired assets is usually the acquisition price. In a taxable merger under Article 18 of the Corporate Income Tax Law, the acquiring entity books the assets at their transfer value and starts a new amortization term for each asset. Alternatively, for tax-neutral mergers defined under Article 19 of the Corporate Income Tax Law,[8] the amortization term of fixed assets acquired is not renewed.

Acquisition costs express the sum of the payments made for the acquisition or the increase in the value of an economic asset and the related expenses. For immovable assets, acquisition costs include the following expenses, apart from the purchase price: (i) customs duties, transportation and installation expenses for machinery and equipment; and (ii) expenses arising from the purchase and demolition of a building and the adjustment of the land. Taxpayers may either include notary, court, valuation, commission and brokerage expenses, as well as real estate purchase tax and special consumption tax to acquisition costs, or they may record them under general expenses.

[8] See Section III.1.1.

In case of an immovable sale, if the immovable has been held for at least two years, 50% of the gain from the sale may be exempted from corporate income tax if the following conditions are met:

- The sales price is received before the end of the second calendar year following the year in which the sale occurred.
- The portion of the gain benefiting from the exemption is maintained in a special reserve account on the balance sheet for five years.
- The selling company's business is not the trading of real estate.

1.2 Investment facilities

Under Turkish law, there is a renewal fund mechanism that allows for the postponement or transformation to new investments of the income earned through the insurance indemnity arising from the sale of economic assets, subject to amortization, or from the damage of such assets.

The income earned through the disposal of the above-mentioned assets can be reserved in a temporary account for three years if the following conditions are fulfilled:

- The company must keep its books on a balance-sheet basis.
- The board of directors must make a resolution on the use of the renewal fund mechanism.
- The economic asset to be purchased and the economic asset to be reserved must be of the same kind.
- The economic asset subject to renewal fund must be subject to amortization.

- The renewal fund must be used within three years; otherwise, it will be included in the tax basis of the third year. Although the Council of State (*Danistay*) accepts the year following the issuance of the balance sheet as the first year for the purpose of calculation of three years, the Ministry of Finance takes the year when the sales were realized as the first year.

1.3 VAT

As a general rule, all supplies of goods or services are subject to VAT.

Turkish VAT is due if such transactions are deemed to be realized or utilized in Turkey.

In an asset deal, the transfer of the assets is, in principle, subject to VAT at a rate of 18% (depending on the type of asset, reduced VAT rates may apply). VAT does not apply to the sale of real property held for at least two years by corporate entities not engaged in the trading of real estate.

Rate	Standard rate: 18% Reduced rate: 1% or 8% Other certain supplies are exempt from VAT.
Basis	General rule: sales price/full consideration received in exchange for the supply of services.
Filing and payment	Taxation period for VAT is on a monthly basis. VAT is due by the 26th day of the month following the realization of the transaction and has to be paid until the 26th of that month.

Liable person	General rule: the seller. Exception: the buyer in certain cases based on the reverse charge mechanism.
Recoverability	For VAT taxpayers, it is treated as input VAT and can be set off against output VAT. For non-VAT taxpayers, it is deemed a cost.

1.4 Transfer tax

Rate	Title deed charge: 2% (both for buyer and seller).
Basis	Sales price (where the sales price is lower than the tax value determined by the municipality, the tax value is the base).
Date of payment	Prior to registration at the title deed office.
Liable person	Applicable for both buyer and seller separately.
Tax deductibility for corporate income tax	Deductible for corporate income tax (or can be capitalized).

1.5 Other acquisition costs

Publicity tax	N/A
Notary fees	Immaterial
Mortgage registration fees	0.455%
Land registrar fee	See Section 1.4, "Transfer tax"

Stamp duty	For a written contract, stamp duty at the rate of 0.948% applies. If the sale of the real property is exempt from corporate income tax, it is also exempt from stamp duty.[9] Stamp duty applies to contracts signed between individuals without any exemption.[10]
Tax deductibility for corporate income tax	Deductible for corporate income tax
WHT obligation on disposal of real estate located in Turkey	N/A

2. Acquisition through a share deal

2.1 Corporate income tax

As a general rule, the gain earned by a company from the sale of shares is subject to corporate income tax at the standard rate of 20% (it increased to 22% for fiscal years 2018, 2019 and 2020). Under certain circumstances, however, 75% of the gain from the sale of shares is exempt from corporate income tax.

A contract arranged for the sale of Turkish company's shares (which are in the form of a joint stock company, a limited liability company and a partnership limited by shares or investment fund) is exempt from stamp duty.

[9] The stamp duty rate applying to promissory agreements to purchase real estate that are concluded in the official form is reduced to 0%.

[10] The stamp duty rate applying to prepaid real estate sales agreements concluded within the scope of the Law on Protection of Consumers is reduced to 0%.

2.2 VAT

A transfer of shares will be subject to VAT at the rate of 18%. The transfer of the shares in a joint stock company is exempt from VAT if such shares are in the issued form.

The transfer of participatory shares in a limited liability company is subject to VAT if such shares have not been held for two or more years.

2.3 Capital gain taxation

The sale of shares of an entity held by another entity is subject to corporate income tax at the rate of 20% (this increased to 22% for fiscal years 2018, 2019 and 2020) on the gain from the sale. If the shares have been held for at least two years,[11] 75% of the gain from the sale may be exempted from corporate income tax if the following is true:

- The sales price is received before the end of the second calendar year following the year on which the sale occurred.
- The portion of the gain benefiting from the exemption is maintained in a special reserve account on the balance sheet for five years.
- The selling company's business is not the trading of securities.

If the sale of shares is exempt from corporate income tax as mentioned above, the share transfer agreement is also exempt from stamp duty.

If the shares of a joint stock company are issued and held for more than two years, however, the gain is not subject to income tax. This exemption

[11] In some recent tax inspections, inspectors considered the sale of a real estate company's shares an ordinary sale of real estate, rather than a share transfer.

does not apply to the transfer of the participatory shares of limited liability companies.

2.4 Sale by corporate nonresidents

Capital gains derived by nonresident companies from the sale of shares of resident companies are subject to corporate income tax at the rate of 20% (this increased to 22% for fiscal years 2018, 2019 and 2020), save for conflicting provisions in applicable double tax treaties.

2.5 Transfer of tax liabilities

In a share deal, the tax liabilities of the target company in past years are inherited by the acquirer. In general, the statute of limitations under Turkish tax law is five years.

3. Financing the investment

3.1 Deductibility of financing expenses for asset deals

In the case of acquisition of an asset, interest expenses belonging to the incorporation period must be included in the investment costs and amortized together with the asset. On the other hand, interest expenses belonging to the operational period can be amortized either by recording them as expense in the relevant year or by including them in the investment costs.

Furthermore, in the event exchange difference expenses arise from the importation of an asset from abroad or as a result of the valuation of the debt installments relating to this asset, the expenses in question incurred until the end of the accounting period in which the asset was purchased must be included in the asset costs. Expenses incurred after the end of the accounting period in which the asset was purchased may either be recorded as an expense or may be amortized by including them in investment costs.

3.2 Deductibility of financing expenses in share deals

Financing expenses incurred in share deals can be treated as deductible expenses in the determination of the corporate income tax base. However, debt push-down is not allowed.

Thin capitalization rules

A company borrowing from a related party that results in a debt-to-equity ratio exceeding 3:1 is deemed to have "thin capital." Equity at the beginning of the fiscal year is the base for calculating the ratio.

A related party is defined as a shareholder or another person holding — directly or indirectly — at least 10% of the share capital, voting rights or rights to receive dividends of the other party.

50% of the borrowings from a related party bank or a similar credit institution in the business of lending are taken into consideration in the calculation of thin capital.

The following loans are not included in the thin capitalization calculation:

- loans received from third parties under a non-cash guarantee of a shareholder or related parties, which are not treated as related party borrowing
- loans obtained by shareholders or related parties from third-party banks, financial institutions or capital markets, and that are granted to the related parties under the same conditions

Interest payments and foreign exchange losses corresponding to thin capital are considered nondeductible expenses in the determination of the corporate income tax base. Dividend WHT at the rate of 15% is charged on the interest paid by yearend, unless reduced by a double tax treaty.

