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Taxation of Cross-Border Mergers and Acquisitions

Oman

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Oman

Introduction

Unlike other Gulf Cooperation Council (GCC) states, Oman operates an income tax regime that applies to companies and a wide range of other commercial activities, including general partnerships and limited partnerships, joint venture arrangements and permanent establishments of foreign entities.

An individual is subject to income tax to the extent that they carry on commercial, industrial or professional activities as a 'proprietorship'. Otherwise, individuals are not generally subject to income tax.

Detailed comments on the tax system operating in Oman are covered under the relevant headings throughout this chapter.

Overview of Omani income tax law

Adoption of worldwide basis of taxation

A new income tax law was introduced with effect from 1 January 2010 (Income Tax Law no. 28/2009). The new law moved Omani taxation from a territorial basis (under which tax was imposed only on profits arising or accruing in Oman) to a worldwide basis. Most notably, the general dividend exemption under the old income tax law (Law of Income Tax on Companies of 1981) no longer applies. The new income tax law only exempts dividends received from an Omani company.

Credit for foreign tax suffered

Consistent with the taxation of foreign dividends (discussed above) and other foreign source income, the new income tax law provides for a tax credit against a company's Omani income tax liability for foreign tax paid on overseas income. The credit is limited to the Omani income tax that would otherwise be due on that income.

Introduction of flat 12 percent income tax rate

The new income tax law eliminated the sliding scale of income tax rates for non-Omani companies (ranging from 5 percent to 50 percent) and applies a flat 12 percent rate of income tax to all domestic and foreign companies and commercial operations (the first 30,000 Omani rial – OMR – of taxable income is tax-exempt).

Permanent establishment

'Permanent establishment' (PE) has been re-defined to include foreign companies providing services in Oman, where the presence of the company's employees in Oman (or other individuals under the company's control) exceeds 90 days in any 12-month period.

Executive Regulations supplementing income tax law

The new income tax law has been supplemented by Executive Regulations that took effect on 29 January 2012.

Although the regulations are intended to codify previous Tax Department practice, the manner in which the regulations will be applied and interpreted is still to be seen. Until they have been tested through a number of years tax assessments, there will be some uncertainty over assessments issued by the Tax Department.

Recent developments

Large Taxpayer Unit and withholding tax teams

The Secretariat General for Taxation has been increasing the Tax Department's resources and improving its technical focus. Two specialist teams have been created to focus on large taxpayers and withholding taxes (WHT).

The impact of the new departmental structure can already be felt through the types of assessment query being raised and the extra focus of the department in particular areas, especially WHT.

This new structure comes at the same time as the new executive regulations are being tested and, in the short term, may create more uncertainty for taxpayers regarding the tax process.

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Free Trade Zones and Special Economic Zones

On 26 December 2013, the Royal Decree was passed giving effect to the Special Economic Zone at Duqm. The regulations grant an exemption from all Omani taxes and custom duties for a term of 30 years (and renewable for similar terms) for companies, branches and permanent establishments carrying out qualifying projects in the Special Economic Zone. Certain companies are excluded from qualification, most notably banks and financial institutions.

In addition to the tax exemption, foreign investors are able to hold 100 percent of the interest in the project vehicle and are exempt from both the investment restrictions under the Foreign Capital Investment Law and the minimum capital requirements normally imposed under the Commercial Companies Law (see the section on purchase of shares later in this chapter).

An existing Free Zone is in operation at Sohar, where companies can enjoy similar tax exemptions for 10 years, extendable by a further 5 years and up to a maximum period of 25 years.

Other Free Zones are in operation at Salalah and al Mazunah, and each of these provides for a 30-year income tax and Customs duty exemption.

The regulations for each of these free zones typically provide for relaxed capital requirements and/or ownership requirements, similar to those applying in Duqm.

To qualify for the tax exemption and other incentives, the company must satisfy the requirements set out in the separate regulations governing each zone.

Asset purchase or share purchase

A buyer may acquire a business in Oman by purchasing the trade and assets of the business or by purchasing the shares of the company through which the business is carried on.

Given the restricted scope of income tax in Oman, the tax position of the seller is determined by the capacity in which they are selling, i.e. as a taxable person or a non-taxable person, and, in the case of a share sale, whether any exemption applies on disposal.

