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Taxation of cross-border mergers and acquisitions

Austria

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Introduction

The Austrian tax environment for mergers and acquisitions (M&A) changed significantly in 2005, when Austria implemented an attractive new tax group system and reduced its corporate income tax rate to 25 percent. However, several new tax provisions have been implemented during the last years that affect M&As.

This report addresses the most important questions that arise with acquisitions in Austria:

— What should be acquired: the target's shares or its assets?

— What acquisition vehicle should be used?

— How should the acquisition vehicle be financed?

Tax is, of course, only one piece of transaction structuring. Company law governs the legal form of a transaction, and accounting issues are highly relevant when selecting the optimal structure. These areas are outside the scope of this report, but some of the key points that arise when planning an M&A transaction are summarized.

Asset purchase or share purchase

Large acquisitions in Austria usually take the form of a purchase of the shares of a company, rather than of its business and assets, because capital gains on the sale of shares may be exempt for the seller (if the seller is a foreign company and a tax treaty following the Organisation for Economic Co-operation and Development's (OECD) model treaty is applicable). Even though an asset deal usually remains more attractive for the purchaser, the introduction of the tax group system in 2005 has increased the relative attractiveness of share deals for the purchaser. However, the abolition of goodwill depreciation for transactions after 28 February 2014 has made asset deals more attractive once again.

Purchase of assets

The main tax effects of an asset deal consist of a new cost basis of the purchased assets (step-up) for the purchaser, and a capital gain (in the amount by which the purchase price exceeds the cost of the asset) realized by the vendor. According to Austrian tax law, the purchase or transfer of a participation in a partnership qualifies as an asset deal.

An asset deal should provide the buyer with the opportunity to buy only the assets actually desired and to leave unwanted assets, especially unwanted risks, behind. For this reason, an asset deal may be preferable if the target corporation has potential liabilities or, for example, owns real property. However, the real estate transfer tax (RETT) cost should be considered.

Capital gains from the sale of business property are subject to corporate income tax of 25 percent.

Purchase price

The purchase price must be allocated to all identifiable assets of the acquiring operation. Each identifiable asset is accounted for at its fair market value on the basis of which the depreciation or amortization is computed (potential step-up). Any portion of the purchase price that cannot be assigned must be accounted for as goodwill.

Goodwill

Goodwill purchased from a third party must be amortized over a period of 15 years for tax purposes.

Depreciation

Depreciation of other assets charged in the accounts is generally accepted for tax purposes. Austrian tax legislation enables the cost of certain assets to be written off against taxable profits at a specified rate by means of capital allowances. Allowances are available with respect to certain tangible assets (e.g. industrial and agricultural buildings) and intangible assets (except self-created intangible assets).

Before 2016, the annual rate of tax write-off for industrial and agricultural buildings, as well as buildings for banks and insurance companies, was 3 percent on a straight-line basis, provided that a minimum of 80 percent of the building was used for business operations. If less than 80 percent were so used, the depreciation rate decreases to 2 percent for industrial and agricultural buildings and to 2.5 percent for banks and insurance companies.

As of 2016, the annual rate of tax write-off for buildings is basically 2.5 percent on a straight-line basis. For buildings used for residential purposes, the tax write-off amounts to 1.5 percent. In both cases, it is possible to obtain a higher write-off percentage where a corresponding expert report can be provided confirming that the actual useful life is shorter than the legal depreciation period.

Tax attributes

Tax losses are not transferred on an asset acquisition. They remain with the company or are extinguished. However, each identifiable asset has to be accounted for at its fair market value on the basis of which the depreciation is computed. Thus, the buyer has high depreciable amounts, which decrease the taxable base in the future. Any portion of the purchase price that cannot be assigned must be accounted for as goodwill. Goodwill purchased from a third party has to be amortized over a period of 15 years for tax purposes. A special regime applies for RETT levied on reorganizations.

Value added tax

Austria levies valued added tax (VAT) at a rate of 20 percent. For the transfer of certain assets, a reduced rate of 13 or 10 percent or tax exemptions may be available. For example, the transfer of shares is exempt from VAT. Certain reorganizations covered by the Reorganization Tax Act of 1992 (RTA) are deemed to be non-taxable for VAT purposes.

There are no specific rules for the transfer of a whole business. The VAT base is calculated based on the purchase price plus transferred liabilities, less tax-exempt or non-taxable items.