The arm's length principle

All transactions between related entities should be conducted at an arm's length basis. Therefore, remuneration on a loan between related parties should be at arm's length. If, however, the interest expenses are not at arm's length, the Turkish tax authorities can adjust the reported figures in a tax return and the interest expenses in excess of the arm's length interest expenses will not be tax-deductible and will also qualify as deemed dividend distributions.

The following methods may be used to determine an arm's length price:

- comparable uncontrolled price method
- cost-plus method
- resale price method
- transactional profit methods
    - profit split method
    - transactional net margin method

Taxpayers are allowed to use any one of these methods that they find most appropriate and set the price or value in accordance with that method. If none of these methods result in a determination of an arm's length price or value, any other method that the taxpayer deems appropriate, given the nature of the transaction, may be used, provided that the method selected honors the arm's length principle.

The Turkish tax administration is not legally bound by the official commentary on the OECD Model Tax Convention or the OECD Transfer Pricing Guidelines. OECD guidance, however, is an important source of interpretation to help determine an arm's length price.

3.3 WHT on interest

According to Article 30 of the Corporate Income Tax Code, the loan interest payments of a corporation that is considered a resident in Turkey to a person or entity resident abroad are subject to WHT. The withholding rate changes, depending on the nature of the establishment that grants the concerned loan. This determination is arranged according to the Council of Ministers Decree No. 2009/14593, promulgated in the Official Gazette No. 27130 and dated 3 February 2009.

According to the applicable decree, if a Turkish resident gets a loan from a nonfinancial institution from abroad, 10% WHT will apply to the interest to be paid. This rate will be 0% if the loan is obtained from a financial institution.

3.4 Debt push-down

Debt push-down structures are criticized by Turkish tax authorities based on the argument that the financial expenses in relation to the acquisition of the shares of a target Turkish company cannot be considered as deductible after its merger with the Turkish target company.

II. Holding the investment

1. Main tax costs to be considered

Taxable income	Net income less deductible expenses (i.e., interest expenses, depreciation, etc.) is subject to corporate income tax at a rate of 20%. This increased to 22% for fiscal years 2018, 2019 and 2020. Dividends earned from resident taxpayer companies are exempt from corporate income tax. Dividends earned from

<table>
<tr><td></td><td colspan="3">nonresident taxpayer companies may also be exempt from corporate income tax if certain conditions are fulfilled.</td></tr>
<tr><td>Depreciation</td><td colspan="3">Acquired goodwill in an asset deal is usually amortized for tax purposes at a rate of 20% of the acquisition costs per year. Other business assets are usually depreciated, depending on the nature of the assets and their estimated lifetime.

Depreciation on buildings is allowed for tax purposes (as described in Section 1.1).

Accelerated depreciation (e.g., in one year) is allowed, with a few exemptions (e.g., goodwill).</td></tr>
<tr><td>VAT`</td><td colspan="3">As a general rule, the supply of goods or services carried out by VAT payers or professionals in the course of their business activities is subject to VAT at a general rate of 18%. Reduced rates (8% or 1%) and exemptions may also apply.

Input VAT may be deductible, depending on the activities of the VAT payer.</td></tr>
<tr><td rowspan="2">Other taxes</td><td colspan="3">Real estate tax (annual percentage determined by law) rates for 2020 are as follows:</td></tr>
<tr><td>Type of real estate</td><td>In metropolitan municipalities</td><td>In other places</td></tr>
</table>

	Residences	0.2%	0.1%
	Offices	0.4%	0.2%
	Lands	0.6%	0.3%
	Terrains	0.2%	0.1%

2. Distribution of profits

WHT on dividends distributed by a Turkish corporation	In general, under Turkish law, dividend distributions are subject to dividend WHT at the rate of 15%. Dividends paid to resident taxpayer companies are, however, exempt from WHT. Lower rates may apply if provided for in double tax treaties.
Taxation of (domestic and/or foreign) dividends received by a Turkish corporation	In general, dividends received are subject to Turkish corporate income tax at the rate of 20%. This increased to 22% for fiscal years 2018, 2019 and 2020. However, according to the Corporate Income Tax Law, income earned through: (i) participation in the capital of another resident taxpayer corporation; (ii) dividends arising from founder shares or other share certificates that enable partaking of the profits of another resident taxpayer corporation; and (iii) dividends arising from participation shares of venture capital investment funds or share certificates of

	venture capital investment trusts, are exempt from corporate income tax. Furthermore, a Turkish corporation may deduct from the corporate income tax the WHT that has been paid abroad, due to dividends received from a foreign company.

III. Selling the investment

1. Asset deal

Selling costs	See Section I, "Acquisition through an asset deal." Indirect tax: Reference is made to this in paragraphs 1.3 and 1.4.
Capital gain taxation	Maximum corporate income tax rate: 20%. This increased to 22% for fiscal years 2018, 2019 and 2020. Under certain circumstances, 50% of the gain from a real estate sale may be exempted from corporate income tax. See Section I.1.1. and I.2.3.
Sale by corporate nonresidents	This is not applicable, as nonresident companies can only own real estate property in Turkey under specific laws.

1.1 Business merger facility

Article 20 of the Corporate Income Tax Law provides for a tax-neutral regime for mergers, provided that certain requirements under Article 19 of the Corporate Income Tax Law are met. Under the tax-neutral regime, only

the taxable profit earned by the merged company until the merger date will be subject to corporate income tax at the rate of 22%.

The conditions in order to benefit from tax neutrality are as follows:

- Both companies must have their registered office or headquarters in Turkey.
- Balance sheet values of the merged company must be transferred to the acquiring company as a whole and reflected in its balance sheet.
- The corporate income tax declaration of the merged company prepared for the term before the merger date (i.e., the date on which the board decision on the merger of the merged company is registered before the trade registry) must be submitted to the tax authorities within 30 days as of the date on which the merger was published in the Trade Registry Gazette.
- In the event the merger has been realized between the month in which the fiscal year ends and the submission date of corporate income declarations, a corporate tax declaration relating to the previous fiscal year of the merged company must be submitted together with the above-mentioned corporate tax declaration.
- The acquiring company must undertake before tax authorities that it will pay all tax liabilities of the merged company and that it will also perform its other duties.

Under mergers subject to the tax-neutral regime, the acquiring company may also deduct the losses belonging to the last five years of the merged company from the corporate income tax basis under the following circumstances:

- The losses carried forward for each year are separately shown in the corporate tax declaration.

- Both companies have duly submitted their corporate tax declarations within the last five years.
- The total tax loss to be carried forward does not exceed the equity capital of the merged company at the merger date.
- The acquiring company continues to operate in the field of activity of the merged company for at least five years upon the merger.

Mergers subject to a tax neutral regime are exempt from VAT, stamp duty, title deed charge and banking and insurance transaction tax.

2. Share deal

Selling costs	See Section I, "Acquisition through an asset deal." Indirect tax: Reference is made to paragraph 2.2.
Capital gain taxation	In general, capital gains are subject to corporate income tax at the rate of 20%. This increased to 22% for fiscal years 2018, 2019 and 2020. However, capital gains derived from shares in a qualifying subsidiary may be exempt under the participation exemption regime (see Section III.2.1). Capital losses on shares in a qualifying subsidiary are deductible for Turkish corporate income tax purposes.
Sale by corporate nonresidents	Capital gains derived by nonresident companies from the sale of shares of resident companies are subject to corporate

	income tax at the rate of 20%. This increased to 22% for fiscal years 2018, 2019 and 2020. Provisions of double tax treaties are reserved.

