KPMG

M&A Matters

Spring 2016

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Welcome to the spring edition of M&A Matters

This new format of M&A Matters incorporates the usual tax updates with a broader review of M&A insights.

Our new look M&A Matters brings you a broader perspective to drive your strategy with insights from our Global M&A Predictor, an update on key funding issues and the latest considerations for tax.

We begin the Spring issue with the latest edition of M&A Predictor which suggests the market will continue to grow in 2016, with capacity expected to outstrip appetite as measured by our global study. Technology will lead the way, with transactions expected to be strongest in Western economies.

From a tax perspective, content includes an update on state aid from John Cox and Grace George, following recent cases in the Netherlands and Belgium, including the potential impacts on due diligence exercises and contract negotiations. Iain Kerr then provides us with an overview of the consultation document published by HMRC on company distributions, which tightens the Transactions in Securities rules.

Michael Bird, John Addison and Rebecca Davies-Cooke, will give us an overview of the new "anti-hybrid" rules, which are due to come into effect from 1 January 2017, following the publication of proposed domestic rules by HMRC followed by Naz Klendjian and Sarah Goodman talking us through BEPS Action Plan 6 (preventing treaty abuse).

Also included is Rob Norris and Michael Eaton's overview of a recent First Tier Tribunal decision as an increasing body of case law building up in relation to the unallowable purpose rule. Our Stamp Taxes team, provide an update seeding relied and a new targeted anti-avoidance rule for deep in the money options.

Then, Arnout Haeser and Aarke Wander provide an update on potential amendments to the acquisition debt rules in the Netherlands which will be of particular interest to private equity investors.

Finally, we provide an overview of announcements from Budget 2016 that may have an effect on M&A transactions.

We hope you will enjoy our spring edition of M&A Matters. If you would like further detail on the articles in this, or any previous issue, please call us, the authors, or your usual KPMG contact.

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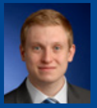

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"We expect a robust M&A market to continue throughout the rest of 2016 in Europe, which is being reflected in higher volumes and higher valuations."

Contents

M&A Predictor - Spring 2016

KPMG's M&A Predictor looks at the appetite and capacity for M&A deals by tracking and projecting important indicators 12 months forward. This issue demonstrates that analysts are expecting the world's largest corporates to maintain the positive momentum for deals in 2016, with both appetite and capacity predicted to increase globally.

Global M&A levels expected to stay strong in 2016

After a strong year for M&A in key markets during 2015, the appetite for deals, as indicated by predicted forward P/E ratios (our measure of corporate appetite or confidence) is expected to rise by 4 percent over the next 12 months. Similarly, the capacity of corporates to fund M&A growth, measured by net debt to EBITDA ratios (our measure of capacity) is expected to rise by 13 percent over the same period, as companies continue to pay down debt and bolster their cash reserves.

"We expect companies will continue to pursue transactions and believe that we will see strong activity in many western economies in 2016. Emerging market economies are expected to remain challenging, however," commented Leif Zierz, Global Head of Deal Advisory.

Capacity growth to exceed appetite

The capacity to transact of the world's largest corporates is predicted to show even stronger growth than appetite, up 13 percent globally. North America and Europe are both expected to show significant increases in capacity, at 15 percent and 12 percent respectively. Capacity in Asia Pacific (Other) is forecast to be even higher, at 19 percent, as is Africa and the Middle East, at 18 percent. The only two regions expecting a below average growth in capacity are Asia Pacific (Japan) and Latin America, where the figures are 1 percent and 8 percent respectively.

Mixed expectations for key industry sectors

In terms of sectors, the strongest performers in terms of appetite are expected to be: Energy, with a 23 percent increase expected in 2016, Basic Materials at 12 percent and Consumer Staple at 6 percent. There are some significant declines in other sectors, however. Most notably Utilities, where appetite is expected to decrease by 6 percent.

Technology is the star performer for capacity growth, with analysts expecting an increase of 90 percent in 2016, as tech companies continue to increase their cash stockpiles. Appetite is expected to stay the same as 2015 in the Technology sector. Healthcare is predicted to see the second highest rise in capacity, at 30 percent.