Transfer taxes

Stamp taxes on certain documents and transactions are levied when there are contracts or documents effecting the transaction from an Austrian stamp tax point of view. As of 2011, loan agreements and credit facilities do not trigger stamp tax. A contract relating to an asset deal as such is generally not subject to stamp tax, but the detailed written documentation regarding the transfer of certain assets and liabilities could trigger stamp tax. The liability for stamp tax can often be avoided by careful structuring of documentation.

Transfers of Austrian land and buildings are subject to RETT. The rate is 3.5 percent plus a 1.1 percent court registration fee.

Purchase of shares

Although the purchase price for shares usually reflects the fair value of the target's net assets (including goodwill), the purchase price has to be accounted for as the acquisition cost of the shares, so it is generally not depreciable.

As mentioned, goodwill depreciation under the group taxation system was abolished for transactions effected after 28 February 2014.

According to the Austrian Income Tax Act and the Austrian Corporate Income Tax Act, the tax treatment of capital gains from the transfer of shares in a corporation depends on the vendor's tax status.

— *Corporations:* Capital gains from the transfer of participations in Austrian corporations are taxable at the level of an Austrian corporate seller. For a foreign seller, treaty protection can often be obtained under an applicable double tax treaty. For participations in foreign corporations, the participation exemption provides for a tax exemption if certain conditions are met.

— *Individuals:* Capital gains from the disposal of shares qualify as taxable income. The tax rate is increased from to 27.5 percent (from 25 percent) but there is the possibility to apply for the regular tax rate (from 0 to 55 percent).

Tax indemnities and warranties

In a share acquisition, the purchaser is taking over the target company together with all related liabilities, including contingent liabilities. The purchaser, therefore, normally requires more extensive indemnities and warranties than in the case of an asset acquisition.

Where significant sums are at issue, it is customary for the purchaser to initiate a due diligence exercise, which would normally incorporate a review of the target's tax affairs. However, there are also transactions where the principle of caveat emptor (let the buyer beware) applies, and where warranties and indemnities would not be given.

Tax losses

Tax losses of the target company, in principle, transfer along with the company. A company's brought forward income-type losses (e.g. trading losses) cannot be offset against the profits of other companies through group relief, but they can be set off against the company's own future profits. The Austrian legislation provides a further restriction on the use of brought forward tax losses; their use can be partly or entirely denied by the tax authorities.

Loss carry forwards cannot be offset against future profits after an ownership change, if the so-called *Mantelkauf* provision applies. According to the regulation as set out in the Austrian Corporate Income Tax Act, the use of tax loss carry

forwards by an Austrian company is denied if, from an overall point of view, the company is considered to have lost its identity. This is assumed in the case of:

— a substantial change in the economic and organizational structure

— a substantial change in the ownership of the company concerned.

This limitation does not apply if the changes mentioned earlier take place in the course of a reorganization that aims to maintain a workplace.

Note also that losses carried forward can only be deducted against a maximum of 75 percent of current taxable income. Specific rules may apply within a tax group. Tax losses can be carried forward without time limitation ('evergreen losses').

Crystallization of tax charges

The purchaser should obtain an appropriate indemnity from the seller that tax charges have been fully paid.

Transfer taxes

No stamp duty applies for the purchase of shares in an Austrian company.

The acquisition of 95 percent or more of all shares in a company ('pooling of shares') owning Austrian real estate is subject to RETT at a rate of 0.5 percent of the specific real estate value for RETT purposes (*Grundstückswert*) as of 2016. Shares held within a tax group are accumulated for RETT purposes.

Before 2016, RETT of 3.5 percent was based on three times of a specific tax value (*Einheitswert*) and RETT was only applied if 100 percent of the shares in an Austrian company were acquired. RETT can often be avoided by careful structuring.

Choice of acquisition vehicle

There are several potential acquisition vehicles available to a foreign purchaser, and tax factors often influence the choice. Capital tax on the introduction of new capital was abolished for 2016 and later years.

Local holding company

An Austrian holding company is typically used where the purchaser wishes to ensure that tax relief for interest is available to offset the target's taxable profits or the taxable profits of other Austrian companies (or the Austrian permanent establishments of non-Austrian companies) already owned by the purchaser.

In the case of a share deal, the creation of a tax group can decrease the future taxable profit of the member companies.

The holding company can offset a tax-deductible interest (see this report's information on deductibility of interest) against Austrian taxable profits of the target company in the combined post-acquisition group.