2.1 Participation exemption

According to Article 5-1/b of the Corporate Income Tax Law, dividend income derived by entities participating in foreign joint stock or limited companies' capital is exempt from corporate income tax, provided that the following conditions are satisfied:

- The company that holds participation shares should own at least 10% of the paid-in capital of the foreign subsidiary.
- Participation shares should have been held for at least one year continuously, as of the date on which the income is obtained.
- A subsidiary should have a tax liability similar to the income and corporate income tax amounting to at least 15%, including taxes paid on the income source for dividend distributions, according to the tax laws of the country where the foreign company is established. If the subsidiaries' main field of operation is financing, including financial leasing, insurance services or securities investment, the subsidiary should have a total tax liability similar to income and corporate income tax amounting to at least the corporate income tax rate applied in Turkey.
- Dividend income should be transferred to Turkey until the date when corporate income tax returns must be filed.

Ukraine



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At a glance

Corporate income tax rate (%)	18
Local income tax rate (%)	N/A
Capital gains tax rate (%)	18[1]
Tax losses carryforward (years)	Unlimited
Tax losses carryback (years)	N/A
Domestic withholding tax rate on dividends, interest and royalties (%)	15[2]
Capital duty (%)	N/A
Transfer of tax liabilities to the buyer	N/A
State duty (%)	Land[3] Building[4]

[1] Capital gain is not taxed separately; instead, a positive balance of the relevant transaction is included into the corporate income tax taxable base, which, in turn, is taxed at the standard 18% corporate income tax rate. In contrast, a foreign entity, in the absence of a permanent establishment in Ukraine, is liable for 15% Ukrainian withholding tax with respect to the capital gains derived from the sale of securities, unless an applicable tax treaty provides otherwise. A foreign entity that has a permanent establishment in Ukraine is to be taxed on attributable profit at 18% corporate income tax, unless an applicable tax treaty provides otherwise.
[2] Subject to double tax treaty provisions.
[3] The rate is 1% of the higher of the sale price or state monetary valuation of land, but not less than the statutory tax-exempt income of individuals (circa EUR 1).
[4] The rate is 1% of the higher of the sale price or the assessed value, but not less than the statutory tax-exempt income of individuals (circa EUR 1).

Pension fund duty (%)	Yes[5]
Standard VAT rate (%)	20/7
Tax on securities sale	No, but please see corporate income tax treatment in Section 2.1.1 below.
Neutral tax regime for restructuring operations	Yes
Group relief	No
Tax consolidation	No

I. Acquiring the investments

1. Acquisition through an asset deal

1.1 Corporate income tax

The Tax Code of Ukraine No. 2755-IV, dated 2 December 2010 ("**Tax Code**"), was officially published on 4 December 2010, and came into effect on 1 January 2011, save for, among others, Section III governing corporate income tax. This section became effective on 1 April 2011.

1.1.1 Taxation of resident entities

The basic corporate income tax rate is 18%. The corporate income tax is levied on "profits," that is, earnings before taxes (profit or loss) as adjusted for the tax differences in a given reporting period (according to the Ukrainian National Accounting Standards or International Financial

[5] The rate is 1% of contractual sale price of real estate financed by the purchaser.

Reporting Standards). Corporate income tax payers may opt to make no such adjustments if their annual income does not exceed UAH 40 million (circa EUR 1,330,000), thus, reporting profits based on the appropriate accounting standards only.

As of 1 January 2016, the taxpayers are no longer obliged to pay corporate income tax in advance on a monthly basis. However, payment of corporate income tax in advance is still required upon remittance of dividends.

Under the Tax Code, all reasonable business expenses of the corporate income tax payer are allowed as deductions. However, certain deductions are expressly limited or are prohibited by law:

- Expenses incurred in connection with the acquisition of land plots are neither deductible nor subject to depreciation allowances.
- According to a "transfer pricing" restriction, payments to affiliated nonresident persons, as well as to a foreign counterparty from a low tax jurisdiction, in excess of arm's length are nondeductible.
- According to an "earning stripping" restriction, interest on a nonresident related party's loan is immediately deductible only within the statutory permitted limits.
- According to a "low-tax jurisdiction" deductibility restriction, only 70% of the purchase price is deductible on payments made to (i) a nonresident with a "low tax jurisdiction status" or to (ii) a nonresident with a "tax transparent status," as a seller of the relevant goods or services purchased by a Ukrainian corporate

income tax payer.[6] This restriction does not apply to transactions carried out at the arm's length level.

- From 23 May 2020, a Ukrainian corporate income tax payer should increase its taxable base for corporate income tax purposes by 30% of the price of the goods and services sold to (i) a nonresident with a "low tax jurisdiction status" or to (ii) a nonresident with a "tax transparent status." This rule does not apply to transactions carried out at the arm's length level.
- Expenses on contributions or cost of services, goods or works provided to nonprofit organizations, government-financed organizations, NGOs and political parties, are deductible up to 4% of the prior-year taxable profit.
- Expenses borne in connection with the provision of services and goods, as well as nonrefundable financial aid free of charge to non-corporate income tax payers (save for individuals) are nondeductible.
- The Tax Code considerably restricts the deductibility of royalties. In particular, under the Tax Code, it is not allowed to deduct royalty payments made for the benefit of nonresidents that are:
    - not subject to tax on royalty income in the jurisdictions of their residency
    - nonbeneficial owners of royalties, unless there is confirmation that such owner of royalties gives the actual recipient the right to receive royalties

[6] Such a list of organizational forms of nonresidents with "tax transparent" status, i.e., those who do not pay corporate tax or are not tax residents in the country of registration, is approved by the Cabinet of Ministers of Ukraine.

Moreover, payment of royalties to foreign entities for an item of intellectual property, the original right to which was created in Ukraine, is not allowed as a deduction. Royalties are also nondeductible if paid to Unified Tax payers, taxpayers exempt from corporate income tax or those paying corporate income tax at the rate other than 18%.

Otherwise, royalties paid to nonresident licensors are deductible up to the taxpayer's royalty income and 4% of a Ukrainian licensee's prior-year net income. This restriction on deduction of royalty does not apply if royalties are determined on arm's length terms.

1.1.2 Taxation of foreign entities

The Tax Code establishes the following general principles with respect to the taxation of foreign legal entities:

- Foreign legal entities are taxed in Ukraine on the "net" basis with respect to income derived from their commercial activities undertaken in Ukraine through a permanent establishment.
- Income derived from sources within the territory of Ukraine by foreign entities, other than through permanent establishments in Ukraine, is taxed in Ukraine on the "gross" basis, being subject to withholding tax at the time of the remittance of such income to such foreign entities. Such tax is withheld from the sums remitted, except for the income in the form of the consideration for goods, works and services, which are generally not subject to withholding tax.

The Tax Code provides that a foreign entity is liable for corporate income tax with respect to all Ukrainian-sourced income. The Tax Code provides for a nonexhaustive list of the types of income, which are, per se, deemed to constitute Ukrainian-sourced income, including, among others, interest payments, dividends, royalties, lease payments, proceeds from real estate sales in the territory of Ukraine, capital gains arising from the sale of real

estate rich companies deriving their value from immovable property located in Ukraine, profits from securities transactions, profits from long-term agreements, broker or agency fees, and other kinds of income derived by a foreign entity from its business activity in the territory of Ukraine.

The Tax Code provides for a domestic withholding tax rate of 15% to be withheld from the amount of any Ukrainian-sourced income, if and when the foreign entity's Ukrainian-sourced income is remitted to such foreign entity by a resident taxpayer or by the permanent establishment of another foreign entity, unless an applicable bilateral double tax treaty (DTT) provides relief with respect to such withholding.

Income derived from the sale of a fixed asset by a resident entity (calculated as contract value less the current balance sheet value of an asset) is subject to 18% corporate income tax.

Sale of a fixed asset located in Ukraine and belonging to a foreign entity, generally, and in the absence of a permanent establishment, should be subject to 15% withholding tax, unless an applicable tax treaty provides otherwise.

The cost of land acquisition is neither deductible nor subject to depreciation allowances for corporate income tax purposes. However, upon the further sale of land in question, capital gains, i.e., the positive value of the difference between the sale price and the purchase price, derived in connection with such sale are subject to 18% corporate income tax.