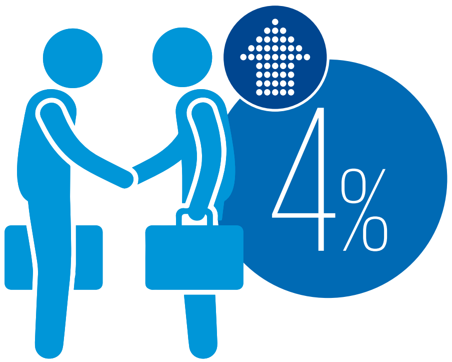
Announced deals on the up

The total value of all announced transactions worldwide climbed by 31 percent in value from US$2,828B to US$3,709B. This diverged significantly from the total value of all completed transactions worldwide, which declined by 40 percent during 2015.

View the full report

View worldwide and regional data of completed and announced deals

"After a strong year for M&A in key markets during 2015, the appetite for deals, as indicated by predicted forward P/E ratios is expected to rise by 4 percent over the next 12 months."



State aid: Recent developments

In the last year there have been several high profile fiscal state aid cases. Recent cases in the Netherlands and Luxembourg have been widely publicised and more investigations into tax rulings have been announced. Most recently the Belgian "excess profit" scheme was announced to be considered illegal state aid. In this article we focus on what these cases imply in an M&A context – in particular, we consider how will due diligence exercises and SPA negotiations could be affected.

What is illegal fiscal state aid?

Assistance is considered "state aid" by the European Commission if it meets all of the following four criteria:

1. Assistance is granted by the state or through state resources;
2. The assistance gives an advantage to one or more undertakings over others on a selective basis;
3. The assistance distorts or has the potential to distort competition; and
4. The assistance is likely to affect trade between EU member states.

Assistance regarding taxation could be in the form of tax incentive schemes or special tax rulings. Tax savings for companies funded through state resources could potentially distort competition and therefore affect trade between EU member states.

In most state aid cases that are brought before the European Court of Justice ("ECJ"), or that have been submitted to the European Commission ("Commission") to confirm that a certain tax measure is not tax relief, the key question is whether the tax assistance gives an advantage on a selective basis. A low statutory corporate tax rate may meet all other three requirements for state aid and is advantageous; however, it is not selective as it applies to all tax payers. When a specific tax relief favours certain groups of tax payers such as multinational groups over domestic companies or certain industries there could be an advantage on a selective basis.

Not all assistance from a state is illegal state aid – specifically, state aid approved by the Commission is not illegal. Certain types of aid are allowed such as aid to facilitate the development of certain economic activities, or of certain economic areas, as long as it does not adversely impact trading conditions in the EU. Further, aid to SMEs and aid up to €200,000 per company group over a period of three fiscal years is exempt from state aid approval.

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Consequences of illegal state aid

When the European Commission decides that a tax measure or tax ruling is illegal state aid, the relevant measure will be declared void and unenforceable from the date it came into effect (subject to a ten year time limitation). The Member State is then forced to recover the aid plus interest, without any delay, from the beneficiary of the state aid. The European Commission can also determine the recoverable amount based on its own assessment, although the Member State or beneficiary concerned can challenge this decision by appealing to the ECJ. However, the appeal procedure would not automatically suspend the effect of the Commission's decision.

> "According to the Commission, around 35 mainly European companies benefitted from the scheme which has been in place since 2005. It is expected that around €500 million will have to be recovered by the Belgian authorities."

Recent cases

Until last year, the focus in state aid cases was on tax incentive schemes, where a number of countries had introduced patent box regimes (e.g. UK, Netherlands and Spain). These schemes were usually notified to the European Commission as potential state aid and subsequently approved by the Commission, with certain adjustments to the scheme made in some cases. It is generally considered that the UK patent box is not considered state aid as it does not provide a selective advantage to a group of tax payers. However, if HMRC grants non-statutory tax clearances about the application of the patent box with the below mentioned indicators, the ruling could potentially be considered illegal state aid.

In December 2014 the focus was shifted to state aid granted to individual tax payers in the form of advantageous tax rulings. The European Commission asked all Member States to provide information about their tax ruling practice and a list of all companies that have received a tax ruling from 2010 to 2013. This followed an earlier investigation that started in June 2013 which only focused on seven member states (Cyprus, Ireland, Luxembourg, Malta, the Netherlands, the UK and Belgium).

On 21 October 2015 the European Commission determined that Luxembourg and the Netherlands granted illegal state aid to certain multinational groups by granting a selective tax advantage that was not available to other tax payers. In these cases, tax rulings confirmed the calculation of the taxable profit and the applicable transfer pricing. The European Commission determined that the agreed transfer pricing did not correspond to market conditions and therefore did not reflect economic reality. Furthermore, the rulings used artificial and complex methods to establish taxable profits for the companies. On this basis, the rulings gave the beneficiaries an unfair and competitive advantage and the Commission determined that approximately €20-30 million had to be recovered by the Netherlands and Luxembourg. Also the companies were no longer able to benefit from the ruling. Both the Netherlands and Luxembourg have challenged the decision for the General Court.

