



Streamlined Structures

A best practice approach to
international deal structuring

Virtual Round Table Series
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Finding the ideal acquisition target that is also a great strategic fit with an existing business, can often seem like an impossible task. This is particularly true if that target is in another country, given the extra difficulty in conducting detailed research and due diligence.

Once these barriers are cleared and the green light is given to acquire, many executives are eager to push through the transaction and gain the benefits of their hard work up to that point. This is where calm, considered professional advice is crucial.

Structuring the physical transaction can seem like a formality, but it is actually highly complex and crucial to future success. Especially across borders.

Legislation can differ substantially depending on the jurisdictions and the types of transactions involved. A share deal, for instance, will usually need to take account of the laws of the country in which the company to be purchased has its seat. If this is a civil law jurisdiction, then any share transfer must be officially notarised before it is legal.

Asset deals are often treated differently, because the purchase may be viewed under local law as a 'going concern'. In such cases buyers may be responsible for existing or ongoing debts and liabilities. If employees are included in the 'asset

value', then strict employment regulations might need to be considered, particularly in some European countries. Asset deals may also require the use of a special purpose vehicle (SPV), and there are further considerations around whether that can be an offshore holding company, or whether it must be located in the same jurisdiction as the assets being purchased.

These legal aspects of deal structuring are closely tied to tax considerations. Often the tax perspectives of buyers and sellers will differ, creating tension around the structuring of any deal. In many jurisdictions, sellers will often find a share deal more tax advantageous, while buyers might prefer to purchase the assets. In some cases, sellers will demand recompense for any extra tax incurred as a result of an inefficient deal. Competent advisors will understand the full implications of this and advise their clients accordingly.

Tax structuring is always complex, but even more so during an acquisition process, when a structure has to take into account the efficiency of the actual transaction and also the new business, on an ongoing basis, following deal closure. Double taxation treaties (DTTs) are important to minimise tax, while an understanding of changes to overarching regulations implemented by bodies such as the Organisation for Economic Cooperation and Development (OECD) is also useful.

All jurisdictions will have different rates of capital gains and corporate tax applicable on purchases, while some will have other taxes such as registration tax. Participation exemptions will apply in some cases, depending on the type of deal, as will incentives in areas such as technology or innovation.

The following feature draws on the expertise of six M&A professionals from important jurisdictions across the world. Each individual has significant experience of closing deals with international clients, and provide their own perspectives on how best to streamline any structures involving their jurisdiction.



The View from IR

Tom Wheeler
Founder

Our Virtual Series publications bring together a number of the network's members to discuss a different practice area-related topic. The participants share their expertise and offer a unique perspective from the jurisdiction they operate in.

This initiative highlights the emphasis we place on collaboration within the IR Global community and the need for effective knowledge sharing.

Each discussion features just one representative per jurisdiction, with the subject matter chosen by the steering committee of the relevant working group. The goal is to provide insight into challenges and opportunities identified by specialist practitioners.

We firmly believe the power of a global network comes from sharing ideas and expertise, enabling our members to better serve their clients' international needs.



INDIA

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Justin specialises in mergers & acquisitions, structured finance, compliance, regulatory and employment law.

He is a member of the Bar Council of Maharashtra and Goa and the Bombay Bar Association. He is also an Advocate on Record at the Supreme Court of India.

His professional and academic qualifications include a BA LLB (Hons) from the National Law School of India and an LLM (Corporate and Financial Law) from the London School of Economics. He is a Solicitor at the High Court in Mumbai.



U.S - MASSACHUSETTS

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Florence specialises in cross-border M&A in the medical device, medtech, biomed, digital health, innovative technologies and dental Industries. She brings 25 years of global experience as an executive in the medical device industry to help mid-market companies achieve their goals.

Born in France and now living in the US, she has true global presence, knowledge and insight. Florence has acted as a Global Vice President and Global Director of Strategic Marketing for a variety of public and private corporations (including private equity-backed), including Draeger Medical, Itamar Medical and Beaver Visitec International.