In the case of a trade and asset sale, the seller typically acts in a taxable capacity, either as a company or other form of commercial operation (each of which is subject to tax) or as an individual carrying on business through a proprietorship (which also is subject to tax).

On the other hand, a sale of shares may be exempt from tax, because the sale is made by an individual holding the shares as an investment (i.e. not acting through a proprietorship) and therefore not subject to tax. A share sale may also be tax-exempt because the disposal relates to shares in a joint stock company (as opposed to a limited liability company – LLC) on which the gain would be specifically exempt under the income tax law (discussed in the section on purchase of shares later in this chapter). Where a foreign company has no taxable presence in Oman, it is not subject to Omani income tax and, accordingly, there would be no Omani income tax liability on a disposal of shares.

Therefore, these issues drive the seller's preference to dispose of a business by way of an asset sale or share sale.

For the purposes of this commentary, it is assumed that the seller is a taxable person. The buyer should be aware of the alternatives, which also helps in understanding the seller's position.

Purchase of assets

Where the buyer purchases the trade and assets of the business, the seller is subject to income tax on any gain arising on the disposal, consisting of the aggregate gain realized on each of the individual assets (and offset by any loss arising on individual loss-making assets). Capital gains form part of the seller's normal taxable income. Assets on which the seller has claimed tax depreciation are not taxed by way of capital gain but may give rise to balancing allowances or charges (see the section on depreciation later in this chapter).

The tax authority calculates the gain by reference to the proceeds received on disposal but has broad powers to substitute market value in the case of related-party transactions or transactions considered to have taken place at below market value.

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If an acquisition of trade and assets is intended to create an Omani branch of a foreign entity, the foreign purchaser should be aware of the restricted circumstances in which a foreign company can operate through a branch. These restrictions are imposed by the Foreign Capital Investment Law (discussed below).

Purchase price

The buyer usually takes the purchase price as its tax basis in the assets for capital gains purposes and for purposes of calculating tax depreciation. Again, the tax authority has powers to impute open market value if the actual purchase price differs from market value.

The tax authority generally follows the allocation of sale proceeds across different assets where they are transferred under the same sale agreement. However, the tax authority has powers to apply a different allocation if it is felt that the contractual allocation is designed to achieve a tax advantage.

Goodwill

The buyer may claim a deduction for goodwill arising on a trade and asset purchase (representing the excess of the purchase price over the fair value of the net assets acquired). The deduction can be claimed over the productive life of the goodwill (or other individual intangible assets). The productive life is determined by the taxpayer and approved by the tax authority.

Depreciation

A tax deduction is available for depreciation calculated in accordance with the income tax law. The accounting depreciation charge is disregarded for tax purposes.

Tax depreciation is available for capital expenditure incurred in connection with tangible assets (plant and machinery, vehicles, furniture, computers and buildings) and certain intangible assets (goodwill, intellectual property rights and computer software). Tax depreciation is not available against the cost of acquiring land.

Tax depreciation is calculated under the income tax law using the following rates and basis:

Asset Type	Rate	Basis
Tractors, cranes and other heavy equipment and machinery of a similar nature, vehicles, computers, computer software and intellectual property rights, fixtures, fittings and furniture	33% on pool of assets	Written-down or reducing-balance
Digging equipment	10% on pool of assets	Written-down value or reducing-balance
All other equipment not included above	15% on pool of assets	Written-down or reducing-balance
Intangible assets – including goodwill but excluding computer software and intellectual property rights (included above)	Productive life of asset as approved by the tax authority	Straight-line
Permanent buildings – superior construction (as determined by the tax authority)	4%	Straight-line
Temporary buildings – inferior construction or pre-fabricated	15%	Straight-line
Ships and aircraft	15%	Straight-line
Quays, jetties, pipelines, roads and railways	10%	Straight-line
Hospitals and educational institutions	100%	Straight-line

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Tax attributes

Tax losses realized by a business do not transfer to the buyer on a transfer of the trade and assets but remain with the seller.

Value added tax

Currently, there is no value added tax (VAT) in Oman. The introduction of VAT in 2016 is being considered by Oman and the other five GCC states (Saudi Arabia, Kuwait, Bahrain, Qatar and United Arab Emirates). However, the introduction of VAT in 2016 may be deferred.