1.2 VAT

The Tax Code is the principal law governing VAT in Ukraine. Under the Tax Code, an entity is subject to mandatory VAT registration in Ukraine, and thus will be charged VAT on its taxable sales, which will be collected if and when, among others, its taxable supplies during the last 12 calendar months exceed UAH 1 million (circa EUR 33,000).

The Tax Code identifies a list of transactions subject to VAT, which include, among others, the supply of goods (or the provision of services) in Ukraine. Transactions that do not constitute VAT taxable events include, among others:

- the issuance, placement and cash sale of securities or exchange for other securities
- the interest or commission element of lease payments under a financial lease agreement
- a pledge of assets as a security under a loan agreement (the sale of the foreclosed assets by the banks or other financial institutions is also exempt provided the value of the foreclosed assets does not exceed the debt so settled)
- the provision of insurance and reinsurance services

The 20% VAT rate applies to the contractual price of goods (services). In any event, the taxable base upon the sale of goods (services) cannot be lower than the purchase price of such goods (services), whereas the taxable base of goods (services) produced by the taxpayer must be calculated at the market price.

Under the Tax Code, domestic taxable sales are subject to 20%, whereas export transactions are subject to 0% VAT. A reduced rate of 7% is applied to the sale and import of medicine and medical devices.

Generally, the 20% VAT rate applies to the sale of fixed assets in Ukraine, including commercial premises. The sale of residential premises is likewise subject to the 20% VAT rate, but only at the stage of the supply from a developer to a first owner, whereas a sale at the secondary market is exempt from VAT.

Input VAT incurred in connection with the acquisition of real estate if apropos of, and incurred in furtherance of, a VAT payer's business is generally recoverable.

The Tax Code does not contain the exemption for the sale of a going concern; that is, the sale of a going concern is subject to VAT. The sale of land plots is not subject to VAT.

Basic VAT information regarding transactions subject to VAT is summarized in the following table:

Asset deal VAT rate	20%
Basis for seller	Price of sale, in certain cases not lower than the market price or price of purchase.
Date of payment	In general, on a monthly basis (within 10 days following the filing of the VAT return, which should be filed within 20 days following the end of the reporting month).
Liable person	The seller
Recoverability	General rules: The VAT borne, in general, can, be deducted from the accrued VAT in each monthly tax form. Under certain conditions, a VAT cash refund is possible.

1.3 Transfer tax

The sale of a real estate asset is subject to mandatory notary certification of relevant sale and purchase agreements. Thus, state duty/notary fees will apply.

Rate	1%
Basis	The higher of the sale price or the assessed value, but not less than the statutory tax-exempt income of individuals (circa EUR 1)
Date of payment	Certification of contract by the notary
Liable person	Seller
Tax deductibility for corporate income tax	Deductible for corporate income tax purposes

1.4 Other acquisition costs

State registration fee	Fixed fee of approximately EUR 7 within five business days (EUR 70 within two business days, EUR 140 within one business day, or EUR 350 within two hours)
Pension fund duty	The duty is 1% of the contractual sale price of real estate financed by the purchaser.

Tax deductibility for corporate income tax	Deductible for corporate income tax purposes

1.5 Tax credits

Reinvestment tax credit	N/A
Exemptions	N/A

1.6 Transfer of tax liabilities

A person may not transfer their tax liability to another taxpayer.

Fiscal authorities do not have the direct power to collect the tax liabilities of a seller of fixed assets (such as VAT liabilities) from the buyer of fixed assets, in the case of nonpayment by the seller.

2. Acquisition through a share deal

2.1 Corporate income tax

2.1.1 General rules

Capital gains derived from the sale of shares are subject to corporate income tax at 18%. Taxpayers must keep separate tax accounting records for the financial results of transactions with securities. The so-called "positive financial result" of the operations with the securities, which was ascertained in accordance with tax accounting rules, increases earnings before taxes. The so-called "negative financial result," realized by a corporate income tax payer as a result of such operations, is generally deductible against the securities' trading income only.

Thus, for reporting purposes, if the overall financial result of the transactions with securities of a taxpayer in a given period is positive, then the excess will be first credited against the losses of a corporate income tax payer from prior periods, while any remaining positive balance would increase earnings subject to 18% corporate income tax. A negative financial result of trading operations is carried forward and is used up against any future securities' trading income.

2.1.2 Goodwill

Under the Tax Code, "goodwill" is defined as an intangible asset, the value of which is ascertained as the difference between the current balance sheet value of assets of an enterprise and its market value as a going concern. Goodwill is neither deductible nor subject to amortization allowances.

2.2 VAT and transfer tax

No VAT is due on the sale of corporate rights for cash consideration or in exchange for other securities.

2.3 Tax credits and other tax benefits

No tax credits are provided under Ukrainian tax legislation.

2.3.1 Tax holidays

N/A

2.4 Tax losses' preservation

Tax losses and liabilities of the target company remain unaffected by the sale of its shares.

2.5 Transfer of tax liabilities

A person may not transfer its tax liability to another taxpayer.

Fiscal authorities do not have direct power to collect the tax liabilities of a seller of fixed assets (such as VAT liabilities) from the buyer of fixed assets, in the case of nonpayment by the seller.

3. Financing the investment

There are two major ways of financing investments in Ukraine: by equity financing and by debt financing.

3.1 Deductibility of financing expenses

3.1.1 Debt financing

Because many projects involve debt financing in the form of shareholder loans, we comment on the tax treatment of such loans.

(i) Principal amount

The principal amount of an interest-bearing loan received from a foreign shareholder is not subject to 18% corporate income tax. The repayment of such principal amount is not tax-deductible for corporate income tax purposes.

(ii) Interest

The most important tax issues with regard to the payment of interest are summarized in the table that follows:

Restrictions on the deductibility of interest	Under the applicable law, interest paid or that has accrued with respect to any "debt obligation" is, for corporate income tax purposes, deductible by a borrower in full, as the borrower's business expense[7] in the

[7] Interest will be deemed a business expense of the borrower if it is paid or accrued in connection with the carrying on by the borrower of a "business activity."

	relevant tax reporting period (quarter) is, however, subject to the following restrictions, as applicable: • the earning stripping restriction • the transfer pricing restriction • the low tax jurisdiction deductibility restriction • business purpose test

a. Earning stripping restriction on interest payments

For a borrower, interest paid or accrued with respect to any "debt obligation" is deductible, in principle, in full for corporate income tax purposes.

An earning stripping restriction would apply if a debt-to-equity ratio exceeds three-and-a-half to one (10 to one for financial institutions and leasing companies). If earning stripping limitations were to apply, the deductibility of interest on a nonresident related party's loan would be limited at 50% of earnings before interest, taxes, depreciation and amortization (EBITDA) in a given reporting tax period. Any portion of the non-expensed interest may be carried forward until it is fully deducted: (1) save for the annual irrecoverable 5% of the non-expensed interest; and (2) subject to the general 50% EBITDA restriction.

Effective from 1 January 2021, the threshold of interest deductibility would (1) be lowered to 30% of EBITDA, (2) apply if a debt-to-equity ratio exceeds three-and-a-half to one, and (3) extend to loans from any nonresident lender regardless of the "relation" status. No earning stripping restriction, however, would apply to financial institutions and leasing companies.

b. Transfer pricing restriction on interest payments

Provided financial thresholds are reached, interest paid under a loan agreement between a Ukrainian entity and a related nonresident party must be on arm's length terms. The same principle would apply to loans from an unrelated nonresident entity, which is registered in a low tax jurisdiction or is "tax transparent."

c. The low tax deductibility restriction on interest payments

An additional limitation on the deductibility of expenses is incurred in connection with purchases of goods or services from (i) a foreign entity with a "low tax jurisdiction" status, or (ii) a foreign "tax transparent" entity incorporated in certain forms.