She has acted as a marketing expert/consultant for corporations such as HP Medical, Tyco Electronics and TRW. Florence has a Double Masters Degree in both Marketing and Finance.



NETHERLANDS

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Shai Kuttner has extensive experience in cross-border mergers & acquisitions, as well as finance and investments transactions. He has close ties with multinational companies in Europe, Israel and the United States.

Shai founded a mid-size international law firm in Amsterdam in 1994, joining forces with Synergy Business Lawyers in 2014. He is now the international practice coordinator at Synergy Business Lawyers and managing partner of the firm's Israeli office.

He studied law at the Hebrew University in Jerusalem and qualified as a lawyer in 1984, working as a lawyer in the United States from 1986 to 1991.

Shai speaks fluent Hebrew and English, and he is a member of the New York Bar Association and the Israeli Bar Association.



ITALY

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Lorenzo Bacciardi heads the Cross Borders Corporate Law Department at Bacciardi and Partners, specialising predominantly in mergers and acquisitions, joint ventures, real estate law, international assignment of employees, strategic international tax planning, law of trusts as well as will and estate planning.

He is particularly experienced in corporate and tax issues related to outbound investments made by Italian clients abroad and to inbound investments made by foreign clients in Italy.

Lorenzo has been a guest speaker in a number of important seminars and conferences both in Italy and overseas, presenting on his areas of expertise. In November 2010, he was elected Chairman of the Eurojuris International Business Group, an office he held until October 2014.

Lorenzo holds a Master of Laws (LL.M.) in International Corporate Transactions and International Taxation from the Temple University James E. Beasley School of Law in Philadelphia, USA.



GERMANY

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Urs is managing partner at AQUAN Rechtsanwälte, forming the business after 15 years of legal practice in Düsseldorf.

He has more than a decade of experience working on complex M&A transactions, and, due to his dual qualification as a German lawyer (Rechtsanwalt) and English Solicitor, he is specialised in cross-border deals. He also has considerable expertise of company and group restructurings, and their tax consequences, as well as in insolvency matters.

Among his domestic and international clients are family-owned businesses, private equity firms, and family offices. He also advises foreign companies on inbound investments into Germany. He became a Certified M&A advisor in Chicago in 2016.

Urs is married and the father of two children. In his spare time, he likes to cook, surf and scuba dive. He plays golf when time allows it, and also visits the opera. Urs is an active member of the WWF (World Wide Fund for Nature).



BELGIUM

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Steven de Schrijver is a partner in the corporate and M&A department of the Belgian law firm Astrea. He has more than 25 years' experience of advising Belgian and multinational companies on mergers and acquisitions, joint ventures, corporate restructuring, private equity and venture capital. Steven has been involved in numerous national and cross-border transactions with a strong focus on the TMT and life sciences sectors.

He also advises on complex commercial agreements and projects dealing with new technologies. His expertise includes e-commerce, software licensing, website development and hosting, privacy law (including GDPR implementation), IT security, technology transfers, IT outsourcing, cloud computing, XaaS, artificial intelligence, drones and robotics

He offers maximum availability and responsiveness while maintaining a personalised and business-orientated approach. He serves a principally international clientele with an outstanding price proposition and the added value of a personalised service. Whatever the issue is, Steven's priority is to provide his clients with pragmatic solutions which enable them to achieve their strategic business goals. His goal is always to provide legible and practical advice.

Steven has been admitted to the Brussels Bar. He holds a law degree from the University of Antwerp (1992) and an LL.M. degree from the University of Virginia School of Law (1993).

What are some of the major legislative differences relating to deal structuring in your jurisdiction, that international clients should be aware of? Any examples

Germany - Urs Breitsprecher (UB) In my opinion, even in a straightforward cross-border deal, it's very important that a buyer consults local counsel. Last year we had an asset deal done under Italian law and the local counsel was clear that the contract stipulated the assets were transferred automatically. We only found out by coincidence when we discussed it over the phone. This is a good example of why national laws are important.

