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Taxation of Cross-Border Mergers and Acquisitions

Philippines

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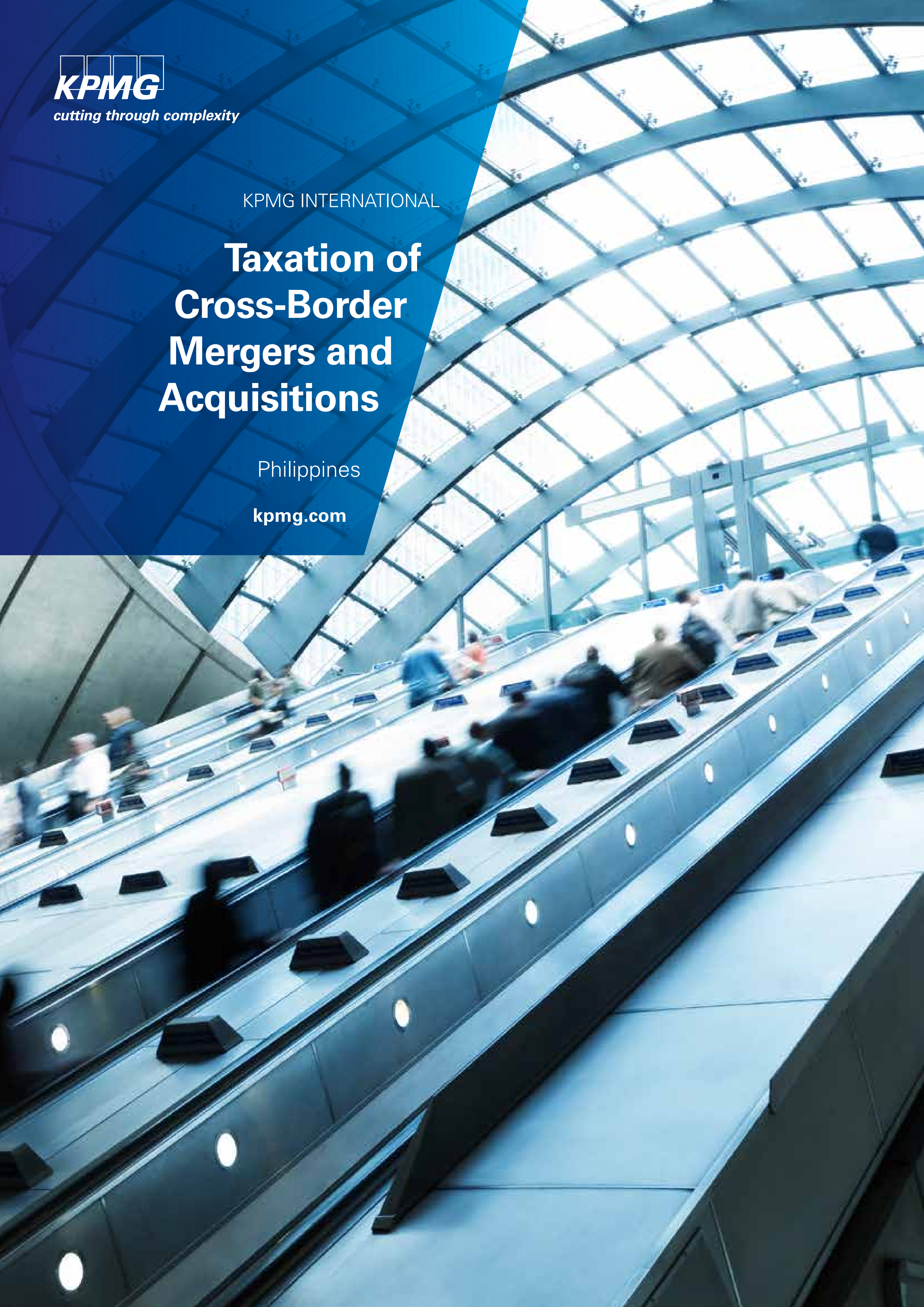

Philippines

Introduction

In recent years, corporate acquisitions, business reorganizations, and combinations and mergers have become more common in the Philippines. Corporate acquisitions can be effected through a variety of methods and techniques, and the structure of a deal can have material tax consequences. Although reorganizations are generally taxable transactions, tax-efficient strategies and structures are available to the acquiring entity.

Recent developments

Two major tax developments in 2009 that affect mergers and acquisitions (M&A) were the reduction in the corporate income tax rate from 35 percent to 30 percent as of 1 January 2009, and confirmation by the Court of Tax Appeals of a resolution issued by the Supreme Court in 2008. The resolution states that taxpayers must secure a confirmatory ruling from the International Tax Affairs Division (ITAD) of the Bureau of Internal Revenue (BIR) before availing themselves of preferential tax rates under bilateral tax treaties. Now, without such a ruling, no tax treaty benefits can be claimed and standard provisions and rates under the Philippine National Internal Revenue Code (Tax Code) apply.

To complement this resolution, on 25 August 2010, the BIR issued Revenue Memorandum Order 072-10, which mandates the filing of a Tax Treaty Relief Application (TTRA) for entitlement to preferred tax treaty rates or exemptions. Filing of the TTRA must be made before the occurrence of the first taxable event (i.e. the activity that triggers the imposition of the tax).