Such a low tax status is assigned to nonresidents that have been established in one of the countries classified by the Cabinet of Ministers of Ukraine as countries: (a) whose corporate income tax is lower than Ukraine's by five or more percentage points; (b) with whom Ukraine has no agreement on exchange of information; and (c) whose competent authorities do not provide a timely and complete exchange of tax and financial information on request of the State Tax Service of Ukraine.

Such a list of organizational forms of nonresidents with "tax transparent" status, i.e., those who do not pay corporate tax or are not tax residents in the country of registration, is approved by the Cabinet of Ministers of Ukraine.

Pursuant to this restriction, a Ukrainian corporate income taxpayer will be allowed to make 70% of its payments to (i) a nonresident with "low tax jurisdiction status" or to (ii) a nonresident with "tax transparent status," as a seller of the relevant goods or services purchased by a Ukrainian corporate income taxpayer. This restriction does not apply to transactions carried out at the arm's length level.

d. Business purpose test

The Tax Code formally permitted the tax office to probe transactions on the subject of their economic (business) purpose. In enforcement practice, this legal tool lacked efficient application due to the absence of a clear-cut guidance and framework for the application thereof.

Effective as of 23 May 2020, the principle of "reasonable economic purpose (business purpose)" is considerably refined, suggesting its wide employment by the tax office while analyzing transactions. The new approach suggests that transactions with nonresidents should be deemed to lack business purpose if the following apply, among other things:

- The principal or one of the principal purposes of a transaction is found to be tax evasion or underpayment.
- Under comparable conditions, a taxpayer would not be able to purchase/sell the same services/works from/to an unrelated party.

Should the cross-border transaction fail to meet the reasonable economic purpose test, no deduction will be allowed in such a case. Should the transaction purpose be challenged, the burden of proof will rest with the tax office.

e. VAT treatment of interest payments

Under the Tax Code, loan interest payments are exempt from Ukrainian VAT.

f. Thin capitalization rules

There are no thin capitalization rules in Ukraine. Please note that an earning stripping restriction on interest payments may apply.

Although there are no thin capitalization rules under Ukrainian tax law, Ukrainian corporate law establishes certain limitations with respect to a company's minimum level of capitalization (i.e., "net assets" requirements).

3.1.2 Debt push-down

Previously, debt push-down suggested that a foreign parent company granted a shareholder loan to its Ukrainian subsidiary for: (a) different projects, including acquisition of another company or land in Ukraine; or (b) for efficient profit repatriation purposes. This type of financing was especially effective if a parent lender was based in a country with a low corporate income tax rate and if the relevant DTT was favorable to interest on loans. However, effective from 23 May 2020, Ukraine is in a position to deny the application of DTT benefits to transactions where it will be reasonable to conclude that "obtaining the benefit was one of the principal purposes" of the arrangement or transaction.

3.1.3 Equity financing

As a general comment, equity financing is carried out by means of a capital (cash or tangible assets) contribution to the charter capital of a Ukrainian target in exchange for shares (in the case of a joint-stock company) or participatory interest (in the case of a limited liability company).

Equity financing in the form of cash contributions to the charter capital does not generally create any corporate income tax liabilities, either for a founder/shareholder or for a newly founded company/issuer. No VAT is due on the cash contributions to the statutory capital of a company in exchange for securities.

Property contribution to the statutory capital of a company would be treated as a sale transaction for tax purposes. As such, it would be subject to 20% VAT.

The equity financing can be repaid either (1) through a decrease of the charter capital (divestiture) or (2) the sale of a Ukrainian company's shares. Capital contributions by a foreign shareholder into a Ukrainian entity constitute "foreign investment" for Ukrainian law purposes.

Regarding the taxation of distributed dividends, please see Section II.2 "Distribution of profits."

3.2 Withholding tax on interest

Interest directly paid to nonresident companies is subject to a 15% Ukrainian withholding tax that is levied at source, unless a DTT provides otherwise. Depending on the period when a loan was provided to a resident, a full exemption or a reduced 5% rate may apply to interest paid with respect to bonds traded at recognized foreign stock exchanges. Certain government bonds may enjoy withholding tax exemption.

The foreign company will be entitled to claim DTT relief in Ukraine, such as a reduced rate of tax, if it (i) qualifies as a beneficial owner of Ukrainian-sourced interest, and (ii) provides a Ukrainian company with a duly issued and legalized tax residency certificate.

Although the Principal Purpose Test (PPT) — in line with the BEPS Action 6 — was introduced in Ukraine's double tax treaties via the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS as of 1 January 2020, Ukraine resolved to transpose this concept into its domestic legislation.

Effective from 23 May 2020, Ukraine will be in a position to deny the application of DTT benefits to transactions where it will be reasonable to conclude that "obtaining the benefit was one of the principal purposes" of the arrangement or transaction.

3.3 Group taxation

Ukraine does not have group tax relief rules.

II. Holding the investment

1. Main tax costs to be considered

Taxable income	Earnings before taxes (profit or loss) as adjusted for the tax differences in a given reporting period (according to the Ukrainian National Accounting Standards or International Financial Reporting Standards) are subject to corporate income tax at the standard rate of 18%.
Depreciation allowances	Depreciation is allowed in respect of most tangible fixed assets (except land) and intangible fixed assets used by a taxpayer for its business need. Effective from 23 May 2020, depreciation is not deductible for the fixed assets' idle period due to modernization, reconstruction, finishing, further equipment or temporary shutdown. Expenditures on the acquisition (or construction) of a real estate object are not deductible for corporate income tax purposes. Once constructed and commissioned, real estate objects, such as buildings, are generally subject to tax depreciation allowances for a minimum period prescribed by the Tax Code, e.g., a

	building should be depreciated for a minimum of over 20 years. If the accounting standards provide for a longer period of depreciation, they prevail over the period prescribed by the Tax Code. In contrast, if the accounting standards provide for a shorter period of depreciation, the period prescribed by the Tax Code prevails.
VAT	The standard VAT rate is 20%. This rate is applicable, among other transactions, to lease payments. Reduced rates, including zero rate and exemptions, may apply depending on the type of transaction.
Other property taxes	Land tax is imposed on owners and lessees of land at the rate dependent on a set of criteria, including land zoning. For instance, lessees are subject to land tax ranging from 3% to 12% of the monetary valuation of land. Real estate tax rates will be set up by local authorities but will not exceed 1.5% of the minimum monthly salary established as of 1 January of a reporting year for each square meter of the residential or nonresidential property (for 2020 the minimum monthly salary is established at UAH 4,723 or circa EUR 160). Relief for 60 square meters of apartments, 120 square meters of houses and 180 square meters of apartment and house

	taken together, is granted to individual real estate taxpayers. In addition, owners of "luxury" apartment(s) over 300 square meters or house(s) over 500 square meters are subject to an additional fixed real estate tax of UAH 25,000 (approximately EUR 850) per year. Real estate tax with respect to nonresidential property is deductible for corporate income tax purposes.

2. Distribution of profits

Withholding tax on dividends distributed by a local company to a foreign shareholder	In Ukraine, retained earnings are exempt from taxation, whereas distributed profits are taxed at the entity level at the rate of 18%, which is charged on, and in addition to, such distributed profits ("**Advance Tax**"). Therefore, when a Ukrainian company remits dividends to its parent company, the Ukrainian company will be required to pay Advance Tax on the dividend's amount, in addition to remitting the value of the dividends itself. As a rule, Advance Tax is levied on the amount of dividends exceeding taxable profits. In the event a taxpayer has tax arrears, Advance Tax is to be levied on the whole amount of dividends.

	The Ukrainian company in this situation will be permitted to credit the Advance Tax levied on its distributed profits against its corporate income tax liability, as appropriate. It would be critical for the Ukrainian company to generate enough taxable income and, thereby, have enough tax liability against which to offset the Advance Tax. In addition to the Advance Tax, dividends remitted by the Ukrainian company to a foreign parent company will be subject to the 15% Ukrainian withholding tax, unless a foreign parent company will be entitled to the benefits of the DTT.
Taxation of domestic dividends received by a local corporation	Any dividends payable by corporate income tax payers (except for mutual investment funds and other corporate income tax payers, whose income is exempt, limited to such exempt amount) are exempt in the hands of the corporate shareholders.
Taxation of foreign dividends received by a Ukrainian company	The 18% corporate income tax rate is imposed on foreign dividends received by a Ukrainian corporate shareholder. Dividends payable by nonresidents are exempt from corporate income tax provided the shareholding threshold of 10% is reached.