The formality of transferring shares in share deals, is often different, depending on the country. In Continental Europe, for example, and some other countries, the agreement must be notarised. Last year we had a deal from Ireland, where the Irish solicitor asked us for help, because the client decided to switch to German law in the middle of the transaction. In the end, the change of jurisdiction wasn't important because, no matter the choice of jurisdiction, the transfer of shares is always governed by the national laws applying to the company that is selling the shares.

The Irish company was buying the shares of two German companies, but also the shares of companies in Hong Kong, Australia and the US. We found out that the buyers thought they had already signed the share deal, but under German law it must be notarised to be valid. They had signed the SPA, but it was void because it was not notarised and therefore they hadn't met all formalities.

It is always advisable to take local counsel, even in a small, straightforward deal.

Belgium - Steven De Schrijver (SDS) In Belgium, we generally see less asset deals done than in other jurisdictions. Asset purchases are almost always exempt from capital gains in Belgium, and often foreign investors come in and want to do an asset deal because of the lower tax liability. However, this often gets pushed back by the Belgian sellers, because it's so much more interesting for them, from a tax point of view, to do a share sale.

We really only see asset deals when there are a lot of liabilities and it's very hard for the Belgian company to sell the shares. This often happens when there have been large tax liabilities in the past and it's part of a global asset deal, with multiple assets acquired in different countries. We might have a global asset purchase agreement and a local asset purchase agreement covering Belgian assets.

More usually, when foreign investors come to us, we end up doing a share deal. There are two different ways of doing this. The first involves a legal procedure, which includes publishing the deal in the Belgium official journal, followed by a waiting period of eight weeks before the shares are automatically transferred. You don't have to do an individual transfer of contracts, but you will have less flexibility. You can also do an ad-hoc transfer or purchase under civil law, which gives more flexibility on timing and on what you include in the purchase.

US - Massachusetts - Florence Joffroy-Black (FJB) The United States is quite different from Europe when it comes to rules and regulations. For example, in most US-based companies, employees in the United States are what is called 'at will'.

Employees often don't have contracts. In the case of an acquisition, this means that employees have little to no rights unless a specific clause is part of the transaction. Also the deal structure may end up making the buyer liable for previous legal and unfinished matters. For example, most stock acquisitions release the seller from all current and future tax debts (unless otherwise stated in the sales contract). In addition, the corporate stock can place heavy tax liabilities on the buyer.

When a US company does a transaction overseas it is important for them to understand the difference in rules and regulations. We have seen companies make a purchase in Europe with the intention of releasing employees and getting rid of some assets. When they are told that their plans cannot be implemented, it changes the strategy that helped them decide to go forward with the initial transaction.

Netherlands - Shai Kuttner (SK) The Netherlands is very similar to Belgium tax-wise. Most of the transactions are share deals, because, in most cases, they qualify for tax exemption. We normally only see asset deals in the real estate market, which is quite obvious. Share deals are much more complex, with more issues to consider.

Many non-Europeans like to buy assets, thinking that, in the process, they can get rid of some employees. The problem with that, is the law in The Netherlands, which protects employees.

If you buy a business unit, the employees' legal rights are automatic transferred to the purchaser of the business. As a result, that is not a way to circumvent employment rights, which are very strong and very effective in The Netherlands.

We often have that kind of a discussion with Americans, who think that's a way to get rid of employees, but it's not the way to do things. There is protection.

Belgium - SDS This is implemented in one way or the other in most European jurisdictions, and is based on European Union directives.

India - Justin Bharucha (JB) We have a similar set of stipulations to what everyone else has mentioned. There is an element of employee protection, and you can't just get rid of employees because you're buying the business.

Besides this, I think the most significant thing to bear in mind when structuring a transaction in India, especially for a foreign investor, is that the Indian rupee is not freely convertible.

For all practical purposes, there are several restrictions on the way foreign investment comes into the country. I would say that, in real terms, an asset deal or a business transfer doesn't work unless the foreign investor sets up a special purpose vehicle (SPV) in our country.

Even if it's a share deal and the foreign investor can directly hold shares in the Indian company, there are pricing guidelines and valuations which have to be respected. That's actually the first test of transaction structuring, when you're looking at foreign investment into the country. It's easier for an Indian company to invest outside India. There are still valuation guidelines, and restrictions, but not to the extent that we see when it's foreign direct investment (FDI) coming in.