Transfer taxes

There are currently no stamp duty or other transfer taxes in Oman.

Purchase of shares

The seller may prefer to dispose of a business by way of share sale where they hold the shares as an individual and, therefore, in a non-taxable capacity (see the section on asset purchase or share purchase later in this chapter).

Where the seller is a taxable entity, the income tax law provides a tax exemption for gains arising on the disposal of shares registered on the Muscat Securities Market, namely companies taking the form of:

- general Omani joint stock company – with the designation SAOG and representing a public listed company
- closed Omani joint stock company – with the designation SAOC and representing a private listed company.

The exemption does not apply to the disposal of shares in an Omani LLC or the disposal of any other form of commercial enterprise (i.e. proprietorship, share in a general or limited partnership or interest in a joint venture arrangement).

A foreign buyer should be aware of the restrictions on foreign share ownership imposed under the Omani Foreign Capital Investment Law. This law restricts foreign participation in any form of Omani company to 70 percent and applies whether the participation arises on incorporation of a new company or the takeover of an existing company.

Even where the foreign shareholding falls within these limits, the Ministry of Commerce and Industry may require the foreign shareholder to show that it has been in existence for a number of years (typically 3 years) and provide 3 years audited financial statements in support.

Shareholdings greater than 70 percent may be permitted only with the recommendation of the Ministry of Commerce and Industry and the approval of the Council of Ministers. Approval is reserved for projects that are deemed critical to the development of the national economy, such as those involving investment in long-term manufacturing or production facilities, training of the local labor force in critical industries, healthcare or educational sectors. The threshold for approval is typically set fairly high.

Oman has entered into a free trade agreement with the United States, under which a US investor can hold an interest in an Omani entity of up to 100 percent without seeking specific approval.

Foreign companies operating in any of the country's free trade or special economic zones are permitted to hold 100 percent of the shares in the Omani company through which those activities are carried on, subject to satisfying the requirements set out in the regulations governing the particular zone (as discussed earlier in this chapter).

The Foreign Capital Investment Law provides additional requirements governing overseas investment, including the minimum share capital that must be invested (see the section on equity later in this chapter).

Tax indemnities and warranties

Where the buyer purchases the shares in an existing company, it is usual for the buyer to request, and the purchaser to provide, indemnities and warranties in respect of undisclosed tax liabilities of the target company. The extent of indemnities and warranties that can be secured is a matter for negotiation.

As the purchaser is taking over the target company, together with all related liabilities, the buyer normally requires more extensive indemnities and warranties than in the case of an asset acquisition. Where significant sums are at stake, it is customary for the buyer to initiate a due diligence exercise, which would normally include a review of the target company's tax affairs.

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Oman's income tax regime operates a full assessment system. The tax authority considers each tax return that a company submits for each tax year. The period of enquiry, which sets the time limit for the tax authority to make a tax assessment, is 5 years from the end of the tax year in which the tax return was submitted. This may mean that the target company has a greater number of open tax years than may be the case in other countries. For older years, information needed to respond to enquiries may be missing or incomplete.

While typical indemnities and warranties might impose some obligation on the seller to help resolve open tax years, as a practical matter, the buyer should consider how this could be enforced over the extended enquiry period.

Where the target company has a significant number of open years, the buyer should consider asking the seller to transfer the trade and assets of the business into a newly incorporated company, so that the buyer is able to acquire the business in a new, 'clean' company.

In contrast to a share sale, a buyer purchasing a business' trade and assets does not take over the related liabilities of the company (expect for those specifically included in the purchase agreement), and fewer indemnities and warranties may be needed. The indemnities and warranties that can be secured are a matter for negotiation but are also governed by the nature of the individual assets and liabilities being acquired.

Tax losses

A company can carry forward tax losses for a period of 5 years following the tax year in which the tax loss arose.

On a transfer of the shares in the company, the tax losses remain with the company. The change in ownership does not restrict the company's ability to carry forward or utilize the tax losses.

Crystallization of tax charges

There are no grouping rules within the Oman income tax law, so no de-grouping charges crystallize on the transfer of shares in the Omani company. As a result, the transfer of assets between Omani companies is always taxable.