A further development in this regard is the Supreme Court decision in August 2013 that the obligation to comply with a tax treaty takes precedence over a BIR revenue memorandum order requiring previous application for ruling. The Court also held that the 2008 resolution that mandates the filing of a request for tax relief is not a binding precedent. In January 2014, the 2013 decision reached finality and is now jurisprudential. The Court denied with finality the motion for reconsideration filed by the BIR. However, the decision covered a 2000 Revenue Memorandum Order and not the 2010 issuance mentioned above.

Asset purchase or share purchase

An acquisition in the Philippines may be achieved through a purchase of a target's shares, assets or entire business (assets and liabilities). Share acquisitions have become more common, but acquisitions of assets only still occur. A brief discussion of each acquisition method follows.

Purchase of assets

Income from an asset acquisition is taxed in the Philippines where the transfer of title or ownership takes place in the Philippines. This is an important consideration for planning and structuring an asset acquisition. Generally, the value of an asset is its selling price at the time of acquisition. For purposes of determining gain or loss, the gain is the amount realized from the sale over the asset's historical or acquisition cost or, for a depreciable asset, its net book value.

Purchase price

To help avoid questions by the tax authorities on the valuation of an asset, the selling price should be at least equivalent to the book value or fair market value (FMV) of the asset, whichever is higher. In a purchase of assets in a business, it is advisable that each asset be allocated a specific purchase price in the purchase agreement, or the tax authorities might arbitrarily make a specific allocation for the purchase price of those assets. In addition, in an acquisition of assets, a sale comes within the purview of the Bulk Sales Law if it is a sale of all or substantially all of the trade or business or of the fixtures and equipment used in the business. The seller must comply with certain regulatory requirements; if not, the sale is considered fraudulent and void.

Goodwill

Goodwill is not subject to depreciation. The tax authorities have consistently held that no amount of goodwill paid may be deducted or amortized for tax purposes unless the same business or the assets related to the goodwill are sold. Thus, for tax purposes, since goodwill is not deductible or recoverable over time in the form of depreciation or amortization allowances, the taxpayer can only recover goodwill on a disposal of the asset, or a part of it, to which the goodwill attaches. In this case, the gain or loss is determined by comparing the sale price with the cost or other basis of the assets, including goodwill.

In the sale of a business or asset, payment for goodwill is normally included as part of the purchase price without identifying the portion of the purchase price allocated to it. Therefore, goodwill could form part of the purchase price for purposes of determining gain or loss from the subsequent sale of the business or assets, or for depreciation of depreciable assets.

Intangibles, such as patents, copyrights and franchises used in a trade or business for a limited duration, may be subject to a depreciation allowance. Intangibles used in a business or trade for an unlimited duration are not subject to depreciation. However, an intangible asset acquired through capital outlay that is known, from experience, to be of value to the business for only a limited period may be depreciated over that period.

On the sale of a business, a non-competition payment is a capital expenditure that may be amortized over the period mentioned in the agreement, provided the non-competition is for a definite and limited term. Any loss incurred on the sale may be claimed as a deduction from gross income, except for capital losses, which can only be used to offset capital gains.

Depreciation

Depreciation allowances for assets used in trade and business are allowed as tax deductions. Any method, such as straight-line, declining-balance, sum-of-the-years' digit and rate of depreciation, may be adopted as long as the method is reasonable and has due regard to the operating conditions under which it was chosen.

An asset purchase does not generally affect the depreciation. Usually, the purchaser revalues the life of the asset purchased for the purposes of claiming the tax-deductible allowance.

Tax attributes

An acquisition of assets may be structured tax-free (non-recognition of gain or loss) when property is transferred to a corporation in exchange for stock or units of participation, resulting in the transferor, alone or with no more than four others, gaining control (at least 51 percent of voting power) of the corporation. However, if money or other property (boot) is received along with the shares in the exchange, any gain is recognized up to the value of the boot and the fair market value of other property where the transferor does not distribute the boot. Gains should also be recognized if, in the exchange, a party assumes liabilities in excess of the cost of assets transferred. Losses cannot be deducted.

The provisions for tax-free exchanges merely defer the recognition of gain or loss. In any event, the original or historical cost of the properties or shares is used to determine gain or loss in subsequent transfers of these properties.

In later transfers, the cost basis of the shares received in a tax-free exchange is the same as the original acquisition cost or adjusted cost basis to the transferor of the property exchanged. Similarly, the cost basis to the transferee of the property exchanged for the shares is the same as it would be to the transferor.

The formula for determining substituted basis is provided in BIR Revenue Memorandum Ruling No. 2-2002. Substituted basis is defined as the value of the property to the transferee after its transfer and the shares received by the transferor from the transferee. The substituted bases of the shares or property are important in determining the tax base to be used in a tax-free exchange when calculating any gain or loss on later transfers.

Value added tax

In asset acquisitions, a 12 percent valued added tax (VAT) is imposed on the gross selling price of the assets purchased in the ordinary course of business or of assets originally intended for use in the ordinary course of business. Mergers and tax-free exchanges are not subject to VAT, except on the exchange of real estate properties (Revenue Regulations 16-2005 implementing RA 9337).