Investigations into transfer pricing rulings granted to certain multinationals by Ireland and Luxembourg respectively by the Commission are still pending.

The most recent case related to the Belgium "excess profit" tax scheme. Under the excess profit scheme companies were allowed to pay substantially less tax because they are multinational and could benefit from alleged synergies. On the basis of the rulings granted by the Belgian tax administration, the "excess profit", being the additional profit as a result of synergies, was exempt from taxation in Belgium. In practice, this typically resulted in 50% to 90% of the actual profits being exempt in Belgium and also not being taxed in other jurisdictions. On 11 January 2016, the Commission issued a press release that the excess profit tax scheme was illegal state aid as the scheme only benefitted a select group of companies (i.e. multinationals) and therefore put smaller competitors at an unfair disadvantage. According to the Commission, around 35 mainly European companies benefitted from the scheme which has been in place since 2005. It is expected that around €500 million will have to be recovered by the Belgian authorities.

In the press release of the Belgian case, Commissioner Margrethe Vestager stated that the Commission will continue their inquiries into tax ruling practices in all EU member states to identify potential illegal state aid as well as their in-depth investigations into tax rulings in Ireland and Luxembourg.

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What to look out for in a due diligence

As illegal state aid will need to be recovered from the beneficiaries, potential illegal state aid could pose a significant risk. As described above, fiscal state aid could take the form of a general tax rule or tax practice or specific individual tax rulings. If a target company has a significantly lower effective tax rate than the statutory tax rate as a result of specific tax relief or a tax ruling, there could potentially be a state aid risk.

In broad terms, tax rulings are comfort letters by tax authorities giving a specific company clarity on how its corporate tax will be calculated, for example to confirm transfer pricing arrangements. The Commission has stressed that this in itself is not "problematic" and not necessarily state-aid.

Based on the letters sent in the recent state aid cases by the commission to Luxembourg and Netherlands, if a tax ruling or ruling practice contains the following elements, the following could be indicators for state aid:

- There is an apparent discretionary power by the relevant authority, e.g. in fixing the taxable base or setting the tax rate;
- Determination of the tax base being subject to "reverse engineering", based on the desired outcome as opposed to the facts;
- The ruling is valid for a long or open-ended period without review;
- There are no underlying transfer pricing documents that substantiate the agreement;
- The relevant authority easily accepts the requested outcome, without any investigation or in a very short time frame;
- As part of the agreement, a certain minimum investment (e.g. employees or capital) is negotiated;
- The tax base is lowered as a result of fixed margins or a fixed base without the facts and circumstances being verified; and
- The agreed transfer pricing is not in line with the dealing at arm's length principle.

The advantage that potentially has to be paid back to the relevant state is an obvious risk that should be considered when determining the purchase price and or provided for in the SPA with suitable warranties or indemnities. As a state aid decision will also annul the existing ruling or measure, the future effective tax rate could also be impacted. Therefore it may be appropriate to model a scenario without the potential state aid measure when determining the purchase price of the target.

"As up to 10 years of illegal state aid can be recovered from the beneficiaries, the usual statute of limitations for tax liabilities in share purchase agreements would most likely not apply."

SPA considerations

Recovery of illegal state aid from the original beneficiary is a key consideration insofar as contractual protection is concerned. Based on the Banks case (Case C-390/98, para. 77), when a company has been sold, the aid must be recovered from the vendor when the company has been sold at an arm's length price. It could be assumed that the purchase price of the company reflects the consequences of the previous aid and the seller therefore benefitted from the state aid.

As up to 10 years of illegal state aid can be recovered from the beneficiaries, the usual statute of limitations for tax liabilities in share purchase agreements would most likely not apply. Given the standard practice is to review open tax periods (e.g. typically up to a maximum of four years) in a tax due diligence, potential illegal state aid from before this period may stay undetected as a result. It may therefore be considered necessary to extend the scope of work to review material illegal state aid risks in the last 10 years.

If it has been identified that the target has benefitted from potential illegal state aid and an indemnity is agreed in the SPA, the claim period should be considered in light of the potential 10 year period. If there are concerns that a seller may not be willing to agree with such a long claim period, purchasers could consider seeking warranty and indemnity insurance to cover the potential risk, which has become much more established in the past few years.

