

TAX DUE DILIGENCE ON CROSS- BORDER M&A TRANSACTIONS

PANELISTS:

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Germany (AG)

Target-
manufacturing company

- Profitable
- earns dividends from its subsidiaries

Switzerland (AG)
Owner of patents


- no employees
- management located in Germany
- income from license fees received from German parent company
- very profitable



Italy (S.p.a.)
Sales Company



- performs losses since 10 years
- loss carried forward 10 Mio €;
- performed incorrect corporate income tax returns for FY 2016
- profits declared: 5 Mio / correct profits 10 Mio;
- German parent company charged management fees



Poland (Spzoo)
Extended workbench



- profit margin 2%
- German parent company charged management fees
- transfer price method used: TMNN
- company were led by a German, who was present for 150 days in Poland, he was on the pay roll of the German parent company




UK (Ltd.)
Purchaser



Italy (Sergio and Roberto)

- which kind of taxes on profits exist in Italy ? / tax rate in average?
- what will happen with loss carried forward of the company?
- if it is on risk (means after the acquisition not applicable, how to avoid that?)
- current losses on risk? , due to wrong application of Arms length principle (losses for very long period?)
- Transfer Price Risks, due to management charges from German parent company?
- how to deal with profits not declared ?
- in case of dividend distribution to German parent company: to withhold taxes ?
- how to handle license fees from VAT perspective?
- in case of dividend distribution to German parent company: to withhold taxes?



Poland (Artur)

- which kind of taxes on profits exists in Poland ? / tax rate in average?
- transfer price issues?
- Is Poland ok with this tp method ?
- does Poland accept the 2% margin?
- how to deal with management charges?
- which risks may arise from the employment of the German Manager (social security / wage tax)
- in case of dividend distribution to German parent company: to withhold taxes?



Germany (Bärbel)

- which kind of taxes on profits exists in Germany ? / tax rate in average?
/ taxes on dividends / capital gains
- transfer price issues
- TP- Method applied to Polish company: TMNN accepted by German authorities?
- license fees paid to Swiss subsidiary: on risk / deductible ?
- how to deal with the manager who runs the Polish subsidiary?
- Is there a risk that Swiss subsidiary will become subject of taxation in Germany?



Switzerland (Marc)

- tax rate on income from licenses ?
- will this rates remain stable ?
- how to handle license fees from VAT perspective?
- in case of dividend distribution to German parent company: to withhold taxes?