In 2011, in Revenue Regulations (RR) No. 10-2011, the BIR held that the transfer of goods or properties used in business or held for lease in exchange for shares of stock is subject to VAT. This treatment applies whether or not there is a change in the controlling interest of the parties. This creates a conflict where an acquisition is subject to VAT but not to income tax.

Perhaps as an attempt to cushion the effects of this pronouncement, the BIR subsequently released Revenue Regulations 13-2011. As a result, VAT only applies on transfers of property in exchange for stocks where the property transferred is an ordinary asset and not a capital asset. This relief is limited as it only applies where the transferee is a real estate investment trust (REIT).

Transfer taxes

An ordinary taxable acquisition of real property assets is subject to stamp duty. In tax-free exchanges, no stamp duty is due. In all cases, transfers of personal property are exempt from stamp duty.

Purchase of shares

The shares of a target Philippine company may be acquired through a direct purchase. Gains from the sale are considered Philippine-source income and are thus taxable in the Philippines regardless of the place of sale. Capital gains tax (CGT) is imposed on both domestic and foreign sellers. Net capital gain is the difference between the selling price and the FMV of the shares, whichever is higher, less the shares' cost basis, plus any selling expenses. In determining the shares' FMV, the Adjusted Net Asset Method is used whereby all assets and liabilities are adjusted to fair market values. The net of adjusted asset minus the liability values is the indicated value of the equity. The appraised value of real property at the time of sale is the higher of:

1. FMV as determined by the Commissioner of Internal Revenue
2. FMV as shown in the schedule of values fixed by the Provincial and City Assessors
3. FMV as determined by an independent appraiser.

Accordingly, for CGT purposes, it is advisable that the selling price not be lower than the FMV. Capital gain is usually taxed at:

- 5 percent (for amounts up to 100,000 Philippine pesos – PHP) and 10 percent (for amounts over PHP100,000) for sales of unlisted shares
- one-half of 1 percent of the gross selling price or gross value in money for sales of publicly listed/traded shares.

A capital loss from a sale of shares is allowed as a tax deduction only to the extent of the gains from other sales. In other words, capital losses may only be deducted from capital gains.

Most acquisitions are made for a consideration that is readily determined and specified, so for share purchases, it is imperative that shares not be issued for a consideration less than the par or issued price.

Consideration other than cash is valued subject to the approval of the Philippine Securities and Exchange Commission (SEC).

Tax indemnities and warranties

When the transaction is a share acquisition, the purchaser acquires the entire business of the company, including existing and contingent liabilities. It is best practice to conduct a due diligence review of the target business. A due diligence review report generally covers:

- any significant undisclosed tax liability of the target that could significantly affect the acquiring company's decision
- the target's degree of compliance with tax regulations, status of tax filings and associated payment obligations
- the material tax issues arising in the target and the technical correctness of the tax treatment adopted for significant transactions.

Following the results of the due diligence review, the parties execute an agreement containing the indemnities and warranties for the protection of the purchaser. As an alternative, it is possible to spin-off the target business into a new company, thereby limiting the liabilities to those of the target.

Tax losses

The change in control or ownership of a corporation following the purchase of its shares has no effect on any net operating loss (NOL) of the company. The NOL that was not offset previously as a deduction from gross income of the business or enterprise for any taxable year immediately preceding the taxable year in question is carried over as a deduction from gross income for the 3 years immediately following the year of such loss. The NOL is allowed as a deduction from the gross income of the same taxpayer that sustained and accumulated the NOL, regardless of any change in ownership. Thus, a purchase of shares of the target corporation should not prevent the corporation from offsetting its NOL against its income.

Crystallization of tax charges

As a share acquisition is a purchase of the entire business, any and all tax charges are assumed by the purchaser. This is one of the areas covered by the indemnities from the seller, for which a hold-harmless agreement is usually drawn up.

Pre-sale dividend

While not a common practice, dividends may be issued prior to a share purchase. However, dividends are subject to tax, except for stock dividends received by a Philippine company from another Philippine company.

Transfer taxes

Transfers of shares of stock, whether taxable or as part of a tax-free exchange, are subject to stamp duty. Only sales of shares listed and traded through the Philippine stock exchange are exempt from stamp duty. As of 20 March 2009, Republic Act 9648 permanently exempts such sales from stamp duty.

Choice of acquisition vehicle

In structuring an acquisition or reorganization, an acquiring entity or investor can use one of the entities described below. Since the tax implications for different income streams vary from one acquisition vehicle to another, it is best to examine each option in the context of the circumstances of each transaction.

Local holding company

A Philippine holding company may be used to hold the shares of a local target company directly. The main advantage of this structure is that dividends from the target company to the holding company are exempt from tax. Although distributing the dividends further upstream to the foreign parent company will attract the dividend tax, tax-efficiency may still be achieved through the use of jurisdictions where such foreign parent company is located. It is common to use a jurisdiction with which the Philippines has an effective tax treaty to optimize tax benefits.