Where an entity ceases to be taxable in Oman, exit charges may be imposed under Omani income tax law. These provisions deem assets that are held on the date the taxpayer ceases to be taxable in Oman to have been disposed of at their market value on that date. Any gain realized under these provisions is included in taxable income.

Pre-sale dividend

Dividends received from an Omani company are not subject to tax under the income tax law.

If the seller will be subject to income tax on any disposal gain arising on the transfer of shares in the Omani company, they may consider stripping surplus cash out of the company by paying a pre-sale dividend – reducing the purchase price and thus the potential gain on disposal.

Dividends received by an Omani taxpayer from a foreign company are subject to tax and included in taxable income in the same way as any potential gain on disposal of the foreign shareholding.

Transfer taxes

There are currently no stamp duty or other transfer taxes in Oman.

Tax clearances

Any change in the ownership of a company must be reported to the tax authority in Oman by filing a revised business declaration form.

Choice of acquisition vehicle

A buyer may use a number of structures to acquire a business in Oman, and the tax and regulatory implications of each can vary. The issues associated with the most common holding structures are discussed below.

Local holding company

There are no provisions within the Oman income tax law providing for the transfer of tax losses between members of the same group or, for example, the transfer of assets at their tax value. Thus, no group relief benefits are gained by holding the shares through a local holding company.

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That being said, dividends paid by an Omani company to a local holding company are exempt from income tax. No adverse tax consequences should arise from holding the target company shares in this way.

A foreign investor is limited to holding a 70 percent interest in the Omani company and would need to find a local partner to hold the other 30 percent. A foreign investor looking to acquire a business in Oman may find it beneficial to identify a local partner first and set up a local Bid Co that complies with these restrictions. Bid Co could then acquire 100 percent of the shareholding in the target company, allowing the investor to move more quickly once a target is identified.

Foreign parent company

Omani income tax law does not impose WHT on dividends paid to a foreign parent company, so no tax is suffered on the repatriation of profits by way of dividends. Interest may also be paid free of WHT.

Omani income tax law does not tax gains realized by an overseas parent company on the disposal of shares in an Omani company.

Management charges and royalty payments paid to the foreign parent company (or other foreign group company) are subject to WHT at 10 percent. Payments for research and development work and for the use or right to use computer software are subject to the 10 percent WHT rate. The final WHT rate may be reduced under the royalties article of any applicable tax treaty (see the section on tax treaties later in this chapter).

The income tax law contains widely drafted provisions governing related-party transactions. Transactions with the foreign parent company (or other foreign group company) must satisfy the arm's length principle. The foreign parent company should make sure that it has appropriate policies governing transactions with the Omani subsidiary, and documentation supporting the methodology, to mitigate the risk of tax deductions being denied and/or additional taxable income being imputed in the subsidiary's tax calculation.

The foreign parent company is subject to the restrictions of the Foreign Capital Investment Law regarding the percentage interest that it can hold in the Omani subsidiary (see earlier and the section on Foreign Capital Investment Law later in this chapter).

Non-resident intermediate holding company

A foreign intermediate holding company is treated in the same way as a foreign parent company. Where the intermediate holding company seeks to claim the benefit of a reduced WHT rate, the tax authority would likely take steps to establish whether the intermediate holding company was beneficially entitled to the income before approving the use of the reduced rate.

Local branch

A foreign company can only establish an Omani branch where it is performing a contract awarded to it by the Oman government. Registration lasts only for the duration of the contract.

Joint ventures

A corporate joint venture (i.e. a joint venture by way of (say) 50:50 shareholding in a corporate vehicle) is taxed in the same way as a local Omani company.

A joint venture formed by way of a joint venture agreement is also treated as a separate taxable entity for Omani income tax purposes. The tax law captures all arrangements that, in substance, represent a pooling of resources and of income and expenses of the joint venture parties. Any joint venture party that is itself subject to income tax in Oman may eliminate its share of joint venture profits from its own income tax calculation such that it is not taxed twice on the share of joint venture profits.

Choice of acquisition funding

Debt

The acquisition of a target business by way of trade and asset purchase typically gives the buyer more flexibility (than a share acquisition) to introduce debt into the business. The income tax law does not allow a tax deduction for dividends paid by a company. Interest paid on debt-financing is deductible (subject to the potential restrictions discussed below).