In addition to the domestic Indian tax structure, the jurisdiction from which the foreign investment is coming into the country and the relevant double taxation treaty avoidance treaty, are crucial to these conversations. Before we even get into structuring a transaction in India, in terms of the nuts and bolts of things, we run two effective paradigm tests, which are the FDI test and the double taxation avoidance test.

Increasingly, we're seeing a lot of investment coming into the country from Singapore, which is perhaps the most favourable jurisdiction through which to root investment. We have seen a fair amount of stuff coming in through Belgium and The Netherlands as well.

Belgium - SDS We do not have any requirement for share deals to be notarised in Belgium, which is maybe one more reason why we see fewer asset deals.

Netherlands - SK That's an important issue, and the big difference between The Netherlands or Germany and most common law countries. Notaries have a very important role to notarise transactions, especially for the transfer of assets or the transfer of shares.

There's a certain cost involved, and an added formality to the transaction, but it's all doable obviously.

Belgium - SDS In Belgium the notary will only get involved in a real estate deal and generally not in an asset deal, unlike The Netherlands.

Germany - UB In Germany, a deal has to be notarised, so I would always look for formalities when closing a cross-border deal. In some countries you have to file a share deal and pay stamp duty.

Every country is unique. We always recommend that foreign investors use a German company as a vehicle to buy German assets. It is much easier to deal with, because if you use a foreign structure, say, for instance, an Indian company with a trust from Dubai, the ultimate beneficial owner (UBO) becomes hard to identify. This can be an issue for notaries, or accepting the purchase price due to money laundering regulations.

Belgium - SDS In Belgium, we only use a shareholders' register. There is no stamp duty. If foreign companies invest, it might be necessary to establish a Belgian company, but that's for tax reasons. When natural persons who own more than 25 per cent of a business sell to a non-EU company, they might be subject to capital gain tax. That's why we sometimes need to establish a new company to buy Belgian shares.

Germany - UB The other issue to consider is warranties and guarantees. Certain warranties that can be excluded in countries such as the US, or China, can't be excluded in Germany. There are certain rights in German law which can't be excluded by contract, not only employment issues. It is often hard to explain this to foreign buyers.

Italy - Lorenzo Bacciardi (LB) There are substantial differences to consider when structuring an Italian asset deal, in comparison to a share deal. Such differences may imply advantages or disadvantages from either the seller's or the buyer's perspective.

Under Italian law, the transfer of a going concern as part of an asset deal is subject to pre-closing and post-closing formalities. Pre-closing formalities include giving prior notice to trade unions, where the business has more than 15 employees. Post-closing formalities include the assignment or endorsement of the authorisation or licenses, necessary to allow the buyer to operate the going concern.

Article 2555 of the Italian Civil Code defines a going concern as an articulated set of assets that may be jointly used to carry out a business. This includes tangible and intangible assets, as well as employees and contractual relations.

Article 2558 of the code states that any commercial agreement, not having an *intuitu personae* component, is transferred to the buyer by operation of law, unless the contracting parties agree otherwise. Any commercial agreement having an *intuitu personae* component, instead, requires an express consent by the third party contractor, in order to be validly transferred to the buyer.

Article 2560 of the code states that the seller remains jointly liable with the buyer for all liabilities related to the transferred going concern, that existed before the transfer. The buyer also becomes jointly liable, with the seller, for all liabilities related to the transferred going concern, up to the value of the purchase.

Article 2557 of the code provides for a mandatory non-compete obligation on the accounts of the seller of a going concern, who will be compelled not to start, in the following five years, a new business activity in competition with the transferred going concern.

As far as formalities are concerned, the asset purchase agreement shall be executed in the form of a private deed with signatures confirmed by an Italian notary public.

None of the peculiarities mentioned under the asset deal apply to the purchase of shares of an Italian company. However, pursuant to Italian case law, the non-compete obligation, provided for by article 2557, may also apply in case of sale of a majority stake in the share capital of an Italian company.