Furthermore, tax deeds (if available) should be reviewed to ensure that the recovery of illegal state aid is covered under the definitions of "tax" and "tax liability" as most likely no formal tax assessment will be imposed.

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Cross-Border Deals Tracker

This edition of the Cross-Border Deals Tracker sees a decline in M&A investment into emerging markets but an increase in the number of M&A transactions between emerging markets in the latter half of 2015.

The latest deals data shows that the volume of developed market investments into emerging markets (D2E) hit a 10-year low over the second half of 2015, but emerging market deals with one another showed strong growth over the same period. Between July and December 2015, the number of D2E deals fell by 3 percent to 541, the lowest number in 10 years.

The yearly total is also the lowest in 10 years, at 1101 D2E deals, 9 percent down on 2014. The fall-off is the second period of decline, following a revival in D2E transactions during the second half of 2014. In contrast, the volume of transactions where both the acquirer and the target were in an emerging market (E2E), increased by 25 percent.

About Cross-Border Deals Tracker

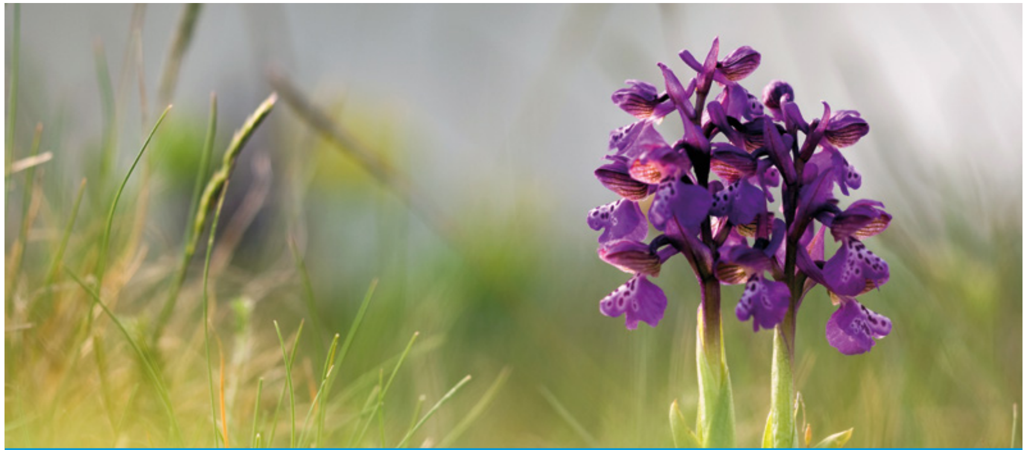
The Cross-Border Deals Tracker (formerly known as High Growth Markets Tracker) looks at deal flows between 15 developed economies (or groups of economies) and 13 high growth economies (or groups of economies). The Tracker is produced every 6 months to give an up-to-date picture of cross-border merger and acquisition activity.

Established in 2003, the Tracker includes data from completed transactions where a trade buyer has taken a minimum 5 percent shareholding in an overseas company. All raw data is sourced from Thomson Reuters SDC and excludes deals backed by government, private equity firms or other financial institutions.

The 15 developed countries or groups are: UK, US, Canada, Spain, France, Germany, Netherlands, Italy, Australia, Singapore, Hong Kong, Japan, Europe (Other), the Offshore Group and Oceania.

The 13 high growth economies or groups are: Brazil, Russia, India, China, Central & Eastern Europe (CEE), the CIS (Commonwealth of Independent States), Malaysia, Southeast Asia, South Africa, Middle East & North Africa, Sub-Saharan Africa, South America (excluding Brazil) and Central America & the Caribbean.

Given that the availability of a tax treaty network is often one consideration amongst many when considering where to establish an intermediary, a key area of uncertainty is the potential scope of a PPT rule in relation to intermediaries used by Funds, particularly given the subjective nature of a PPT. Set out below are some observations on this issue.



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Company distributions: Overview of consultation document

On 9 December 2015, HMRC published a consultation document on company distributions. Draft legislation published alongside the document and to be included in Finance Act 2016 toughens up the Transactions in Securities rules applicable to individuals and introduces a new Targeted Anti-Avoidance Rule ("TAAR") for liquidation distributions. The draft provisions have a 6 April 2016 commencement date to coincide with the introduction of the new dividend taxation regime for individuals, which will see the highest rate of tax on dividends rise to 38.1% compared with a highest rate of tax on capital gains of 28%.

