

Annex 2
to the Rules of Procedure
for the 4th KPMG Best Tax Law Student Competition
- 2017 -
Tax Case No.2

TAX MEMORANDUM¹

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To: Mr. John Smith
Director
Tribeca Ltd.

From: Petro Petrov
Partner, Tax and Legal

15 March 2016

Re: Ukrainian tax implications of a direct or indirect sale of a Ukrainian subsidiary

Dear Mr. Smith,

Pursuant to engagement contract No.50/2016 dated 5th March 2016, I am pleased to provide tax advice on the Ukrainian tax implications of a contemplated sale of a Ukrainian subsidiary.

FACTS AND ASSUMPTIONS

In this document, tax analysis, conclusions and recommendations are based on the following salient facts and assumptions:

1. Tribeca Holding B.V. is a company incorporated and registered under Dutch law. Tribeca Holding B.V. is a resident of the Netherlands for corporate income tax (“**CIT**”) purposes and purposes of the tax treaties, which the Netherlands is a party to, including the Ukraine-Netherlands Double Tax Treaty (“**the Ukraine-Netherlands DTT**”))².

¹ All personal and corporate names mentioned in this document are fictitious. Any resemblance to real persons or companies, if any, is purely coincidental.

² Convention between the Kingdom of the Netherlands and Ukraine for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Property dated 24 October 1995.

2. Tribeca Ltd. is a company incorporated and registered under the laws of England and Wales. Tribeca Ltd. is a resident of the United Kingdom of Great Britain and Northern Ireland (“**the UK**”) for CIT purposes and purposes of the tax treaties, which the UK is a party to.
3. TOV “Chernomor Real Estate Development” (“**CRED**”) is a limited liability company incorporated and registered under the laws of Ukraine. CRED is a resident of Ukraine for CIT purposes and purposes of the tax treaties, which Ukraine is a party to.
4. Tribeca Holding B.V. is a Dutch special-purpose investment holding company that was set up in 2012 for purposes of investing in Ukrainian commercial real estate. Tribeca Holding B.V. owns all membership interests in CRED. Apart from investments in CRED, Tribeca Holding B.V. does not have any other material assets.
5. The shares of Tribeca Holding B.V. are owned by two UK companies as follows:
 - (i) 90% of the shares are owned by Tribeca Ltd., and
 - (ii) 10% of the shares are owned by Butterfly Ltd, a UK resident company that is affiliated with Tribeca Ltd.
6. CRED is a Ukrainian real estate development company that was set up in 2012 by Tribeca Holding B.V. for purposes of constructing and operating 2 (two) large malls in Kyiv and Odessa, Ukraine. Apart from these 2 (two) Ukrainian real estate projects that are being developed, CRED does not carry on other businesses.
7. Tribeca Ltd. has decided to exit the Ukrainian market and considers selling the Ukrainian business to Amigo LLC, an unrelated US limited liability company that is incorporated and registered under the laws of the State of Delaware, the US (“**the Transaction**”).
8. Tribeca Ltd. considers structuring the Transaction either as a direct sale of the membership interests in CRED by Tribeca Holding B.V., or as an indirect sale of the Ukrainian business by means of selling of all shares in Tribeca Holding B.V. to Amigo LLC.
9. It is likely that Tribeca Holding B.V. would realize a capital gain on the sale of the membership interests in CRED. Likewise, it is possible that Tribeca Ltd. and Butterfly Ltd. would realize a capital gain on the potential sale of the shares in Tribeca Holding B.V.
10. Neither Tribeca Holding B.V. nor Tribeca Ltd./ Butterfly Ltd. has a permanent establishment in Ukraine.

REQUESTED ADVICE

Based on the above facts and assumptions, Tribeca Ltd. requested tax advice on the Ukrainian tax implications of:

- (i) direct sale of the membership interests in CRED by Tribeca Holding B.V., and
- (ii) indirect sale of the Ukrainian business by means of selling of all shares in Tribeca Holding B.V. to Amigo LLC.

EXECUTIVE SUMMARY

[...]

TAX ANALYSIS

[...]

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Should you have any questions in respect of this tax advice, or need assistance in implementing thereof, please feel free to contact me at +38 044 XXX XX XX.

Yours sincerely,

Petro Petrov
Partner, Tax & Legal

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ASSIGNMENT

- 1.1. You are a tax consultant in a large audit and advisory firm. A manager approaches you and asks to complete the “Tax analysis” and “Executive summary” of the tax memorandum based on the listed facts and assumptions.
- 1.2. The “Tax analysis” section shall include the detailed analysis of the requested Ukrainian tax issues as well as your clear conclusions and recommendations to the client on the best approach to sell the Ukrainian business from a Ukrainian tax perspective. The “Tax analysis” section is usually designed for the client’s project (mid-management) team, which is responsible for a successful and tax-efficient sale of the Ukrainian business.
- 1.3. The “Executive summary” section shall include a brief summary of tax analysis, conclusions and recommendations, and shall not exceed 3/4 of a page. The “Executive Summary” is designed for top management of the client, who do not have time to read the entire memorandum. It is advisable to prepare the “Executive summary” after finalizing the “Tax analysis” section.