One disadvantage of a Philippine holding company is that it attracts the imposition of an improperly accumulated earnings tax (IAET). Under current law, the fact that a corporation is a mere holding company or investment company is prima facie evidence of a purpose to avoid the tax on the part of its shareholders or members. Thus, if the earnings of the Philippine holding company are allowed to accumulate beyond the reasonable needs of the business, the holding company may be subject to the 10 percent IAET.

Foreign parent company

Where a foreign company opts to hold Philippine assets or shares directly, it is taxed as a non-resident foreign corporation. A final withholding tax (WHT) of 15 percent is imposed on the cash or property dividends it receives from a Philippine corporation, provided the country in which the non-resident foreign corporation is domiciled allows a credit against the tax due from the non-resident foreign corporation taxes deemed to have been paid in the Philippines equivalent to 15 percent. Similarly, the tax rate may be reduced where a tax treaty applies, subject to securing a prior confirmatory ruling from the BIR. As noted earlier, all preferential rates and exemptions under a treaty apply only if a prior ruling is secured. This is still the prevailing rule under Revenue Memorandum Order No. 72-2010.

Philippine corporation law does not permit a foreign company to merge with a Philippine company under Philippine jurisdiction. However, they may elect to merge abroad.

Non-resident intermediate holding company

Certain tax treaties provide exemption from CGT on the disposal of Philippine shares. Gains from sales of Philippine shares owned by a resident of a treaty country are exempt from CGT, provided the assets of the Philippine company whose shares are being sold do not consist principally (more than 50 percent) of real property interests in the Philippines. Also, some treaties (e.g. Philippines-Netherlands tax treaty) grant a full exemption on alienation of shares without condition (i.e. without the real property interest component). This is a potential area for planning, and specific treaties should be consulted.

Local branch

In certain cases, foreign companies may opt to hold Philippine assets or shares through a branch office. As with a domestic corporation, the Philippine-source income of a resident foreign corporation, such as a branch, is taxed at the rate of 30 percent (from 1 January 2009). Through the attribution principle implemented under Revenue Audit Memorandum Order (RAMO) No. 1-95, a portion of the income derived from Philippine sources by the foreign head office of the branch is attributed to the branch, following the formula in the RAMO. The income is apportioned through the branch or liaison office that was not party to the transaction that generated the income. The branch or liaison office then becomes liable to pay tax on the income attributed to it. Profit remitted to a foreign head office is subject to a 15 percent WHT, unless reduced by a tax treaty.

In establishing a branch office in the Philippines, the SEC requires that the foreign head office comply with certain financial ratios (i.e. 3:1 debt-to-equity ratio, 1:1 solvency ratio and 1:1 currency ratio).

Joint venture

Joint ventures may be either incorporated (registered with the SEC as a corporation) or unincorporated. Both forms are subject to the same tax as ordinary corporations. Unincorporated joint ventures formed to undertake construction projects, or those engaged in petroleum, coal, geothermal or other energy operations under a government service contract, are not taxable entities. Profits distributed by the joint venture or consortium members are taxable.

Choice of acquisition funding

Corporate acquisitions may be funded through equity, debt or a combination of the two.

Debt

Companies tend to favor debt over equity as a form of financing mainly because of the tax-favored treatment of interest payments vis-à-vis dividends (see this chapter's information on deductibility of interest). The tax advantage of interest payments, in contrast to dividends, is an outright savings of 30 percent in the form of deductible expense against the taxable base. Since interest payments are subject to a 20 percent final tax under the Tax Code, financing through debt still has an advantage over financing with equity equivalent to 15 percent.

Currently, there are no specific rules for determining what constitutes excessively thin capitalization, so it is necessary to determine what seems to be a reasonable ratio of debt to equity in the circumstances of each case.

Deductibility of interest

Under current law, interest payments incurred in a business are deductible against gross income. The allowable deduction for interest expense is reduced by 33 percent of the company's interest income, if any, subjected to final tax.

Withholding tax on debt and methods to reduce or eliminate it

Generally, interest income received by a Philippine corporation from another Philippine corporation is subject to the regular corporate income tax of 30 percent. However, interest income received by a non-resident foreign corporation from the Philippines is subject to a final withholding tax of 20 percent. The rate of WHT may be reduced or eliminated under a tax treaty, subject to securing a prior ruling.

Checklist for debt funding

As no specific rules determine what constitutes excessively thin capitalization, a reasonable ratio of debt-to-equity should be determined on a case-by-case basis.

Equity

A purchaser may use equity to fund its acquisition by issuing shares to the seller as consideration.

A tax-free acquisition of shares can be accomplished through a share-for-share exchange between the acquiring company and the target company. In such an exchange, one party transfers either its own shares or the shares it owns in a domestic corporation solely in exchange for shares of stock in the other company, resulting in the transferor gaining control of the transferee company. In the same manner, the transferee company becomes the controlling stockholder of the transferor company since the shares received are the domestic shares of the transferee company.

This is considered a tax-free exchange within the scope of section 40(C)(2) of the Philippine Income Tax Code. No gain or loss is recognized if property (including shares of stocks) is transferred to a corporation by a person in exchange for stock or units of participation in such a corporation such that the person, alone or with no more than four others, gains control (stock ownership of at least 51 percent of the total voting power) of the corporation.