Transactions in Securities

The Transactions in Securities rules were designed to prevent income being received in capital form. They apply to close companies and so can be of relevance to Private Equity owned groups. The rules are recast to consider the purpose of the transactions (not the purpose of a person being party to a transaction) and apply to a tax advantage obtained by any person – not just the person who is a party to the transaction.

The definition of a transaction in securities is widened to encompass repayments of share capital or share premium (which were made far more straightforward by the solvency statement capital reduction procedure) and liquidation distributions. Current HMRC practice is legislated for by providing that assets available for distribution include assets which can be distributed by controlled subsidiaries, i.e. it is the consolidated distributable reserves position that is relevant.

The fundamental change of ownership let out is reconfigured and is available only if the original shareholders together with their associates (as defined for close company purposes) hold 25% or less of the share capital, economics or votes of the new company.

Transactions cleared before 6 April 2016 but occurring on or after that date can still be caught, i.e. clearances will be void where transactions ought to be countered by the amendments made. It is understood that clearance letters will state this and that it will be possible to apply for clearance under the rules as amended ahead of 6 April 2016.

New TAAR

One point which is not made clear in the consultation document is whether liquidation distributions for which a Transactions in Securities clearance has been obtained can still be caught by the new TAAR (new ss396B and 404A ITTOIA).

Unlike the Transactions in Securities rules, the TAAR is a self-assessment matter and applies where:

- a company which is close or was close within the last 2 years is wound up;
- income tax avoidance was a main purpose of the winding up; and
- cat any time within the next 2 years a recipient of the winding up distribution carries on a trade or activity the same as or similar to that carried on by the company (or is a participator in another company which carries on that activity or is involved with the carrying on of such an activity by a person connected with them).

Where the TAAR applies, the winding up distribution is taxed as income other than to the extent it represents a repayment of share capital originally subscribed or consists of irredeemable shares in 51% subsidiaries.

If Transactions in Securities clearance has been obtained, it could be inferred that HMRC are satisfied that income tax avoidance was not a main purpose of the winding up. The TAAR is aimed at "phoenixism" whereby companies are used by individuals for individual contracts and then wound up to convert the profits into capital, but there are concerns that sectors such as property development in which SPVs are used for a wide range of commercial reasons could be caught.


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Anti-hybrid rules: An overview

On 9 December 2015, the UK published proposed domestic rules to implement the final recommendations made under Action 2 (neutralising the effects of hybrid mismatch arrangements) of the OECD's base erosion and profit shifting ("BEPS") project. This article provides an overview of the new "anti-hybrid" rules which are due to come into effect from 1 January 2017.

Overview

The new anti-hybrid rules, which broadly follow the OECD's recommendations, are aimed at counteracting perceived aggressive tax avoidance through arrangements involving hybrid instruments or entities which result in a tax deduction for a payment with no corresponding inclusion in ordinary income, or a double deduction for the same payment.

The new rules, which are to be included in Finance Act 2016, will apply to payments made on or after 1 January 2017. It should be noted that there will be no grandfathering of existing arrangements. A number of draft examples illustrating the application of the new rules were published by HMRC on 22 December 2015.

The new rules will replace the existing arbitrage rules and, unlike those rules, will be self-assessment provisions and apply automatically if the relevant conditions are satisfied.

The new rules apply in four broad scenarios:

1. Payments made under hybrid financial instruments or transfers (such as a repo or stock loan), as well as by and to hybrid entities, that are tax deductible for the payer, but are not fully included in the ordinary income of the payee.
   In these cases, where the payer is within the charge to UK corporation tax, the payer's UK tax deduction will be reduced by an amount equal to the mismatch. Where the payee is within the charge to corporation tax and it is reasonable to suppose that the mismatch has not been fully counteracted under the UK's anti-hybrid rules or equivalent rules in another jurisdiction, an amount equal to the mismatch will be treated as income arising to the payee (covered by draft Chapters 3, 4, 5 and 6 of the new rules).

2. Payments made by hybrid entities that are tax deductible for the hybrid entity and also the investor in the hybrid entity.
   In this case, where the investor is within the charge to UK corporation tax, its UK tax deduction will be denied, unless it is deducted from "dual inclusion income" (income subject to tax in both jurisdictions). Where the hybrid entity is within the charge to corporation tax and it is reasonable to suppose that the mismatch has not been fully counteracted under rules equivalent to the anti-hybrid rules in the investor jurisdiction, the hybrid entity's UK tax deduction will be denied, unless it is deducted from dual inclusion income (covered by draft Chapter 7).