If the purchaser is unable to form a tax group (because, for example, it only acquires a minority share), interest is deductible at the holding company level (see deductibility of interest). In the absence of a tax group, interest expense cannot be offset against taxable profit; it merely increases the tax loss carry forwards at the holding level.

For an asset deal, interest and borrowing expenses as well as goodwill depreciation are fully deductible at the level of the Austrian holding company without the creation of a tax group. (However, see deductibility of interest below.)

Foreign parent company

The foreign purchaser may choose to make the acquisition itself, perhaps to shelter its own taxable profits with the financing costs. Dividend taxation and capital gains taxation on exit depend on the residency of the foreign purchaser (the availability of treaty protection, its position with regard to the dividend provisions of the European Union (EU) Parent-Subsidiary Directive, etc.). Thus, any intermediate holding company should have sufficient substance to cover its exposure in the event that a structure is challenged under the substance-over-form principle.

Further, the foreign company should be reviewed to ensure it does not qualify as Alternative Investment Fund, as this could have material adverse tax consequences.

Non-resident intermediate holding company

If the foreign country taxes capital gains and dividends received from overseas, an intermediate holding company resident in another territory could be used to defer this tax and perhaps take advantage of a more favorable tax treaty with Austria. However, the purchaser should be aware that the Austrian authorities take a rather restrictive view on treaty shopping and thus the ability to structure a deal in a way designed solely to obtain tax benefits is restricted.

Local branch

A foreign purchaser may structure the acquisition through an Austrian branch, as an alternative to the direct acquisition of the target's trade and assets. Austria does not impose additional taxes on branch profits remitted to an overseas head office. The branch would be subject to Austrian tax at the normal corporate rate, currently 25 percent. If the Austrian operation is expected to make losses initially, a branch might be advantageous since, subject to the tax treatment applicable in the head office's country, a timing benefit could arise from the ability to consolidate losses with the profits of the head office.

Joint venture

Joint ventures can be either incorporated (with the joint venture partners holding shares in an Austrian company) or unincorporated (usually an Austrian partnership). Partnerships are generally considered to provide greater

flexibility from a tax viewpoint. For example, if the joint venture will incur initial losses, the partners should be able to use their shares of those losses against the profits of their existing Austrian businesses.

In practice, there may be non-tax reasons that lead a purchaser to prefer a corporate joint venture. For example, a corporate body may enable the joint venture partners to limit their liability to the venture (assuming that lenders do not insist on receiving guarantees from the partners). One fairly common structure involves the parties establishing a jointly owned Austrian company that borrows to acquire the Austrian target.

Choice of acquisition funding

A purchaser using an Austrian acquisition vehicle to carry out an acquisition for cash will need to decide whether to fund the vehicle with debt, equity or a hybrid instrument that combines characteristics of both. The principles underlying these approaches are discussed below.

Debt

The principal advantage of debt is the potential tax-deductibility of interest, as the payment of a dividend does not give rise to a tax deduction. As of 2011, however, interest on loans taken out to acquire participations from related companies is no longer deductible for corporate income tax purposes. Further, as of March 2014, interest paid to a group-affiliated corporation is not tax-deductible if the beneficial owner is considered to be low-taxed on the interest income received (see deductibility of interest).

Another potential advantage of debt is the deductibility of expenses, such as guarantee fees or bank fees, in computing trading profits for tax purposes (this is only available in the case of an asset deal; the position of a share deal in connection with a tax group is currently under discussion). These payments will be distributed over the term of the loan or credit. As of 13 June 2014, however, financial expenses on loans taken out to acquire participations are no longer tax-deductible.

Austrian legislation does not include any formal thin capitalization rules. In practice, a loan from an affiliated party is deemed to constitute hidden equity if it is granted to substitute the shareholder's equity. Thus, evidence has to be provided that a supply of equity would clearly not have been necessary at the time the loan was granted and that the loan is not a substitute for the required equity.

Moreover, the companies' capital ratio should be in line with commercial practice. A debt-to-equity ratio of 3:1 or even 4:1 should generally be sufficient, provided there are no unusual circumstances. To avoid a re-classification of the loan into hidden equity, documentation of the arm's length nature of the loan is required.

Deductibility of interest

Interest paid or accrued on debt is generally tax-deductible for the paying corporation, if the arm's length condition is met, the loan is properly documented and the company has a reasonable financing structure.