Hybrids

The current laws contain no guidelines on whether to classify hybrid financial instruments as equity infusions or debt instruments. The question is whether a loan is a bona fide loan or a disguised infusion of capital.

If it is the latter, there is a risk that the BIR may:

- disallow the interest expense
- where the loan is interest-free or carries an interest rate that is less than the prevailing market rate, impute interest income to the lender and assess additional income tax thereon.

Certain court decisions may provide some guidance on whether a transaction should be considered a bona fide loan or a dividend distribution. To date, no authoritative or definitive rulings have been issued.

Discounted securities

Under Philippine laws, the discount on discounted securities is treated as interest income rather than a taxable gain. For discounted instruments, a trading gain arises only where the instrument is sold above par.

Other considerations

Concerns of the seller

In an acquisition of assets, a sale comes within the purview of the Bulk Sales Law where it is a sale of all or substantially all of the trade or business, or of the fixtures and equipment used in the business. The seller must comply with certain regulatory requirements; if not, the sale is considered fraudulent and void.

VAT applies to sales of goods in the ordinary course of trade or business (i.e. the regular conduct or pursuit of a commercial or an economic activity, including incidental transactions). Thus, isolated transactions generally are not subject to VAT. However, decisions of the Philippine Court of Tax Appeals in 2013 consistently hold that an isolated transaction may be considered an incidental business transaction for VAT purposes. Hence, VAT may be imposed on isolated transactions such as sales of assets, shares or the whole business enterprise.

Company law and accounting

The Corporation Code of the Philippines governs the formation, organization and regulation of private companies, unless they are owned or controlled by the government or its agencies. The Corporation Code also governs mergers and other business combinations.

The Corporation Code allows two or more corporations to merge into either of the constituent corporations or a new consolidated corporation. Under the Philippine Tax Code, the terms ‘merger’ and ‘consolidation’ are understood to mean:

- an ordinary merger or consolidation
- the acquisition by one corporation of all or substantially all the properties of another corporation solely for stock, undertaken for a bona fide business purpose and not solely for the purpose of escaping the burden of taxation.

Mergers in the Philippines require a transfer of all the assets and liabilities of the absorbed corporation to the surviving corporation. This step is followed by the dissolution of the absorbed corporation. In return for the transfer of all the assets and liabilities of the absorbed corporation, the surviving entity issues a block of shares equal to the net asset value transferred. These shares are in turn distributed to the stockholders of the absorbed corporation.

A de facto merger is the acquisition by one corporation of all or substantially all of the properties of another corporation solely for stock, usually undertaken for a bona fide business purpose and not solely to escape taxation. For the acquisition to be considered substantial, at least 80 percent of the assets acquired must have an element of permanence; that is, not acquired for immediate disposal. Unlike a statutory merger, where the absorbed corporation is automatically dissolved as a consequence of the merger, in a de facto merger, the corporation the assets of which were acquired survives after the transfer until it is later dissolved by another act. The tax consequences of a de facto merger are similar to those of a statutory merger. However, in a de facto merger, the acquisition of assets does not automatically result in the dissolution of the corporation the assets of which are acquired, and so the net operating loss carryover (NOLCO) of the absorbed corporation is not transferred to the acquiring corporation.

A legitimate business purpose for the merger is essential. Without it, the merger could be treated as a mere arrangement to avoid the payment of taxes, and the BIR could disregard the tax-free nature of the transaction. In determining the existence of a bona fide business purpose for the merger, each step of the transaction is usually considered and the entire transaction or series of transactions could be treated as a single unit.

Applying the step transaction test is recommended. Under this test, it is advisable to implement each successive step in a merger after the lapse of a certain period of time, say, a year or so. This prevents an examination by the BIR on whether or not a business purpose exists. However, the BIR has not issued a ruling on the acceptable timeframe for each transaction.

Group relief/consolidation

Group tax relief is not applicable under Philippine law. For tax purposes, each legal entity is registered as a separate taxpayer and subject to separate tax filings, and tax consolidations are not possible.

Transfer pricing

The Philippine Tax Code grants the Commissioner of Internal Revenue the power to reallocate income and deductions between and among related entities. The Secretary of Finance's transfer pricing regulations (Revenue Regulations 2-2013) provide guidelines for applying the arm's length principle for transfer pricing.

These guidelines state that the most appropriate of the transfer pricing methods under the Organisation for Economic Cooperation and Development Transfer Pricing Guidelines may be used in determining the arm's length result. These methods are as follows:

- comparable uncontrolled price method
- resale price method
- cost plus method
- profit split method
- transactional net margin method.

The guidelines do not prescribe a preference for any one method. Instead, the method that produces the most reliable results, taking into account the quality of available data and the degree of accuracy of adjustments, should be utilized.

The guidelines recognize the authority of the Commissioner of Internal Revenue to make transfer pricing adjustments to ensure that taxpayers clearly reflect income attributable to related-party transactions and to prevent the avoidance of taxes with respect to such transactions.