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Deductibility of interest

Where the business has existing debt or the buyer is able to introduce new debt into the business, the deductibility of related-party interest is restricted where the local company has a debt-to-equity ratio in excess of 2:1. These thin capitalization rules are effective from 1 January 2012.

Interest on third-party funding should not be restricted. However, where the company has a mix of related-party and third-party debt (and exceeds the 2:1 ratio), the tax law determines the non-deductible portion of related-party interest expense.

The tax authority also may deny some or all of the interest expense on foreign related-party debt where it is felt that the interest rate is not comparable with third-party rates or terms. The foreign related-party lender and the local company should ensure that they have appropriate policies governing their intra-group loans, and documentation supporting the rates and terms, to mitigate the risk of tax deductions being denied in the local company's tax calculation.

Where the debt is taken by a local holding company (i.e. to acquire the shares in an existing business), the tax deduction for interest paid by the local holding company is restricted to the extent that the interest expense relates to exempt income (i.e. dividends from any Omani company or gain on disposal of shares in SAOC or SAOG companies).

Where the local holding company carried on any other taxable activities, the interest expense is apportioned on an appropriate basis and a tax deduction is permitted only for that part that relates to the taxable activity.

Where the foreign company is carrying on its activities through an Omani branch, a tax deduction is denied for any interest expense of the foreign company that is attributed to the branch. In order to deduct the interest expense of the branch, any debt should be taken from a third party and in the name of the branch.

Subject to the above restrictions, the basis for any income tax deduction is the charge accrued in the financial statements of the company or branch.

No tax deduction is available for fair value adjustments included in the financial statements (e.g. on foreign currency loans or fixed rate borrowings that are fair valued in accordance with International Financial Reporting Standards). A tax deduction is allowed only at the time of payment and the crystallization of any actual gain or loss on the instrument.

Withholding tax on debt and methods to reduce or eliminate it

Omani income tax law does not impose WHT on interest payments.

Checklist for debt funding

- Consider the impact of the thin capitalization rules.
- Where loans are taken from related parties to fund the acquisition, ensure that the rates are comparable to rates that can be obtained from third parties to avoid adjustments by the tax authorities.
- Where activities are carried on through a branch of the foreign company, consider whether the branch itself can make the borrowing locally, so that interest payments can be deducted against branch income.

Equity

Where a newly incorporated company is used to acquire the trade and assets, the Commercial Companies Law and the Foreign Capital Investment Law stipulate the minimum equity funding required by each form of company (see the section on purchase of shares earlier in this chapter regarding the restriction of foreign investment in an Omani company and cases where restriction relaxed).

For an LLC, the minimum capital requirement is OMR150,000 (approximately 390,000 US dollars – USD). Where a foreign investor is given approval to hold more than 70 percent of the Omani company's share capital, this minimum share capital is increased to OMR500,000 (approximately USD1,300,000).

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These limits apply to incorporation of a new company as well as a foreign investor's acquisition of shares in an existing Omani company (see the section on choice of acquisition vehicle earlier in this chapter).

The minimum share capital of a limited joint stock company (SAOC) is OMR500,000 (approximately USD1,300,000).

A general or public joint stock company (SAOG) is required to have a minimum share capital of OMR2,000,000 (approximately USD5,200,000).

Oman has no capital duty or any other duty or tax charge on the issue of share capital.

Oman has no exchange controls that limit the repatriation of funds overseas. The following points should be noted when funding a company with equity:

- When a new joint stock company is formed, there is a lock-in period of two financial years before promoters can withdraw their money from the company.
- If the target company is loss-making, dividends can only be issued after setting-off all carried forward losses.
- In the case of a public company (SAOG), the promoters must have a minimum interest of 30 percent, and they are restricted to a maximum interest of 60 percent of the capital, with the remaining shares being offered for public subscription. In addition, no single promoter can hold more than 20 percent of the share capital.

Hybrids

Hybrids are not common in Oman.

Discounted securities

Discounted securities are not common in Oman.

Deferred settlement

The income tax law does not set out specific rules governing the taxation of earn-out provisions in sale contracts. The tax authority would look at the contract to determine the price at which the sale was completed and, applying general principles, would likely take into account the value of any earn-out rights provided.