In a share deal, the share purchase agreement must be constructed in such a way that provision is made for specific and express representations, warranties and indemnities by the seller.

As far as formalities are concerned, the main framework agreement, whereby seller and buyer set forth all the terms and conditions of the transfer and of the ancillary arrangements, is usually executed in the form of a private deed.

With respect to the closing formalities, necessary to perfect the transfer of the shares, the parties execute a specific transfer deed in the form of a private deed with signatures confirmed by an Italian notary public.



Urs Breitsprecher & Florence J Black pictured at the 2018 IR Annual Conference in London

SESSION TWO - TAX ADVANTAGES

How do different deal structures affect tax liabilities in your jurisdiction?

India - JB In India, asset deals are subject to an effective punitive tax, because a pure asset deal is subject to the highest rate of capital gains tax.

Because of this, pure assets deals don't work from a tax efficiency point of view, however, the Indian direct access code recognises something called a slump sale, which is the sale of a business as a going concern. So it's not shares you buy, but the entirety of the business, including assets and or liabilities attributable to that business. In that case, you get beneficial tax treatment to the extent that you are charged on the aggregate tax block, not on the gain accrued to each asset.

For share transactions, we do have a slightly beneficial rate of tax, which is applicable if you have held the shares for more than two years. You get taxed at long-term capital gains, which is an effective rate of 10 per cent on the gain. If you have invested through a jurisdiction, which has an effective double taxation treaty (DTT), you can actually avoid Indian capital gains, which makes a lot of sense.

The big thing to bear in mind, from the Indian tax point of view, is that we now have the general anti-avoidance rules being brought onto our statute, and they have the potential to be fairly draconian. If and when we structure transactions, we try and make sure that there is, in every sense of the word, nothing which could fall foul of that part of the tax act, because it can cause a lot of problems

We do have withholding taxes, so if there is capital gains payable, the buyer of the shares, or of the asset, needs to withhold about 10 to 20 per cent of the consideration and pay that to the Indian government upfront. There is the capacity to claim a refund on that, but it's a separate process.

Netherlands - SK Most transactions are structured through The Netherlands to hold assets and mostly to hold other companies throughout the world. The Netherlands has a little more than 85 treaties worldwide for double taxation, designed to reduce taxation. There is also the so-called rule of participation exemption, where shares, held in other jurisdictions, can be sold free of capital gains tax.

Many transactions are done through The Netherlands using Dutch companies, even if there are no Dutch assets involved. When you are doing transactions within The Netherlands, people prefer to do share deals rather than asset deals, with the exception again of real estate transactions

If you are doing share deals in real estate transactions, there are some punitive damages that add to the cost of the transaction. As a result, real estate transactions are usually done by buying assets.

Double taxation treaties are very favourable and, in most cases, withholding taxes on dividends are reduced from 15 per cent to 5 per cent, so that very advantageous. Rolling over losses can also be done after an acquisition.

One more issue to consider is VAT, which has not been mentioned until now.

Italy - LB The sale of a business as a going concern implies taxation of capital gains derived by the seller from the sale of the going concern itself. Capital gain is determined as the difference between the sale price (market value) of the going concern and its original net asset value.

In an asset deal, capital gain derived by an individual will be subject to Individual Income Tax (IRPEF), applied with progressive rates from 23 per cent to 43 per cent.

Capital gain derived by a company will be subject to Corporate Income Tax (IRES) at a rate of 24 per cent.

The transfer of a going concern is also subject to Registration Tax at different tax rates, ranging from 0.50 per cent to 15 per cent, depending on the nature of the assets transferred. The buyer is not taxable in connection with the purchase of a going concern.

The sale of shares also implies the application of capital gain tax. Capital gain is determined as the difference between the sale price of the shares and the cost incurred by the seller when it first purchased said shares.

If the seller is an individual, the capital gain tax is subject to a 26 per cent tax rate.

To reduce or minimise the amount of capital gain derived by the individual shareholder and the amount of related capital gain tax, the selling individual may opt to step up the tax value of the shares to be transferred, and align the same to the corresponding market value. The step up process requires the application of a substitute Italian tax at a rate of 11 per cent.