The documentation supporting the transfer pricing analysis is not required to be submitted upon filing of tax returns. The taxpayer should retain the documentation for the period provided under the Tax Code and be prepared to submit to the BIR when required or requested to do so.

Further, the documentation should be contemporaneous (existing, prepared at the time the related parties develop or implement any arrangement that might raise transfer pricing issues, or prepared when the parties review these arrangements when preparing tax returns).

Dual residency

The Philippines follows the incorporation/domestication rule: a corporation is considered a resident of the country where it is incorporated. Certificates of incorporation or registration and articles of incorporation or association are considered sufficient proof of residency.

Foreign investments of a local target company

Philippine domestic corporations are taxed on their worldwide income at the rate of 30 percent, subject to foreign tax credits in compliance with applicable rules.

Comparison of asset and share purchases

Advantages of asset purchase

- The transferee corporation does not automatically assume liabilities of the transferor corporation.
- The transferor corporation does not automatically dissolve and may continue its separate existence.

- The transferor and transferee corporations may select which assets to transfer or purchase.
- The transfer of all or substantially all of the assets solely for stock is not subject to donor's tax.
- The transfer of all or substantially all of the assets solely for stock is not subject to stamp duty unless the assets transferred involve real property.
- No loss or gain is recognized, provided the conditions in section 40(c)(2) of the Tax Code are met.
- An asset purchase does not normally need SEC approval, unless the assets are payments for subscription to the capital stock and there is a need to increase the authorized capital stock of the transferee corporation.
- The property purchased by the buyer is subject to depreciation. The buyer may use a different method and rate of depreciation based on the acquisition cost of the property acquired.

Disadvantages of asset purchases

- Unless specifically provided for in the agreement, the transferee corporation does not acquire the rights, privileges and franchises of the transferor corporation.
- The transferee corporation cannot claim any NOLCO of the transferor corporation since the transferor corporation continues to exist as a legal entity.
- The transferor's unused input VAT cannot be absorbed by or transferred to the transferee corporation.
- A transfer of all or substantially all of the assets must comply with the requirements of the Bulk Sales Law.
- A higher purchase price arises in the event of any additional premium or goodwill imputation.
- Acquisition is subject to VAT where the transaction is deemed to be a sale.
- Any real property purchased is subject to stamp duty and VAT.

Advantages of stock purchase

- The buyer may benefit from an automatic transfer of the rights, privileges and franchises by the transferor corporation to the transferee corporation.
- The transferee corporation may claim the NOLCO of the transferor corporation, subject to the provisions of the Tax Code and its regulations. However, in 2012, the BIR ruled that in a statutory merger, the NOLCO of the absorbed corporation is not one of the assets that can be transferred and absorbed by the surviving corporation, as this privilege or deduction is only available to the absorbed corporation. Accordingly, the tax-free merger does not cover the NOLCO of the absorbed corporation that can be transferred and absorbed by the surviving corporation.
- The transferor's unused input VAT may be absorbed by or transferred to the transferee corporation.
- A merger may not be subject to donor's tax and VAT, subject to the comments above. Moreover, no loss or gain is recognized, provided the conditions in section 40(c)(2) of the Tax Code are met.
- A stock purchase may involve a lower purchase price and lower taxes.

Disadvantages of stock purchase

- The transferee corporation may be responsible for all the liabilities and obligations of the transferor corporation as if the transferee corporation had incurred them directly. Any claim, action or pending proceeding by or against the transferor corporation may be prosecuted by or against the transferee corporation.
- It may be necessary to increase the authorized capital stock of the transferee corporation to accommodate the issue of new shares; hence, SEC approval is required.
- The issue of new shares is subject to stamp duty.
- Regulatory compliance would be required before the shares are registered in the buyer's name.

Philippines – Withholding tax rates

This table sets out reduced WHT rates that may be available for various types of payments to non-residents under the Philippines' tax treaties. This table is based on information available up to 1 January 2014.

Source: International Bureau of Fiscal Documentation, 2014

	Dividends		Interest[1] (%)	Royalties (%)	Capital gains tax exemption on alienation of shares[36]
	Individuals, companies (%)	Qualifying companies (%)			
Domestic rates					
Companies:	15/30	15/30	20/30	30	
Individuals:	20/25	N/A	20/25	10/20/25	
Treaty rates					
Treaty with:					
Australia	25	15[2]	10/15[3]	15/25[4]	Yes
Austria	25	10[5]	10/15[6]	10/15[7]	Yes
Bahrain	15	10[8]	10	10/15[9]	Yes
Bangladesh	15	10[10]	15	15	Yes
Belgium	15	10[8]	10	15	No
Brazil	25	15[11]	10/15[3]	15/25[12]	No
Canada	25	15[13]	10/15[3]	25[14]	Yes
China (People's Rep.)	15	10[8]	10	10/15[9]	Yes
Czech Republic	15	10[8]	10	10/15[15]	Yes
Denmark	15	10[10]	10	15	Yes
Finland	15	15[13]	10/15[3]	15/25[16]	Yes
France	15	10[8]	10/15[3]	15	Yes
Germany	15	10[10]	10/15[17]	10/15[9]	No
Hungary	20	15[18]	15	15[14]	Yes
India	20	15[13]	10/15[19]	15[20]	Yes
Indonesia	20	15[21]	15	15/20[22]	Yes
Israel	15	10[8]	10	15[14]	Yes