Interest on debts connected with an asset deal is deductible for tax purposes.

As of 2005, interest deduction has also been granted by law to share deals. As of 2011, in the case of a share deal, interest on loans taken out to acquire participations from related companies is no longer deductible for corporate income tax purposes.

As noted earlier, as of March 2014, interest payments to group-affiliated corporations are no longer tax-deductible if the beneficial owner is considered to be low-taxed on the interest income received. Income interest is considered low-taxed if it is subject to:

— a nominal tax rate below 10 percent

— no taxation at all

— effective taxation below 10 percent due to a special regulation, ruling or tax refund system.

An effective tax rate below 10 percent on interest due to loss compensations or losses carried forward does not trigger the non-deductibility of interest payments.

Payments to affiliated companies have to comply with the arm's length principle to be recognized for tax purposes. Interest payments to related parties may be classified as a hidden dividend to the extent that the consideration is not arm's length or the underlying debt is classified as hidden equity. The tax authorities take a restrictive view of what constitutes an acceptable interest rate.

Withholding tax on debt and methods to reduce or eliminate it

Austria does not levy any withholding tax (WHT) on interest on loans paid to a foreign company.

For non-resident companies, interest income is generally taxable only if the income is attributable to a permanent establishment in Austria. No WHT is levied on intercompany interest payments to non-resident companies.

Austrian tax law includes no thin capitalization rules. Payments of interest to an affiliated company that represent an amount that would not have been payable in the absence of the relationship are not deductible for Austrian tax purposes. In the case of a re-classification into hidden equity, WHT at a rate of 25 percent would be imposed on interest payments under domestic law. This WHT can be reduced or eliminated under a tax treaty or the EU Parent-Subsidiary Directive.

Checklist for debt funding

— The use of bank debt avoids transfer pricing problems and the re-qualification of a loan into hidden equity.

— Consider whether the level of profits would be sufficient to absorb tax relief on interest payments.

— Consider whether a group-affiliated recipient (who also qualifies as the beneficial owner) is subject to taxation of less than 10 percent on interest income (see above).

— A tax deduction may be available at higher rates in other territories.

— No WHT applies on interest payments to non-Austrian entities.

Equity

A purchaser may use equity to fund its acquisition or wish to capitalize the target post-acquisition.

As of 2016, no capital tax is levied on the injection of equity in Austria.

Under domestic law, there is no WHT on dividends paid by an Austrian company to another domestic corporation if the shareholding is at least 10 percent. If the EU Parent-Subsidiary Directive is applicable, no WHT applies on dividends paid to companies resident in the EU. Relief of WHT at source is available under certain conditions. A reduction of dividend WHT may also be available under a tax treaty. Dividends are not deductible for Austrian tax purposes.

While equity offers less flexibility should the parent subsequently wish to recover the funds it has injected, it may be more appropriate to use equity than debt in certain circumstances, such as:

— Where the target is loss-making, it may not be possible to obtain immediate tax relief for interest payments. Thus, the possibility of a re-classification of the loan into hidden equity would apply and the interest payments would be deemed to be dividends.

— Where the company is thinly capitalized, it would be disadvantageous to increase borrowings without also obtaining an injection of fresh equity. A tax-efficient structure normally requires a mix of debt and equity that provides adequate interest cover for Austrian tax purposes.

— There may be non-tax reasons for preferring equity. For example, in certain circumstances, it may be desirable for a company to have a low debt-to-equity ratio. This is one of the factors that have encouraged the use of hybrid funding instruments (see later in this report).

— The use of equity could also be more appropriate where participations are acquired from related companies as interests on loans of these acquisitions are no longer deductible (see deductibility of interest).

A recent change in Austrian tax law restricts the ability to choose whether a dividend distribution shall be treated as equity repayment (not subject to WHT, reduction of tax book value) or profit distribution (basically subject to WHT). Before structuring a transaction, accumulated profits and released equity (both documented in the company's evidency account) should be considered.

Reorganizations

Austrian law includes a variety of special provisions that apply to mergers and acquisitions in areas ranging from corporate law, antitrust law and employment law to environmental law and tax law. Special tax treatment for M&As was introduced in the RTA. Since this law closely links the tax treatment of M&As to the legal structure chosen to effect a merger or acquisition, substantial thought needs to be given to the company law aspects of the proposed structure, as well as to its tax consequences under the RTA. Provided that certain conditions are met, a tax-neutral reorganization is often possible under the RTA.