If the seller is a company, then the Participation Exemption Rule (PEX) usually applies. PEX implies that capital gains are taxable on their 5 per cent amount maximum. The buyer is not taxable in connection with the purchase of shares or quotas.

Belgium - SDS In the case of a Belgian share acquisition, the acquiring company is not entitled to depreciate the assets of the target company, nor the acquired shares in the target company, which leads them to prefer an asset deal.

But, as I already said, in most cases the seller will prefer to carry out transactions by means of a sale of stock, because the capital gains on shares are, in principle, one hundred per cent tax exempt.

In the case of an acquisition of business assets, the acquiring company is, in principle, authorised to depreciate acquired assets and goodwill or clientele, on the basis of the acquisition value. That means that the acquiring company will benefit from a fiscal step up, that reflects the difference between the sale price of the transfer of assets or liabilities, and the fiscal value of these liabilities prior to the sale. Under these circumstances, the seller will, in principle, be taxed on all capital gains realised on this purchase of assets. The capital gain is not taxed immediately, but on a future pro-rata basis.

The corporate tax rate of 33.99 per cent will be lowered to 29 per cent in 2018 and 25 per cent as from 2020. SMEs get a decrease in the rate to 20 per cent, from 2018, for the first tranche of EUR100,000. These rates are to be increased with the crisis tax, which will also be lowered for 2018 and abolished in 2020.

The 95 per cent dividends-received deduction (DRD) is increased to 100 per cent, resulting in a full participation exemption. The separate 0.412 per cent capital gains tax for multinational enterprises on qualifying shares is abolished, while the conditions to benefit from the capital gains exemption are brought in line with the DRD. This implies the application of a minimum participation threshold of at least 10 per cent, or an acquisition value of at least EUR 2.5 million in the capital of the distributing company.

As from 2020, capital gains on shares are taxed at the standard rate (25 per cent) if one condition is not met, but exempted when all the conditions are met.

The last thing to mention is that quite a lot of interesting measures for technology companies have been implemented since 2017. We have a new innovation income deduction tax, and all kinds of social measures that benefit research and development. It makes Belgium quite an interesting country to invest in when you want to do R&D.

US - Massachusetts - FJB The type of deal structure is impacted, tax wise, by the type of corporation you are dealing with and how it is structured between the shareholders and the assets.

There are different types of corporation in the United States, including LLC (limited liability companies) C-Corps, S-Corps, partnerships and trusts. Each of these types has a different tax liability. A business acquisition of any size carries tax implications for the buyer, ranging from employment taxes to state sales tax liabilities.

Usually a buyer doesn't have to pay federal tax on his purchase (please note that there are exceptions to the rule). However, the buyer will have to pay local and state taxes. Taxation rates vary from state to state. It is important for a foreign buyer to hire a local tax professional to help understand the impact of the transaction.

Finally, there is a difference in tax liabilities if you purchase straight assets versus making a stock/share play.

Germany - UB Investing in Germany isn't as bad as a lot of people think, from a tax perspective. It's not the tax which is so terribly high, but the social security payments. However, Germany is a very stable market and therefore – with Brexit imminent – maybe a kind of safe harbour in Europe.

Analysing whether you want to do an asset or a share deal is important. The share deal is advantageous for the seller, because the purchase price is taxed much less. If it's sold privately, it's taxed

at 60 per cent, but if held in a limited liability company, you don't pay any tax on the purchase price at a company level, although you pay out a bit more tax later on.

Asset deals are much more beneficial for the buyer, because there are amortisation possibilities.

We recently had to deal with a Dutch company which was selling two German companies and some IP rights. The British buyer bought via a German company. The buyer wanted to buy the IP rights in an asset deal and not in a share deal. This was a big tax disadvantage for the seller, so in the end, the buyer had to pay the tax disadvantage on top of the purchase price because the seller didn't agree to pay a higher tax.

We quite often use Dutch companies as holding companies, however, under German law, we have anti-avoidance regulation to consider.