III. Selling the investment

1. Asset deal

Selling costs	See Section I.1.
Capital gains	The standard corporate income tax rate of 18% and VAT of 20% would apply to income derived by the resident company from the sale of fixed assets.
Sale by foreign company	The foreign entity may generally sell real estate assets located in Ukraine either directly to a buyer or through its permanent establishment in Ukraine. In case a foreign entity sells real estate assets directly, Ukrainian withholding tax is charged on capital gains at the rate of 15%, unless a DTT provides otherwise. Where a foreign company sells through its permanent establishment, the capital gains would be taxed with 18% corporate income tax and 20% VAT.
Constructive dividends	Not known earlier in Ukraine, a new concept of "constructive dividends" will be introduced starting 1 January 2021. Effectively, if the value of a transaction with a foreign related entity or nonresident incorporated in a "low-tax" jurisdiction or tax-transparent entity were to be found to be not at arm's length, the difference would be reclassified into

	dividends and taxed accordingly in Ukraine. The same treatment would apply to cash or non-cash payouts by Ukrainian companies to nonresident shareholders in the case of (1) charter capital decrease, (2) shares buyouts, (3) shareholders' withdrawal from the company, (4) other similar transactions that effectively decrease the retained earnings of the Ukrainian company.

2. Share deal

Selling costs	See Section I.2.
Capital gains	General: Capital gains derived by a Ukrainian company are subject to 18% corporate income tax.
Sale by a foreign company	Ukrainian withholding tax is charged on capital gains at the rate of 15% unless a DTT provides otherwise. Previously, Ukraine had no effective legal mechanism to tax capital gains of nonresidents, arising from the sale of real estate rich companies deriving their value from immovable property located in Ukraine. This changed, effective from 1 July 2020, with the introduction of a specific set of rules addressing such a

	transaction. In particular, capital gains from the alienation of shares/participatory interest in a foreign company that directly or indirectly owns a Ukrainian real estate rich company would be subject to taxation in Ukraine, if for any period during the last 365 days: the foreign company's shares/participatory interest derive more than 50% of the value from the capital in the Ukrainian company more than 50% of the value of the Ukrainian company was generated by real estate located in Ukraine The nonresident buyer of the foreign company would be required to register with the Ukrainian tax office and withhold capital gains tax from the nonresident seller at the rate of 15%. The tax base for calculating such a tax will be the positive difference between the sale value and the documented costs of acquiring such an asset borne by the nonresident seller. At the same time, if the nonresident seller fails to provide the nonresident buyer with documents confirming the acquisition costs, the full purchase value would constitute the tax base in such a case.

3. Divesting by a decrease of the charter capital

Effective from 1 January 2021, divesting by a decrease of the charter capital of a Ukrainian company is treated, for Ukrainian tax purposes, as a remittance of constructive dividends, if it leads to the decrease of the retained earnings of the Ukrainian company. Such payout would be reclassified into dividends and taxed accordingly in Ukraine.

4. Special holding regimes

A tax favorable regime is afforded to IJIs (i.e., investment funds and mutual funds).

The main tax benefit of IJIs is that their funds (namely, funds attracted from investors, income generated from transactions involving their assets, and income accrued with their assets) are exempt from corporate income tax.

IV. Tax regime for restructuring operations

Under civil legislation and the Tax Code, there can be several main types of restructuring (reorganization), namely, mergers, acquisitions, split-offs and spin-offs. A company may also incorporate another company, with the contribution of part of its assets into the charter capital of the new company. Detailed information on these restructuring options is below.

1. Mergers

By a merger, Ukrainian legislation means the transaction under which all property rights and the obligations of each of the entities are transferred to the entity, which is created as a result of the merger. This is referred to as an "A + B = C" transaction.

If the reorganization is carried on by way of a merger of one or several taxpayers into one taxpayer, with the liquidation of the taxpayers that

have merged, then the merged taxpayer would inherit all rights and obligations regarding the settlement of tax liabilities or tax debt of all taxpayers that have merged. As regards VAT, the Tax Code provides for the carryforward of input VAT (credit) from the predecessor to the successor entity in the event of a merger. Reorganization by way of merger is not a transaction subject to VAT.

2. Joining

By joining, Ukrainian legislation means the transaction under which all property rights and obligations of the joining entity are transferred to another entity. This is referred to as an "A + B = A" transaction.

The assets and liabilities of a joining entity are fully joined with the assets and liabilities of the successor entity. The balance sheet and tax reporting figures of a joining entity are transferred to the balance and tax reporting of the successor entity and are taken into account for the determination of the corporate income tax base by such a successor.

As regards VAT, the Tax Code provides for a carryforward of input VAT (credit) from the predecessor to the successor entity in the case of a joining. Reorganization by way of joining is not a transaction subject to VAT.

3. Split-offs

By a split-off, Ukrainian legislation means the transaction under which all property rights and obligations of an entity are passed on in their corresponding shares to each of the new entities created as a result of the split-off. This is referred to as an "A = B + C" transaction.

If the reorganization is made by way of a split-off of a taxpayer into two or more entities with the liquidation of such a taxpayer, all taxpayers that will be created after such a reorganization will acquire all rights and liabilities regarding the settlement of tax debts that have arisen before

such reorganization. These liabilities (debts) are divided between the newly created taxpayers in proportion to the parts of the balance sheet value of the assets received by them during the reorganization, in accordance with the dividing balance sheet.

The transfer of tax losses in a split-off transaction for corporate income tax purposes should be possible. For VAT purposes, the divided entity would be able to pass on input VAT (credit) to the surviving successor entity. Reorganization by way of split-off is not a transaction subject to VAT.

4. Spin-offs

By a spin-off, Ukrainian legislation means the transaction under which part of the property of a legal entity is transferred to one or more newly created legal entities. This is referred to as an "A = A + B" transaction.

Generally, the reorganization of a taxpayer by way of a spin-off from the taxpayer of another taxpayer, without the liquidation of a taxpayer that is being reorganized, does not result in the division of tax liabilities (debt) between the divided taxpayer and the entities created in the process of its reorganization. Neither would it result in the establishment of their joint responsibility (apart from certain tax avoidance cases).

As with a split-off, the transfer of tax losses for corporate income tax purposes should be possible. For VAT purposes, the divided entity would be able to pass on input VAT (credit) to the surviving successor entity. Reorganization by way of spin-off is not subject to VAT.

5. Contribution of assets

The contribution of fixed assets to a charter capital of an entity is treated as a sale of assets of the contributing entity for corporate income tax purposes. The acquired fixed assets may be tax-depreciated by an acquiring entity.

Generally, the contribution of fixed assets to a charter capital of an entity (other than certain exempt cases) is subject to 20% VAT.

6. Exchange of shares

Corporate income tax treatment of the exchange of shares is not clearly regulated. For VAT purposes, the exchange of shares (swap) would not likely be subject to VAT.

United Kingdom



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At a glance

Corporate income tax rate (%)	19
Local income tax rate (%)	N/A
Tax losses carryforward (years)	Can be carried forward indefinitely but set-off limited to 50% of profits for losses of more than GBP 5 million
Tax losses carryback (years)	1 for trading losses; no carryback for capital losses
Limitations on transfer of tax losses	Yes
Domestic withholding tax rate on dividends (%)	N/A
Domestic withholding tax rate on interest (%)	20
Capital duty	N/A
Transfer tax rates (%)	
Sale of shares	0.5
Sale of UK real estate	1-15
Standard VAT rate (%)	20
Neutral tax regime for restructuring operations	Yes

Tax consolidation	No, but losses can be surrendered from one group company to another.