3. Payments made by dual resident companies that are deductible for UK corporation tax purposes and also for the purposes of a non-UK tax.
   In this case, the company will not be able to obtain a UK tax deduction for the payment, unless it is deducted from dual inclusion income (covered by draft Chapter 8).

4. Payments that are deductible for UK corporation tax purposes which form part of a wider series of arrangements that also includes a hybrid mismatch arrangement as described in scenarios 1, 2 or 3 above.
   In this case, the payer will be denied a UK corporation tax deduction for the payment. This will prevent the effect of a hybrid mismatch arrangement being 'imported' into the UK (for example, through an ordinary loan), but only to the extent that the hybrid mismatch has not been counteracted under other parts of the UK's anti-hybrid rules or equivalent rules in another jurisdiction (covered by draft Chapter 9).

In each of these scenarios (apart from scenario 3 above), the new rules will apply either where the parties to the arrangement are members of the same control group or where they are related persons and, additionally, where the payment is made under

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a structured arrangement (i.e. one which is designed to secure the hybrid mismatch or where the mismatch is priced into the terms of the arrangement). "Control groups", "related persons" and "structured arrangement" are specifically defined terms for the purposes of the draft legislation.

For the purposes of scenario 1 above, there are a number of situations in which a mismatch will not be considered to arise, for example, where the payee is not taxed on the payment because it is not liable to tax on any income or profits which it receives (e.g. a tax haven company) or because it is not taxed on the grounds of sovereign immunity. Also, an amount will be considered to be included in ordinary income of a payee if it is included as income in a period of the payee which begins within 12 months of the end of the period of the payer in which the deduction is claimed, or in a later period if the taxpayer can provide evidence to justify the timing difference.

Finally, the rules do not apply to payments which are only deemed to be made for tax purposes (e.g. notional interest deductions on equity or deemed interest on an interest-free loan) and which do not involve the creation of economic rights between the parties.

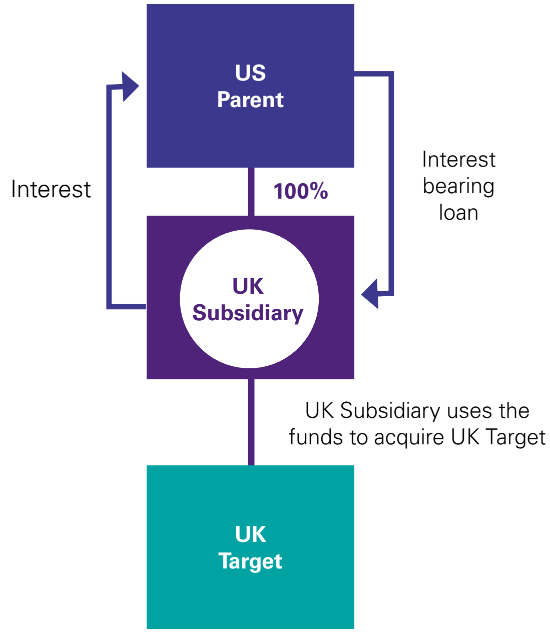
Impact on M&A transactions

Historically, hybrid entities and hybrid instruments have been a common feature of financing arrangements used by multinational groups and private equity companies to fund acquisitions in the UK. It will be important for groups to carry out a detailed review of their current UK financing structures, including those which include a hybrid mismatch offshore (e.g. potentially where PECs are used to fund an intermediate Luxembourg company), to assess the impact of the new anti-hybrid rules and, if necessary, to consider alternative arrangements. Similarly, the new rules will need to be taken into account in considering financing options for future UK acquisitions.

Furthermore, where a company is looking to acquire a UK-parented group consideration should be given, as part of the due diligence process, as to whether the target has any existing financing arrangement which could be caught by the new rules and, if so, how this might impact on the future effective tax rate of its business.

Example of the application of the new rules

A US parent previously established a UK subsidiary, funded with an appropriate level of debt and equity, to acquire a UK target. For US tax purposes, a "check-the-box" election was made in respect of the UK subsidiary so that it was disregarded as an entity separate from the US parent and, thus, the loan and interest thereon were disregarded. For UK tax purposes, the UK subsidiary surrenders the interest payable on the loan from the US parent, as group relief, to the UK target to offset against its trading profits. The UK subsidiary obtained advance clearance from HMRC that the arbitrage rules would not apply to disallow interest payable on the loan on the basis that the arrangement did not have a main purpose of achieving a UK tax advantage.