Hybrids

Consideration may be given to hybrid financing — that is, instruments treated as equity for accounting purposes for one party and as debt (giving rise to tax-deductible interest) for the other. Various hybrid instruments and structures have been devised to achieve an interest deduction for the borrower with no income inclusion for the lender. A new regulation introduced in 2011 limits investments of an Austrian company abroad via hybrid instruments. Specialist advice should be obtained if such financing techniques are contemplated or already in place.

Further, the restriction on interest payments to low-taxed affiliates (see above), effective as of March 2014, should be considered.

Discounted securities

The tax treatment of securities issued at a discount to third parties normally follows the accounting treatment.

Deferred settlement

An acquisition often involves an element of deferred consideration, the amount of which can only be determined at a later date on the basis of the business's post-acquisition performance. As a general rule, the overall purchase price, including discounted estimated earn-out payments, has to be capitalized at the level of the purchaser. According to a court decision, a higher earn-out payment increases the overall purchase price. Otherwise, a lower earn-out payment should decrease the purchase price, but this is currently a gray area. Specialist advice should be sought on whether subsequent changes of the valuation should be treated as profit and loss (P&L) neutral or P&L-effective.

Earn-out clauses should be considered carefully, especially in the context of a reorganization.

Other considerations

Concerns of the seller

The tax position of the seller can be expected to have a significant influence on any transaction. In certain circumstances, the seller may prefer to realize part of the value of their investment as income by means of a pre-sale dividend. The rationale here is that the dividend may be subject to no or only a low effective rate of Austrian tax but reduces the proceeds of sale and thus the gain on the sale. However, the position of the Austrian authorities has become ever more restrictive in this respect (e.g. statements in the CIT guidelines) and should be reviewed carefully.

Company law and accounting

In general, under the earlier mentioned Austrian law, an acquisition can be structured as either a share or an asset purchase. If a share purchase is chosen, significant tax benefits can be achieved by subsequently establishing a tax group. Eventually, it may prove useful to effect further stages of reorganization after the acquisition to achieve a favorable tax result. Company law provides the vehicles needed to reach the most advantageous tax results.

Taxpayers are usually bound by the form they choose for a transaction. However, the government may challenge the tax characterization of the transaction on the grounds that it does not clearly reflect the substance of the transaction. Thus, the way parties choose to structure a transaction may have substantial tax consequences. In any event, it is highly recommended that acquisition structuring issues are discussed in good time and the parties properly record the intended tax treatment of the transaction in the documents associated with the transaction.

Group relief/consolidation

As of 2005, the old system of the Austrian tax unit (*Organschaft*) has been replaced by the new group taxation system enabling the pooling (no consolidation) of tax P&L of Austrian-resident group companies and joint taxation of national and international corporations. It is possible to use the tax losses of foreign subsidiaries directly held by Austrian group companies. However, these losses are, among other things, subject to a clawback at the time the foreign subsidiary earns profits against which the foreign loss carry forward can be offset.

Generally, the following conditions are required for the formation of a tax group:

— a participation of more than 50 percent

— majority of voting rights

— maintenance of the tax group for at least 3 years

— filing of a separate application for group taxation with the competent tax office (a tax unit under the old tax unit scheme will not be automatically replaced by the group taxation system).

Basically, all unlimited taxable corporations in Austria may act either as a parent company or as a group member under the group taxation system. A foreign company subject to limited tax liability in Austria that is comparable to an EU corporation (listed in the appendix of the Austrian Income Tax Act) may act as a parent company or a group member (if it is registered in Austria with a branch and the participation in the corporation can be allocated to the branch).

The participation of over 50 percent in group members may either be held directly or indirectly (via a partnership) or, in addition to a small direct participation, via another group corporation.

It is possible for mere holding companies to act both as group parent or group member. To avoid the risk of a challenge to the grouping, it is advisable for a holding company acting as a group parent to have minimal substance.

Before 2011, interest expenses arising from a leveraged share acquisition in a future group company were automatically deductible against the profits of the target business without the need for any complex restructuring. As of 2011, interest on loans taken out to acquire participations from related companies is no longer deductible for corporate income tax purposes. Further, the restriction on interest to low-taxed affiliates (see above) as of March 2014 should be considered.

P&L of Austrian group members will be pooled, resulting in final tax savings. As Austria does not have the right to tax the profits of foreign group members, only losses of foreign-resident group members need to be assigned to the parent company. This reduces the Austrian tax base, resulting in cash flow benefits for the group (although specific recapture rules should be considered).