I. Acquiring the investment

1. Acquisition through an asset deal

1.1 Corporate income tax

On an acquisition of assets from a third party, the acquisition cost of the asset is treated as the base cost of the asset. Where assets are acquired from another UK tax resident company (or a UK permanent establishment of a company) in the same chargeable gains group (see Section 2.1), the assets will be treated as transferring, for such a consideration as would give rise to neither a gain nor a loss; that is, the transfer will be tax-neutral. Where the assets are acquired from a connected party (but not a UK tax resident company or a UK permanent establishment of a company), the assets will be treated as transferring at the fair market value.

Capital allowances (the tax equivalent of depreciation) can be claimed for certain assets. When a business purchases a capital asset (on which capital allowances are available), it can deduct a proportion of the cost of the asset each year as an expense in the calculation of its taxable profits. The rate of the allowance varies according to the nature of the asset.

The most common types of assets qualifying for capital allowances are plant and machinery. Expenditure on plant and machinery qualifies for capital allowances at 18% on a reducing basis. Expenditure on integral features and long-life assets qualifies for capital allowances at 6% on a reducing basis.

Structures and buildings allowances may be claimed for expenditure incurred on or after 29 October 2018 on the construction, renovation or

conversion of most UK or overseas commercial buildings and structures. These capital allowances are given at a flat rate of 3% a year on qualifying expenditure (for a 33.3-year period).

Under the Intangible Assets Regime, expenditure on intangible fixed assets acquired on a business transfer can be amortized broadly in accordance with the depreciation charge in the company's accounts. However, the amount of expenditure on certain items ("relevant assets") eligible for amortization is capped at the fair value of "qualifying" assets such as patents, registered designs, copyright or design rights in the business being acquired. Relevant assets for these purposes are goodwill, customer-related intangibles, unregistered trademarks and licenses relating to any of these, and amortization relief on them is given at 6.5% per annum but limited to six times the expenditure on the qualifying assets. Companies may opt for an alternative rate of depreciation for tax purposes (4% per annum on a straight-line basis) to ensure that tax depreciation is available for assets that have an indefinite economic life (and which would not otherwise be eligible for depreciation). The Intangible Assets Regime is applicable only to intangible fixed assets acquired from an independent third party, or created, on or after 1 April 2002.

1.2 VAT

UK VAT is charged on a taxable supply of goods or services in the UK. Note that the Isle of Man is part of the UK for VAT purposes.

However, the transfer of all the assets of a business, or a separately identifiable part of a business, can be done as a transfer of a going concern (TOGC) for UK VAT purposes and, therefore, would be outside the scope of UK VAT.

In order for an asset transfer to be treated as a TOGC, the following conditions must be met:

- The assets must be transferred as part of a business as a going concern (attention needs to be paid if the transferring business is in liquidation).
- The transferee must intend to use the assets for carrying on the same kind of business to that carried on by the transferor.
- Where the transferor is VAT-registered, the transferee must also be VAT-registered (or become so as a result of the transfer).
- If the transferor has exercised an option to tax in respect of any property interests transferred, the purchaser must also exercise an option to tax in respect of the same interest(s) by the transfer date.
- If only part of the business is transferred, it must be capable of operating independently from the part not transferred.
- The transfer must not be part of a series of consecutive transfers (i.e., the transferee must not immediately transfer the assets — or some of the assets — to another party).
- There must be no significant break in trade before or immediately after the transfer.

If the above conditions are not met, the VAT liability of each individual asset transferred needs to be determined in order to establish which assets are subject to a standard rate of VAT, a reduced rate of VAT or are exempt from VAT.

Rate	20%
Basis	General rule: Sale price

	Special rule: The UK tax authorities may determine an alternative value if: (a) the price is less than the open market value; (b) the transferor and transferee are connected; and (c) the transferee is not entitled to fully recover VAT.
Date of payment	On a quarterly basis, 30 days after the end of the seller's quarterly VAT accounting period
Liable person	The seller
Recoverability	VAT is fully recoverable, provided the seller carries on a fully taxable business in the UK. Input VAT is credited against output VAT collected by the buyer in the relevant VAT period. The buyer will repay any excess input VAT to the UK tax authorities. If the transfer is a TOGC, the buyer will be entitled to recover any input VAT incurred on costs associated with the transfer, provided the buyer uses the purchased assets for the purpose of making taxable supplies. Input tax incurred on costs of the seller will be treated as an overhead cost of the seller's business.

1.3 Transfer taxes

Instruments transferring shares and marketable securities attract UK stamp duty at 0.5%. The transfer of UK real estate attracts stamp duty land tax (SDLT) at rates of between 1% and 15%.

1.3.1 Stamp duty

Rate	0.5%
Basis	Transfer value
Date of payment	Within 30 days of the date of the document that transfers the beneficial interest in the shares[1]
Liable person	Purchaser

1.3.2 SDLT

Rate	1% to 15% (supplementary 3% rate applies to purchase of additional residential property such as second home or buy-to-let)
Basis	Transfer value (although transfers between connected persons are deemed to take place at fair market value)

[1] This will typically be the date of the execution of the stock transfer form(s).

Date of payment	Within 14 days of the effective date[2]
Liable person	Purchaser

1.4 Other acquisition costs

Land registry fees	GBP 20 to GBP 910

1.5 Transfer of tax liabilities

The tax liabilities associated with a business may be transferred with the other liabilities of the business on an asset sale, if agreed upon between the seller and the buyer. There is no specific mechanism providing that the buyer will become liable for the tax liabilities associated with the business. Therefore, if the tax liabilities are not transferred with the other liabilities, the tax liabilities will remain the responsibility of the seller.

1.6 Tax losses

Where two companies are under common ownership, and there is a transfer of a trade from one company to the other, any tax losses associated with that trade will be transferred automatically across to the transferee company, provided certain conditions are met.

Where the transferor transfers all of its activities to the transferee, any tax losses of the transferor will transfer across to the transferee. Where the transferor transfers only part of its business to the transferee, only the

[2] The effective date is the date of completion of the transfer or, if earlier, the date of substantial performance of the contract. A contract will be regarded as substantially performed if the purchaser takes possession of the land or becomes beneficially entitled to the income from the land.

losses associated with that part of the business will be transferred to the transferee.

The transferee can use the transferred losses:

- against profits arising in the transferred trade if the transferred losses were made in the trade before 1 April 2017
- against its total profits if the transferred losses were made in the trade on or after 1 April 2017 and are of the type that the transferor would have been able to set against its own total profits

Losses will not be transferred on an assets acquisition on a third-party asset deal.

2. Acquisition through a share deal

2.1 Corporation tax

On an acquisition of shares from a third party, the acquisition cost of the shares is treated as the base cost of the shares. Where the shares are acquired from another UK tax resident company (or a UK permanent establishment of a company) in the same chargeable gains group (see definition below), the shares will be treated as transferring, for such a consideration as would give rise to neither a gain nor a loss; that is, the transfer will be tax neutral. Where the shares are acquired from a connected party (but not a UK tax resident company or a UK permanent establishment of a company), the shares will be treated as transferring at the fair market value.

(1) Chargeable gains group

The newly acquired company will be in the same chargeable gains group as the other companies, if it is (a) a 75% subsidiary of the company that

acquired it,[3] and (b) an effective 51% subsidiary of the principal company in the group.[4] The benefit of two companies being in the same chargeable gains group is that (provided both companies are UK tax residents/trading in the UK through a UK permanent establishment) assets can be transferred between the two companies on a tax-neutral basis.

(2) Group relief group

The newly acquired company will be in a group relief group with another company if it is a 75% subsidiary of that company or both companies are direct or indirect 75% subsidiaries of a third company. Where two companies are in the same group relief group, current year trading losses and other current year expenses can be surrendered by the loss-making UK company to the profitable UK company.

(3) Merger

It is not possible to merge two UK companies under UK corporate law other than through an onerous court procedure. Instead, a merger is achieved by the transfer of assets and liabilities from one company to the other, followed by the liquidation or strike-off of the transferor company.