The income tax law also gives the tax authority broad powers to substitute open market value if it is felt that the transaction has taken place at an undervalue. In principle, this market value substitution should pick up the value of any deferred consideration.

If a final determination of the earn-out value gave rise to a greater amount, the tax authority would look to tax this extra amount in the year it was realized. If the earn-out calculation gives rise to a lower amount, it may be difficult to argue for a reduction in the taxable gain. The tax authority would likely abide by their earlier determination of open market value.

Where the contract does not provide for an earn-out payment but instead calculates the total sale price at the date of completion and simply defers cash payment, the tax authority would calculate the gain based on the consideration stipulated in the sale agreement. The tax authority would still consider the open market value position and determine whether any adjustment is needed in calculating the capital gain.

Other considerations

Group relief/consolidation

There is no concept of group tax loss relief under Omani income tax law.

Transfer pricing

The rules governing related-party transactions are drafted very broadly and give the tax authority significant scope to challenge what they perceive to be non-arm's length prices.

Increasingly, the tax authority requires clear documentary evidence to support positions adopted between the related parties. That being said, the income tax law does not currently include specific transfer pricing rules – beyond the broad principle that pricing should be on an independent (i.e. arm's length) basis. Further, the tax law does not include any guidance on the form that supporting documentation should take.

The income tax law provides for compensating adjustments to be made in calculating the taxable income of the other related party to the transaction.

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The related-party provisions fall within a broader anti-avoidance framework. These rules are also widely drafted and give the tax authority broad powers to challenge transactions that they perceive as having avoidance as a motive. The rules also give the tax authority powers to make adjustments that they feel necessary to counter the perceived avoidance.

Merger provisions in the Commercial Companies Law

The Commercial Companies Law of Oman includes provisions for the legal merger of companies in the following ways:

- dissolution of one or more companies and the transfer of assets and liabilities to an existing company
- dissolution of two or more companies and the establishment of a new company to which the assets and liabilities of the dissolved companies are transferred.

The Omani tax authorities should be notified prior to carrying out a legal merger of companies, and they have the right to object to the merger. If approved, the tax authorities should be asked to finalize and close the tax file of the dissolved entity.

Further, the surviving company whose ownership has changed on account of merger is required to file a revised business declaration form with the tax authorities.

Foreign Capital Investment Law

In addition to the foreign ownership restrictions detailed in earlier sections, a foreign national or entity must obtain a license from the Ministry of Commerce and Industry before engaging in any commercial, industrial or tourism business in Oman or acquiring an interest in the capital of an Omani company.

The license is granted on certain conditions, including that the business be carried on through an Omani company.

Foreign companies may operate in Oman through a branch only by virtue of a special contract or agreement with the government or in the case of projects declared by the cabinet as necessary for the country. A branch registration is valid only for the duration of the project.

In the case of a takeover of an Oman branch of another foreign company (or an acquisition of the shares in the foreign company owning the Oman branch), the buyer should satisfy itself that the branch registration continues to be an appropriate form for operating in Oman. The change in ownership would need to be reported to the Ministry of Commerce and Industry.

Although the Foreign Capital Investment Law restricts the level of investment by foreign entities in an Omani company, the law protects the foreign investor by:

- ensuring the right of foreign investors to repatriate capital and profit
- stipulating that foreign investment projects may not be confiscated or expropriated unless it is in the public interest (in which case equitable compensation must be paid)
- requiring the use of a local or international arbitration tribunal (as may be agreed) in the case of disputes between the foreign investor and third parties.

Labor law and Omanization

The government has set targets in certain sectors for Omanization (employment of Omani nationals). All companies must adhere to these targets.

Other approvals/consents

In addition to the requirements of the Commercial Companies Law and the Foreign Capital Investment Law, public companies and regulated industries, including banking and insurance companies, require the approval of the relevant regulating agency.

For all M&As, consideration should be given to informing and, where necessary, obtaining the consent of key customers and suppliers (particularly in the case of government contracts).

Foreign exchange controls

There are no foreign exchange controls in Oman. Capital and income may be repatriated without restriction.

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Foreign investments of a local target company

The new income tax law adopts a worldwide basis of taxation and, in particular, taxes foreign dividends (and other foreign source income) received by an Omani taxpayer.

A tax credit is available for any foreign tax suffered. The tax credit is restricted to the amount of the Omani tax liability relating to that particular item of foreign income.