Under the new anti-hybrid rules, the UK subsidiary is a hybrid entity because it is regarded as a person for UK tax purposes, but, as a result of the "check-the-box" election, its income and profits are treated as those of the US parent for US tax purposes. Although the interest payable on the loan by the UK subsidiary is deductible for UK tax purposes, the US parent does not bring in any amount as ordinary income for US tax purposes and this mismatch arises by reason of the UK subsidiary being a hybrid entity. As a result, under the new rules, the UK subsidiary will be denied a UK tax deduction for the interest payable on the loan.

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BEPS Action 6: Treaty abuse and the principal purpose test

The OECD's final BEPS Action Plan 6 ("AP6") report in 2015 on "The Granting of Treaty Benefits in Inappropriate Circumstances" deferred until 2016 the detailed consideration of the application of changes under AP6 for non-CIVs, being Pension Funds, Sovereign Wealth Funds and Managed Funds ("Funds") investing into alternative assets such as infrastructure, private equity and real estate. This process is now moving forward and we expect the OECD to release a consultation document shortly, with comments due in April 2016. Clarification of guidance is due to be released in the second half of 2016. AP6 will be a key consideration when it comes to performing due diligence on target groups' tax affairs and structuring transactions.

Overview

It is typical for Funds investing alone and/or together from their 'home' country into multiple investee 'source' countries to do so through a combination of regional 'platforms', consortium and co-invest vehicles and/or managed funds ("intermediaries"). Investing via regionally based intermediaries allows Funds access to greater connectivity with local markets, other market participants and underlying investments within close geographical proximity, and to recruit local (multicultural and multilingual) talent with regional business practice, regulatory environment and legal framework expertise.

It is likely that most, if not all, countries in Europe will adopt a treaty integrity rule which looks to the principal purposes of transactions or arrangements i.e. a principal purposes test ("PPT") rule, rather than a rule based on the limitation-on-benefits ("LOB") provision. The PPT rule essentially looks to challenge treaty benefits where "obtaining the benefit [under a treaty] was one of the principal purposes of any arrangement or transaction" that results in that benefit.

Given that the availability of a tax treaty network is often one consideration amongst many when considering where to establish an intermediary, a key area of uncertainty is the potential scope of a PPT rule in relation to intermediaries used by Funds, particularly given the subjective nature of a PPT. Set out below are some observations on this issue.

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What is the PPT?

To date, the concept of 'substance' has been arguably the most relevant factor in 'beneficial ownership' style treaty eligibility tests. To what extent will this concept remain relevant, if at all, to a PPT in the context of investment activities? This might sound like a trite question but it is important to remember that it is a principal purpose test and not a 'substance' test. Failure of a PPT only requires that the treaty outcome be 'one of the principal purposes', and it may not be possible to 'correct' a decision made for a 'bad' purpose by introducing substance later. That said, the two concepts are not necessarily separate, in that 'good substance' (including having in-country staff and service providers commensurate with the activity being undertaken in the intermediary jurisdiction) can often be an expression of bona fide commercial purposes which could outweigh 'ancillary' tax reasons for choosing a particular intermediate jurisdiction.

Can the PPT have any impact where there is no net additional benefit?

Take an example where a Fund in home country A invests via an intermediary in country B into an asset in country C. Assume that the Fund would have been eligible to a dividend withholding tax rate of nil had it invested directly from country A into country C (as a result of either a reduce treaty rate or a sovereign exemption). If the dividend withholding tax rate of source country C is reduced from a full domestic rate (say, 30%) to a nil rate pursuant to the country B – country C treaty, there has been no net additional benefit as a result of having invested via an intermediary. It may seem obvious but it is worth noting that a PPT should not be capable of being failed in these circumstances (i.e. it should not be the case that investing via an intermediary in these circumstances should expose the Fund to any additional risk of source country C's full domestic dividend withholding tax rate). Underlying commercial reasons may drive the use of an intermediary for the Fund's transactions and this might go some way to supporting a view that the intermediary was not created for a tax purpose. Indeed, excluding such investments from the intermediary platform could create a negative presumption.

PPT in the managed fund context

What is the position where a pooled fund is established by a fund manager and offered to various investors? Which purpose(s) is/are relevant when applying a PPT to the pooled fund? The PPT is an objective facts and circumstances test but is it the purposes of the manager, the investors, or both the manager and the investors that is ultimately taken into account? Is there any impact if the investors change and one of the new investors clearly benefits from the way the fund was established? Managed funds investing into Europe often use (fiscally opaque) corporate platforms, not only for the regional connectivity reasons outlined above. Practically, the use of corporate platforms often limits the burden of compliance for funds' wide range of underlying limited partner investors who, via the fund, may be invested indirectly in multiple European countries with the permutations that would generate multiple source country-investor treaty applications. We are not sure that there is a clear answer to this at present but fund formation and secondary fund trading must now be carefully considered.