2.2 VAT

The transfer of ownership in existing shares is exempt for UK VAT purposes. Please note that the issue of new shares is outside the scope of UK VAT.

[3] A company will be a 75% subsidiary of another company if that company owns 75% or more of its ordinary share capital.

[4] A company will be an effective 51% subsidiary of the principal company if the principal company is beneficially entitled to more than 50% of the profits available for distribution to equity holders and the principal company would be beneficially entitled to more than 50% of the profits available for distribution to equity holders on a winding up.

Rate	VAT-exempt
Recoverability	The seller will not be entitled to recover input VAT that is directly attributable to the transfer of existing shares.

2.3 Stamp duty

Instruments transferring shares and marketable securities attract UK stamp duty at 0.5%.

2.4 Tax losses

Where there is a major change in the nature or conduct of trade carried on by a company within five years of a change of ownership of the company (beginning not more than three years before the change), any carryforward trading losses of the company are, as at the date of the change of ownership, lost. An eight-year window applies to non-trading losses, such as loan relationship debits.

2.5 Transfer of tax liabilities

Any tax liabilities of the company in which the shares are acquired will remain liabilities of that company.

2.6 Transaction costs

Transaction costs will typically increase the tax base cost in the shares.

3. Financing the investment

3.1 Deductibility of financing expenses

The ability to obtain a tax deduction in respect of interest payments is restricted by the following rules:

Thin capitalization rules	The debtor must not be thinly capitalized. UK law does not specify any debt-to-equity ratio or other guidelines that must be adhered to. Instead, HM Revenue and Customs (HMRC) will review the company's debt to earnings before interest and taxes (EBIT) (or earnings before interest, taxes, and amortization (EBITA)/ earnings before interest, taxes, depreciation and amortization (EBITDA) if more appropriate) ratio and the company's interest cover ratio (interest to EBIT/EBITA/EBITDA) when considering whether or not the company is thinly capitalized.
Arm's length principle	All debt between related parties must be on arm's length terms.
Fixed ratio rule	Limitations on interest deductibility for groups with EUR 2 million or more of net UK interest expense in a 12-month period apply from 1 April 2017. If these rules apply, a company must submit a Corporate Interest Restriction return and must determine its "interest allowance" (the maximum amount of net interest and financing costs the company or group can deduct for the period). This can be determined by applying either the Fixed Ratio Rule or the Group Ratio Rule. The Fixed Ratio Rule limits deductions to 30%

	of EBITDA. The Group Ratio Rule is available for groups that have high levels of external debt for commercial purposes. There is a limited exemption for private finance for certain public infrastructure projects.
Other restrictions on deductibility	Unallowable purpose: The loan must not be entered into for an unallowable purpose; that is, tax avoidance must not be the main purpose of entering into the loan. A targeted anti-avoidance rule applies to the whole of the UK's regime on taxation of corporate debt, enabling HMRC to counteract a loan-related tax advantage arising from relevant avoidance arrangements. The UK's anti-hybrid mismatch rules deny a deduction for interest paid by or to a hybrid entity, or under a hybrid instrument, the receipt of which is not taxable in the payee's hands or which gives rise to a double deduction.

3.2 Withholding tax on interest

Payments of yearly interest to non-UK lenders attract interest withholding tax at 20%. As a rule, "interest" is "yearly interest" if it is intended, or possible, for the loan upon which the interest is payable to extend beyond a period of one year or more. Relief from interest withholding tax may be

available under a double tax treaty between the UK and the jurisdiction in which the lender is located. Relief from interest withholding tax may also be available under the Interest and Royalties Directive, although this is unlikely to continue to be the case when the transition period ends.

II. Holding the investment

1. Main tax costs to be considered

Taxable income	Net income less deductible expenses (i.e., interest expenses, depreciation, etc.) is subject to UK corporate income tax at 19%.
Depreciation	Capital allowances may be available (see Section 1.1, corporate income tax). Expenditure on intangible assets can be amortized if the assets are within the Intangible Assets Regime (see Section 1.1, Corporate income tax)
VAT	As a rule, VAT is charged at 20% on the supply of goods or services in the course of furtherance of a business. Reduced rates (5%/0%) and exemptions may apply.

2. Distribution of profits

Withholding tax on dividends distributed by a UK company to a foreign shareholder	N/A
Taxation of domestic dividends received by a UK company	Dividends received from UK companies will be exempt from UK corporate income tax, provided that the dividend is not caught by anti-avoidance rules.
Taxation of foreign dividends received by a UK company	Dividends received from foreign companies will be exempt from UK corporate income tax, provided that the dividend is not caught by anti-avoidance rules.

III. Selling the investment

1. Asset deal

Selling costs	See Section I, Acquiring the investment
Capital gain taxation	Standard corporate income tax rate is at 19%[5]

[5] From 6 April 2019, any nonresident company that disposes of an interest in UK land, or in a "property-rich" entity, is subject to corporation tax on the gain accruing from 6 April 2019. A "property-rich" entity is one where 75% or more of the entity's value derives from UK land. The nonresident owner must own 25% or more in the entity in order to fall within the rules. An exception applies, subject to certain conditions, for interests held in property for trading purposes.

Sale by corporate nonresidents	Acting without a permanent establishment in the UK: Exempt from UK tax (except for UK real estate, see below) Acting with permanent establishment in the UK: See Capital gain taxation in the next table

2. Share deal

Selling costs	See Section I. 2, Acquisition through a share deal
Capital gain taxation	General: Standard corporate income tax rate is at 19% Where the conditions of the substantial shareholding exemption (SSE) are met, any gain on the disposal of shares will be exempt from corporate income tax. The conditions of the SSE are as follows: • The investing company must have held 10% or more of the ordinary share capital of the investee company for a period of 12 months in the last six years. • The investee company must have been a trading company or the holding company of a trading group or trading subgroup throughout the 12-month period. A company will be a "trading company" if it carries on trading activities and does not

	carry on a substantial amount of non-trading activities. A group will be a "trading group" if it carries on trading activities and does not carry on a substantial amount of non-trading activities. The UK tax authorities interpret "substantial" for these purposes as being more than 20%.
Sale by corporate nonresidents	Acting without a permanent establishment in the UK: Exempt from UK tax (except for UK real estate: see above). Acting with permanent establishment in the UK: See Capital gain taxation above.

IV. Tax regime for restructuring operations

The UK has various statutory provisions that allow for tax-free reorganizations. As set out in Section 2.1 on corporation tax, transfers of assets between UK resident companies in the same group occur on a tax-neutral basis.

On a reorganization involving new shares or debentures (the new holding) being issued by the reorganized company to its shareholders, in respect of and in proportion to their shareholding before the reorganization (the original shares), there is no disposal for chargeable gains purposes. The new holding will be treated as the same asset as the original shares, and no chargeable gain will arise until the new holding is disposed of (and other reliefs may then be available to mitigate or exempt the tax payable).

Group relief from UK stamp duty should be available for transfers of shares between two associated companies. Two companies will be associated where one has control of the other or a third company has control of both the transferor and transferee.

V. Exemption for foreign branch profits

An opt-in exemption applies to profits of foreign branches of UK companies. The foreign branch exemption relieves trading profits, investment income (where the investment income is effectively connected with the branch) and some chargeable gains earned by foreign branches of UK companies from UK corporate income tax, to the extent these profits/income/gains can be attributed to the foreign branch in accordance with the relevant double tax treaty, provided that the treaty contains a nondiscrimination article. If there is no such article in the treaty, the attribution is to be made in line with the 2010 OECD Model Convention.

Companies that opt into the regime do so irrevocably and are not able to claim relief for losses generated by foreign branches. Where a company opts into the regime and has already claimed relief for branch losses, the branch profits will only become exempt when the branch losses in the preceding six years have been matched by branch profits.

For large and medium-sized companies, the regime applies to all foreign branches. However, for small companies, the regime only applies to foreign branches in countries with which the UK has entered into a double tax treaty (provided that the double tax treaty contains a nondiscrimination clause).

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