If you use a holding company outside of Germany and the holding company has no other business in the country of origin than as a holding company, the German financial authorities are allowed to take a source tax for any payment of dividends to this holding company. If you own a holding company in The Netherlands, Hong Kong, Dubai, or another tax beneficial country, you have to have your own business within that country. If you have a Dutch BV as a holding company for the shares in a German company, and this is just a holding company, it will be taxed in Germany, even if it's based in The Netherlands.

The European Court of Justice has said this is not against European law. Since this year, even the profits of the sale of real estate of holdings outside of Germany will be taxed in Germany, when more than 50 per cent of domestic immovable assets at any time during the 365 days prior to the sale.

A trust from somewhere like Dubai, or the Cayman Islands won't be accepted as a vehicle by the German tax authorities and therefore holding structures should be reviewed by local counsel.

SESSION THREE - INSIDE KNOWLEDGE

Are there any loopholes or specific deal structuring methods that can benefit international clients in your jurisdiction?

US - Massachusetts - FJB In 2017 the US reduced the tax rate for corporations from 35 per cent down to 21 per cent, making investments for US companies in the US, much more attractive than in the past. It has not stopped investments outside of the US from taking place, but has brought some investment back to the US.

For overseas investments, the new tax rate moves to tax foreign profits for US companies that used the previous law to leave profits untaxed overseas. Today, foreign profits might be taxed at an even lower rate, based on tangible depreciable assets. If the profits realised overseas are reinvested in a tangible US asset, a company could avoid paying taxes on its above normal foreign profits.

Germany - UB Because of anti-avoidance rules in German tax law, we almost never recommend offshore corporations for use in deals. Under the BEPS (Base Erosion and Profit Shifting) regulations of the OECD, it seems that offshore companies and vehicles are becoming more and more unattractive worldwide. Most of the time we advise our clients to take a German company as a vehicle. It's easy, safe and straightforward.

Sometimes we may use a Dutch company as a vehicle, but only if there is a presence in The Netherlands. I would like to have more offshore companies, in order to travel to all those nice countries, but in Germany we don't use them much.

Sometimes it makes sense to transfer the statute seat of a company to other countries to utilise their jurisdiction. We have done this quite a lot recently for Brexit, translating English companies over to Europe.

This is something you should always think about when structuring a deal, and we do quite a lot of restructuring within the companies to get more of a tax advantage. We sometimes merge the daughter company with the mother company, or vice versa, to get more tax benefits.

India - JB Historically, from the mid-90s to the mid-2000s, Mauritius was used extensively for offshore structures, but over the last 10 to 15 years, a lot of the new structures have come through Singapore.

The secret sauce to running a deal in India, is to choose your offshore jurisdiction carefully. This is the last mile before you make the investment in India, so you should choose a jurisdiction which has a robust and substantive double taxation treaty with India, and is known for being very compliant.

This is possibly why Singapore has taken over from almost all other jurisdictions with regard to India. When we are looking to structure transactions, more often than not, we recommend clients to look at a Singapore special purpose vehicle (SPV) to hold their investment.

We also recommend avoiding intermediation once you're into India, so don't set up an Indian holding company, which will then hold the actual investment downstream. It is much better to do a direct holding of the company in which you want to invest, because that just makes it easier to run and more tax efficient.

We don't really have the capacity to avail of tax benefits or other sort of benefits by changing the seat or otherwise.

Some of our private equity clients do prefer routing money through the British Virgin Islands (BVI) sometimes, but as a rule, we are increasingly seeing structures move into Singapore.

Historical investors who've been here in India for 10 or 15 years, do have Mauritius structures in place, and they are still operating them, but even for them, when it's time to set up a new fund, Singapore looks very attractive.

Netherlands - SK I'll start with just a few general comments and get a bit more technical.

I would say that offshore incorporation is dying, because most clients don't like it and the tax authorities like it even less.

As for special purpose vehicles, The Netherlands is used as a holding country for tax purposes. There is a big industry of so-called trust companies, that are providing corporate and other services for these kind of holding companies. These trust companies are still good and doing a lot of work for many jurisdictions, but for countries like Germany or the US, they are much more sensitive. They can be used to assist, but you need substance.