In carrying out a due diligence review of an Omani target company, the buyer should consider the company's related-party transactions with its foreign subsidiaries. In particular, the buyer should consider whether any of those transactions could be challenged under the related-party provisions of the income tax law and trigger additional tax liabilities for the Omani target company.

The assessment period under the Oman income tax law extends to 5 years from the end of the year in which the company's income tax return was submitted. This may require the buyer to consider related-party transactions across several years, if they are still open to enquiry. This also should be considered when drafting warranties and indemnities to be included in the sale agreement.

The tax authority requires strong documentary evidence to support the pricing of related-party transactions, and the outcome of their assessments cannot be reliably predicted.

Comparison of asset and share purchase

Advantages of asset purchases

- Buyer is entitled to depreciation on the fair value of assets purchased and would take a fair value tax basis for capital gains purposes.
- Seller's tax history and tax liabilities do not transfer to the buyer.
- A deduction can be claimed against any goodwill included in the acquisition.
- Buyer is able to choose which assets and which parts of the business to acquire and does not need to acquire unwanted parts of the business.
- Buyer may have greater flexibility to fund the acquisition with debt and achieve the preferred debt-equity mix.

Disadvantages of asset purchases

- Pre-acquisition losses do not transfer to the buyer and are not available for use by the acquiring company.
- The company selling the assets is liable to tax on any capital gains arising from sale of the business assets (including goodwill). This may be unattractive to the seller, who may look to increase the sale price accordingly.

Advantages of share purchases

- Pre-acquisition losses within the target company are acquired and can be carried forward to be offset against future taxable income of the target company.
- Seller may be exempt from tax on any gain arising on a share disposal where the shares qualify for exemption (companies with SAOC or SAOG status) or the individual is not holding the shares in a taxable capacity.

Disadvantages of share purchases

- Buyer inherits the tax history of the target company and any tax liabilities that might arise in connection with open tax years. Suitable warranties and indemnities should be included in the sale agreement and, more importantly, should be enforceable in the event that liabilities arise.
- No tax deduction is available against goodwill realized on the acquisition of shares.
- It may be more difficult to adjust the debt-to-equity balance of the target company.

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Oman – Withholding tax rates

This table sets out reduced withholding tax rates that may be available for various types of payments to non-residents under Oman's tax treaties. This table is based on information available up to 1 February 2014.

Source: International Bureau of Fiscal Documentation, 2014

	Dividends		Interest (%)	Royalties (%)
	Individuals, companies (%)	Qualifying companies (%)		
Domestic rates				
Companies:	0	0	0	10
Individuals:	0	N/A	0	10
Treaty rates				
Treaty with:				
Algeria	N/A	N/A	N/A	10
Belarus	N/A	N/A	N/A	10
Brunei	N/A	N/A	N/A	10
Canada	N/A	N/A	N/A	10[1]
China (People's Rep.)	N/A	N/A	N/A	10
Croatia	N/A	N/A	N/A	10
Egypt	N/A	N/A	N/A	15
France	N/A	N/A	N/A	0
India	N/A	N/A	N/A	15
Iran	N/A	N/A	N/A	10
Italy	N/A	N/A	N/A	10
Korea (Rep.)	N/A	N/A	N/A	8
Lebanon	N/A	N/A	N/A	10
Mauritius	N/A	N/A	N/A	0
Moldova	N/A	N/A	N/A	10
Morocco	N/A	N/A	N/A	10
Pakistan	N/A	N/A	N/A	12.5
Netherlands	N/A	N/A	N/A	8
Russia	N/A	N/A	N/A	5
Seychelles	N/A	N/A	N/A	10

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	Dividends		Interest (%)	Royalties (%)
	Individuals, companies (%)	Qualifying companies (%)		
Singapore	N/A	N/A	N/A	8
South Africa	N/A	N/A	N/A	8
Thailand	N/A	N/A	N/A	15
Tunisia	N/A	N/A	N/A	5
Turkey	N/A	N/A	N/A	N/A
United Kingdom	N/A	N/A	N/A	8
Uzbekistan	N/A	N/A	N/A	10
Vietnam	N/A	N/A	N/A	10
Yemen	N/A	N/A	N/A	10

Notes:

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