	Dividends		Interest[1] (%)	Royalties (%)	Capital gains tax exemption on alienation of shares[36]
	Individuals, companies (%)	Qualifying companies (%)			
Italy	15	15	10/15[3]	15/25[23]	Yes
Japan	15	10[5]	10	10/15[24]	Yes
Korea (Rep.)	25	10[25]	10/15[6]	10/15[7]	Yes
Malaysia	25	15[11]	15	15/25[23]	Yes
Netherlands	15	10[26]	10/15[17]	10/15[7]	Yes
New Zealand	15	15	10	15	Yes
Nigeria[37]	15	12.5[38]	15	20	No
Norway	25	15[13]	15	7.5/10/25[27]	Yes
Pakistan	25	15[28]	10/15[3]	15/25[4]	Yes
Poland	15	10[10]	10	15	Yes
Romania	15	10[29]	10/15[17]	10/15/25[30]	Yes
Russia	15	15	15	15	No
Singapore	25	15[31]	10/15[3]	15/25[32]	Yes
Spain	15	10[8]	10/15[17]	10/15/20[33]	Yes
Sweden	15	10[10]	10	15	Yes
Switzerland	15	10[8]	10	15	Yes
Thailand	–	15[34]	10/15[3]	15/25[32]	Yes
United Arab Emirates	15	10[8]	10	10	Yes
United Kingdom	25	15[13]	10/15[3]	15/25[32]	Yes
United States	25	20[35]	10/15[3]	15/25[4]	Yes
Vietnam	15	10[10]	15	15	No

Notes:

1. Many of the treaties provide for an exemption for certain types of interest, e.g. interest paid to public bodies and institutions or in relation to sales on credit. Such exemptions are not considered in this column.
2. The 15 percent rate applies if double tax relief by way of a rebate or credit is given to the beneficial owner of the dividends (being a company) in accordance with Art. 24 of the treaty.
3. The 10 percent rate applies to interest paid in respect of public issues of bonds, debentures or similar obligations.
4. The 15 percent rate applies to royalties paid by an enterprise registered with the Philippine Board of Investments (BOI) and engaged in preferred areas of activities. For the United States of America, the treaty provides for the 'most-favored-nation' clause (i.e. the lowest rate of Philippine tax that may be imposed on royalties of the same kind paid under similar circumstances to a resident of a third State).
5. The 10 percent rate applies if the beneficial owner is a company that holds directly at least 10 percent either of the voting shares of the Philippine company or of the total shares issued by that company during the period of 6 months immediately preceding the date of dividend payment. For Japan, the 10 percent rate also applies if the dividends are paid by a company registered with the BOI and engaged in preferred pioneer areas of investment under the Philippine investment laws.
6. The 10 percent rate applies to interest paid on public issues of bonds, debentures or similar obligations. The same rate also applies to interest paid by a company registered with the BOI and engaged in preferred pioneer areas of investment under the Philippine investment incentives laws.
7. The 10 percent rate applies to royalties paid by a company registered with the BOI and engaged in preferred pioneer areas of investment under the Philippine investment incentives laws.

