Strategic Jurisdiction Planning for Share Acquisitions: Enhancing Cross-Border Financing Tax Efficiency

- Background

A global business “Topco” is acquiring a trading company “Tradeco” in a different jurisdiction via the acquisition vehicle “Holdco”. The share acquisition will be financed by debt provided by Topco. The purpose of this exercise is to highlight the potential tax benefits of locating Holdco, and thereby the financing costs, in the same jurisdiction as Tradeco.

Topco	Holdco	Tradeco
Foreign jurisdiction	Same jurisdiction as Tradeco	Same jurisdiction as Holdco

Tradeco's jurisdiction									
	Belgium	**France**	**Germany**	**Italy**	**Netherlands**	**Poland**	**Spain**	**UK**	**China**
Acquisition funding									
Limitations on tax deductibility of Holdco's financing costs (1)									
De minimis	€3 million	€3 million	€3 million	n/a	€1 million	PLN 3 million	€1 million	£2 million	
General limit	30% of EBITDA	30% of EBITDA	30% of EBITDA	30% of EBITDA	20% of EBITDA	30% of EBITDA	30% of EBITDA	30% (or higher for highly geared groups) of EBITDA	No relief for financing costs
Carry forward of restricted interest	Indefinitely	Indefinitely	Indefinitely	5 years	Indefinitely	5 years	Indefinitely	Indefinitely	
Tax relief for acquisition financing - surrender of Holdco's tax losses to Tradeco (2)									
Limit of current year losses of Holdco that can be utilised against Tradeco's profits	No limit	No limit	No limit but requires a formal contract for a "transfer of results" that must last for at least 5 years	First 3 years: no limit After: 80% of taxable income	No limit	Subject to meeting certain conditions it can be treated as a single taxpayer that must last at least 3 years	No limit	No limit	
Limit of Holdco's bought forward losses that can be utilised against Tradeco's profits (3)	70% of profits subject to €1 million de minims	50% of profits subject to €1 million de minims	60% (2024 to 2027: 70%) of profits subject to €1 million de minims	First 3 years: no limit After: 80% of taxable income	50% of profits subject to €1 million de minims	Within five years, up to 50% of the loss yearly subject to PLN 5 million de minimis	Turnover < €20m, 70% of profits Turnover < €60m, 50% of profits Turnover > €60m, 25% of profits subject to €1 million de minims	50% of profits subject to £5 million de minims	No group tax consolidation or relief
Ownership period required	5 years	None	None	None	None	None	None	None	

	Belgium	France	Germany	Italy	Netherlands	Poland	Spain	UK	China
Withholding tax on interest payable by Holdco on the acquisition financing provided by Topco (4)									
Holdco to non-EU Topco	30% or lower/0% as per Double Tax Treaty	No WHT unless to non-cooperative jurisdiction	No WHT unless the debt is secured on German real estate	26% or lower/0% as per Double Tax Treaty	No WHT	20% or lower/0% as per Double Tax Treaty	19% or lower/0% as per Double Tax Treaty	20% or lower/0% as per Double Tax Treaty	10% or lower /0% as per Double Tax Treaty
Profit Extraction									
Tax on dividends received in Holdco (5)									
Holdco receiving dividends from Tradeco	Exempt	99% exempt	95% exempt	95% exempt	Exempt	Exempt	95% exempt	Exempt	Exempt (non-listed companies)
Minimum participation period	1 year	None	None	None	None	2 years	1year	None	1 year
Withholding tax on dividends from Holdco to Topco									
Holdco to non-EU Topco	30% or lower/0% as per Double Tax Treaty	25% or lower/0% as per Double Tax Treaty	25% or lower/0% as per Double Tax Treaty	26% or lower/0% as per Double Tax Treaty	15% or lower/0% as per Double Tax Treaty	19 % or lower/0% as per Double Tax Treaty	19% or lower/0% as per Double Tax Treaty	No WHT	10% or lower/0% as per Double Tax Treaty
Minimum holding period	1 year	None	1 year	1 year	None	2 years	1 year	None	1 year
Exit									
Tax on the gain arising on the disposal of the shares in Tradeco									
Taxable/Exempt	Exempt	88% exempt	95% exempt	95% exempt	Generally exempt	Generally exempt	95% exempt	Exempt	Taxable (tax deferral for qualified group restructuring)
Minimum holding period to qualify for exemption	1 year	2 years	None	1 year	None	2 years	1 year	1 year	n/a

Notes

(1) Generally in most European countries tax relief is available for financing costs, subject to a potential restriction linked to a percentage of EBITDA results and the group worldwide net interest costs. This only applies to net interest costs above a certain de minims threshold. Different countries have different de minims thresholds and percentages.

There are various anti avoidance measures for example:
- The debt does not function as equity.
- Anti hybrid legislation – to counteract cross border mismatches in the tax treatment of financing costs.
- Tax relief on finance costs can be restricted if one of the main purposes for the borrowing is tax avoidance.
- Transfer pricing adjustments for related party debt.

(2) Holdco is acquiring all Tradeco's share capital, and so Tradeco is a 100% subsidiary

(3) Holdco is being set up at the same time that Tradeco acquired (no preacquisition losses in Holdco)

(4) Interest should be arm's length to benefit from reduced/nil withholding tax.

(5) Subject to meeting the relevant tax conditions