However, according to draft legislation, the cross-border deduction of losses generated by foreign companies is limited to 75 percent of the profits earned in Austria. In addition, only foreign companies that are residents in another state with which a tax treaty providing a comprehensive assistance agreement ('major information clause') is in place can be included in an Austrian tax group (currently excluding, e.g. China).

Pre-group carry forwards of unlimited taxable group members may only be offset against the profits of the group company itself, not against profits of other group members, whereas tax loss carry forwards of the group parent can be offset against the group profit.

The general restriction that loss carry forwards can only be set off with 75 percent of future profits (surplus can be carried forward) is only applicable at the level of the parent company. At the level of each group member, pre-group tax loss carry forwards can be matched up to 100 percent with individually generated profits of the specific group member.

An impairment of a group member at the group-parent level during the life of the group will not be tax-effective and cannot be clawed back on termination of the group. In contrast, participations in corporations not included in the tax group are still available for impairment of the participation under the general tax rules.

Transfer pricing

Austrian tax law does not provide for legally specified transfer pricing rules. However, the OECD's transfer pricing guidelines are applied and transfer pricing documentation is reviewed in tax audits as a matter of routine. In 2010, the Austrian tax authorities published Austrian Transfer Pricing Guidelines. Transactions with foreign permanent establishments and foreign-affiliated parties and arrangements between related parties have to comply with the arm's length principle.

Dual residency

There are few advantages to using a dual resident company.

Foreign investments of a local target company

The shareholding of an Austrian corporation in a foreign company might qualify for the holding privilege if the minimum holding of at least 10 percent has been held for at least 1 year. Dividends are tax-exempt unless the switch-over provision (i.e. application of the credit instead of the exemption method for dividends received from low-taxed passive foreign companies) applies. In the year of the purchase of the participation (or the year the company holds a participation of 10 percent or more in the foreign company for the first time), the taxpayer has an irrevocable option to decide whether the participation is treated as tax-neutral or taxable.

If a tax-neutral participation qualifying for the holding privilege is sold, the capital gains are tax-free (capital losses are not tax-effective). Despite this, the Austrian holding privilege provides for a switch-over provision applicable in the case of low-taxed, passive subsidiaries. In this case, the tax exemption would change to a tax credit. Further, dividends are not tax-exempt if they are tax-deductible in the foreign country where the distributing company is resident.

If the option for a taxable participation is chosen, capital gains at the level of a corporation are taxable at the standard rate of 25 percent and capital losses can be claimed for tax purposes over a period of 7 years.

Comparison of asset and share purchases

Advantages of asset purchases

— The purchase price (or a proportion) can be depreciated or amortized for tax purposes.

— Interest payments connected with the acquisition are tax-deductible, provided the loan is not granted by a low-taxed affiliate.

— No undisclosed risks/liabilities of the company are inherited.

— No deferred tax liabilities on retained earnings.

— Possible to acquire only part of a company's business.

— Profitable operations can be absorbed by loss companies in the acquirer's group, thereby effectively gaining the ability to use the losses.

Disadvantages of asset purchases

— Possible need to renegotiate supply, employment and technology agreements, and change stationery.

— Higher capital outlay is usually involved (unless the debts of the business are also assumed).

— Higher tax burden, especially if the vendor is an individual, which may increase the purchase price.

— Accounting profits are reduced by the amortization of acquired goodwill.

— Any loss carry forwards remain with the vendor.

Advantages of share purchases

— Likely to be more attractive to the vendor (lower tax burden, especially for individuals), which can lead to a lower purchase price (compared with an asset deal).

— Tax loss carry forwards of the target company can be used in the future (subject to limitations).

— Existing supply or technology contracts may provide advantages.

— Real estate transfer tax (if land property is acquired) can be avoided under certain conditions.

— Interest deduction available unless a participation is acquired from an affiliated company or loan is granted by a low-taxed affiliate.

Disadvantages of share purchases

— Basically no deduction of the purchase price compared to an asset deal.

— Deferred tax liability at the company level equal to the difference between fair value and tax book value of the net assets.

— Any prior undisclosed risks and liabilities remain with the target company and are acquired by the buyer, so warranties are recommended.

— No deduction of interest where a loan is taken out to acquire participations from related companies or granted by a low-taxed affiliate.

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