8. The 10 percent rate applies if the beneficial owner is a company that holds directly at least 10 percent of the capital of the paying company. Except for Belgium, China and Czech Republic, the treaties exclude partnership. For France and Spain, the rate applies to voting shares (vis-à-vis capital).
9. The 15 percent rate applies to royalties arising from the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films or tapes for television or broadcasting. For China and Germany, the 10 percent rate applies to royalties arising from the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or from the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience. Further, the 10 percent rate applies if the contract giving rise to royalties for transfer of technology (which, under Philippine law, is subject to approval) has been approved by the Philippine competent authorities.
10. The 10 percent rate applies if the beneficial owner is a company (excluding partnerships) that holds directly at least 25 percent of the capital of the paying company. For Germany, the rate applies to ownership (vis-à-vis holding).
11. The 15 percent rate applies if the recipient is a company. For Brazil, it includes a partnership.
12. The 25 percent rate applies to royalties arising from the use or the right to use trademarks and cinematograph films, films or tapes for television or radio broadcasting.
13. For Canada, the 15 percent rate applies if the company controls at least 10 percent of the voting power of the company paying the dividend. For Finland, the 15 percent rate applies if the recipient is a company (excluding partnership) owning at least 10 percent of the voting stock of the company paying the dividends. For India, the 15 percent rate applies if the beneficial owner is a company that owns at least 10 percent of the shares of the company paying the dividends. For Norway and the United Kingdom, the 15 percent rate applies if the beneficial owner is a company that controls directly or indirectly at least 10 percent of the voting power in the company paying the dividends.
14. The treaty provides for the 'most-favored-nation' clause (i.e. the lowest rate of Philippine tax that may, under similar circumstances, be imposed on royalties derived by a resident of a third State).
15. The 10 percent rate applies to royalties arising from the use of, or the right to use, any copyright of literary, artistic or scientific work (other than the use of, or the right to use, any copyright of cinematograph films, and films or tapes for television or radio broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or from the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience. The 15 percent rate applies to royalties arising from the use of, or the right to use, any copyright of cinematograph films, and films or tapes for television or radio broadcasting.
16. The 15 percent rate applies to royalties paid by an enterprise registered with the BOI and engaged in preferred areas of activities, royalties in respect of cinematographic films or tapes for television or broadcasting, and royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work.
17. The 10 percent rate applies if such interest is paid in connection with the sale on credit of any industrial, commercial or scientific equipment, or on any loan of whatever kind granted by a bank (including other financial institutions for Netherlands), or in respect of public issues of bonds, debentures or similar obligations. For Romania, the 15 percent rate applies to interest in connection with the sale on credit of any means of transport. For Spain, the 10 percent rate does not apply to interest paid on any loan of whatever kind granted by a bank.
18. The 15 percent rate applies if the beneficial owner is a company that holds directly at least 25 percent of the capital of the paying company.
19. The 10 percent rate applies if the interest is received by a financial institution (including an insurance company). The same rate applies to interest arising from public issues of bonds, debentures or similar obligations.
20. The 15 percent rate applies to royalties that are paid by an enterprise registered with the BOI.
21. The 15 percent rate applies if the beneficial owner is a company that holds directly at least 25 percent of the capital of the paying company.
22. The 15 percent rate applies to royalties paid by an enterprise registered with the BOI and engaged in preferred areas of activities.
23. The 15 percent rate applies to royalties paid by an enterprise registered with the BOI and engaged in preferred areas of activities and also royalties in respect of cinematographic films or tapes for television or broadcasting.
24. The 15 percent rate applies if the royalties are paid in respect of the use of or the right to use cinematograph films and films or tapes for radio or television broadcasting.
25. The 10 percent rate applies if the beneficial owner is a company (other than a partnership) that holds directly at least 25 percent of the capital of the company paying the dividends. The same rate also applies to dividends paid by a company registered with the BOI and engaged in preferred pioneer areas of investment under the Philippine investment incentives laws.
26. The 10 percent rate applies if the recipient is a company the capital of which is wholly or partially divided into shares and which holds directly at least 10 percent of the capital of the company paying the dividends.
27. The 25 percent rate applies to royalties, including rentals or amount paid for the use of, or the right to use, motion picture films, films or tapes for radio or television broadcasting. The 7.5 percent rate applies to rentals or amount paid for the use of or the right to use containers. The 10 percent rate applies to royalties paid by a company registered with the BOI and engaged in preferred pioneer areas of investment. Further, this treaty provides for the 'most-favored-nation' clause (i.e. the lowest rate of the Philippine tax that may be imposed on royalties of the same kind paid in similar circumstances to a resident of a third State).
28. The 15 percent rate applies if the beneficial owner is a company (excluding partnership) that holds directly at least 25 percent of the capital of the paying company during the part of the paying company's taxable year which precedes the date of payment of the dividends and during the whole of its prior taxable year, if any.
29. The 10 percent rate applies if the recipient is a company (excluding partnership) and during the part of the paying corporations taxable year which precedes the date of payment of the dividends and during the whole of its prior taxable year (if any), at least 25 percent of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation.
30. The 10 percent rate applies if the royalties are paid by an enterprise registered with the BOI and engaged in preferred pioneer areas of activities. The 15 percent rate applies if royalties are in respect of cinematographic films and tapes for television or broadcasting. The 25 percent rate applies in all other cases.
31. The 15 percent rate applies if the recipient is a company (including partnership) and during the part of the paying company's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 15 percent of the outstanding shares of the voting stock of the paying company was owned by the recipient company.
32. The 15 percent rate applies where the royalties are paid by an enterprise registered with the BOI and engaged in preferred areas of activities and also royalties in respect of cinematographic films or tapes for television or broadcasting.
33. The 10 percent rate applies where the royalties are paid by an enterprise registered with the BOI and engaged in preferred areas of activities. The 20 percent rate applies in respect of cinematographic films or tapes for television or broadcasting. The 15 percent rate applies in all other cases.
34. The 15 percent rate applies if the company paying the dividends is a Philippine company engaged in an industrial undertaking.
35. The 20 percent rate applies when the recipient is a corporation and if during the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 10 percent of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation.
36. Most of the treaties provide certain conditions to be met before the exemption from Philippine capital gains tax can be applied. On the other hand, the tax treaty with Netherlands grants full exemption from Philippine capital gains tax without any conditions to be satisfied.
37. Under Revenue Memorandum Circular No. 16-2014 issued by the BIR on 14 March 2014, the Agreement between the Government of the Republic of the Philippines and the Government of the State of the Federal Republic of Nigeria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains (or 'RP-Nigeria tax treaty') has entered into force on 18 August 2013. Under Article 29 (2) of the RP-Nigeria tax treaty, the provisions on taxes on income of the Agreement shall apply to income derived or which accrued beginning 1 January 2014.
38. The 12.5 percent rate applies if the beneficial owner is a company (excluding partnerships) which holds directly at least 10 percent of the capital of the paying company.

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