If a Dutch structure is being used, there need to be more substance on the ground, so they get an office and employees and people doing real activities.

When it comes to the specifics of investment in The Netherlands, we see more and more usage of specially designed vehicles like the Dutch CV, which is comparable to the limited partnership. It is a mechanism that is used a lot to invest into the Netherlands - basically to create a transparent entity for tax purposes that gives investors a good amount of protection from liability.

This is similar to the limited liability LLC in the US, or The Limited Partnerships which you have in the common law. Other special vehicles and entities that we use, include foundations, which are similar to trusts, although trusts are not recognised per se. We use entities like foundations which are called STAKs and are transparent for tax purposes, while, at the same time, allowing a certain protection from liability for investors.



Lorenzo Baccardi pictured at the 2018 IR Annual Conference in London

These are all very specific entities that have to be tailored very carefully. We do that together with the tax advisors and the notaries, who are involved in setting up those entities.

Belgium - SDS We are seeing fewer and fewer offshore companies involved in Belgian transactions, because of very severe anti-money laundering regulations.

It's very difficult to open bank accounts, and we must complete a lot of know your customer (KYC) checks. The general perception towards offshore companies has worsened over the years.

As far as special purpose vehicles are concerned, they are often necessary for tax reasons. A Belgian who owns more than 25 per cent of a company, cannot sell to a non-EU buyer, without losing their exemption from capital gains. It usually states in the purchase agreement (SPA) that the shares have to be purchased by an EU company, and that the purchaser has to covenant that they will not sell the shares to a non-EU company for a period of 12 months.

We do see a lot of special purpose vehicles in private equity investments. They establish a New Company to purchase the target company, and the financing is done via the New Company. That's the structure we see quite often in Belgium. The owners will reinvest 49 per cent of the proceeds in the new holding company and the deal is leveraged when they buy the target company.

We have a new company code that enters into effect on the first of May and as from then we will apply statutory seat theory to be more in line with neighbouring countries. Until now, Belgian law would apply only if a company had its real activities in Belgium. The new code also makes Belgian law much more flexible and attractive to foreign businesses.

Netherlands - SK KYC has become a big issue. I think it's worldwide, but definitely in The Netherlands. We are spending more time on each transaction, proving all sorts of things that once we never needed to prove. This includes source funds, identifying people and businesses and also the history of clients.

It goes along with banking and the opening bank accounts in Continental Europe. I don't know how it is in Belgium or Germany, but definitely in The Netherlands, banks are becoming a big headache and it takes a big part of the energy that is involved in any new transaction to arrange a new bank account.

Italy - LB In cross border M&A transactions carried out in Italy by non-EU foreign clients, a point of concern is whether there is reciprocity, in terms of investment protection, between Italy and the non-EU jurisdiction of the foreign investor.

This may, sometimes, require the non-EU foreign investor to invest in Italy through a corporate vehicle rather than as an individual.

If neither the individual nor the corporate vehicle of a certain non-EU jurisdiction is allowed to operate or to purchase businesses in Italy, then the foreign investor may decide to establish a Special Purpose Vehicle (SPV) in (i) a non-EU country having reciprocity with Italy or in (ii) an EU country, other than Italy, having reciprocity with the non-EU jurisdiction of the foreign investor. In the latter case, the SPV established in the EU country will be allowed to carry out business in Italy without any restriction.

An additional point of concern may arise during the post-acquisition or consolidation stage, when the foreign investor needs to appoint, within the board of the acquired Italian company, directors or managers having the same nationality of the foreign investor.

There is a specific Italian entry visa that entitles foreign nationals to be appointed as director of an Italian company, which is the entry visa for self-employment. However, Italian visas are subject to numerical restrictions, provided by annual entry quotas, when they need to be granted to certain applicants having non-EU nationalities.

Careful planning is required while structuring of the deal, in order to ensure that the managers of the foreign investors are smoothly deployed to Italy to supervise the post-acquisition activities related to the acquired Italian company.

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