Look-through outcomes

This deals with what happens if the PPT is failed. Assume, instead, that in the example above, the Fund would have only been eligible to a reduced dividend withholding tax rate of 10% had it invested directly from country A into country C. In circumstances where the intermediary established in country B fails the PPT, would source country C apply its domestic withholding tax rate (say, 30%), or would it exercise a discretion to apply the reduced rate applicable under the treaty between country A and country C (10%)? Whilst there is sympathy for the latter outcome (and some precedent for such an approach in p.64 of the OECD's final AP6 report) it is far from a concluded position and it may be that this resolves itself to the discretion of individual countries. Further, there are inherent practical difficulties with the implementation of a consistent look-through approach that need to be considered in further detail.

"To date, the concept of 'substance' has been arguably the most relevant factor in 'beneficial ownership' style treaty eligibility tests."


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Recent developments in the loan relationships and derivative contracts unallowable purpose rules

Since they were first introduced, the loan relationships and derivatives contracts regimes have included rules which test the purposes for which a company is a party to or acquires/disposes of rights and obligations under a loan or derivative; the unallowable purposes provisions. The provisions are a key consideration when structuring transactions and reorganisations. For many years, disputes were not litigated which meant that there was no case law authority as to how the provisions should be applied. This now seems a long time ago as there have been at least seven decisions of the Courts considering the unallowable purpose rules since 2008.

In this article, we consider the most recent of these cases, the First Tier Tribunal ("FTT") decision in Travel Document Service and Ladbroke Group International v Commissioners for HMRC ("Ladbrokes") and what this tells us about the unallowable purposes rules.

The FTT found for HMRC, determining that the loan relationship unallowable purposes rule applied not only to disallow the intended benefit of a debit representing the fall in the fair value of a deemed loan relationship asset but also the interest payable on borrowing between UK group companies to facilitate the arrangement. As a result, there was a downside to the arrangement.

Background

The case primarily involved Travel Document Service Ltd ("TDS") and its wholly owned subsidiary Ladbrokes Group International Ltd ("LGI").

At the time of the transactions, there was anti-avoidance legislation which applied where the effect of holding shares and other arrangements was to produce a return for the holder equivalent to a commercial rate of interest (s91B FA 1996). The counteraction was to tax the holder as though the share investment was a loan relationship asset, with taxable profits and losses being based on movements in the fair value. The taxpayer arranged to fall within these rules and claim a deduction for a reduction in the fair value of a deemed loan relationship asset resulting from a further arrangement.

▶Continued

There were two elements to the arrangements undertaken by the taxpayer:

1. There were steps which deemed TDS to be a party to a loan relationship asset on which it would earn an interest like return.
   In 2008, the group undertook a restructuring to merge various UK operating businesses into the main UK operating company, Ladbrokes Betting and Gaming Ltd ("LBGL"). Certain of these businesses were carried on by subsidiaries of LGI. However, due to problems associated with transferring the leasehold properties into LBGL, it was decided to implement a "synthetic transfer" of the relevant businesses to LBGL until these problems could be resolved. This was achieved by TDS (LGI's immediate parent) entering into a total return swap ("the Swap") with LBGL, under which TDS would receive an interest like return on the fair value of its share investment and would pay LBGL an amount equal to the increase in the value of the LGI shares (ignoring any non-arm's length transactions).
2. There was an arrangement which had the effect of reducing the value of the deemed loan relationship such that TDS could claim a fair value loss.
   Following the entry into the Swap, two intra-group loan liabilities were transferred to LGI in return for nominal consideration. The assumption of the liabilities, in the nature of a distribution, gave rise to a £254m reduction in the value of the LGI shares held by TDS.

Decision of the FTT

Where a loan relationship has an unallowable purpose, relief is denied for so much of a debit as is attributable, on a just and reasonable basis, to the unallowable purpose. The FTT considered the application of this rule in the context of the two loan relationships.

TDS – party to deemed loan relationship asset

TDS was deemed to be a party to a loan relationship asset and claimed a loan relationship debit of £254m in respect of the reduction in fair value of its shares in LGI.

In the key element of the decision, the FTT found for HMRC (but for a different reason to that advanced by their Counsel), that the relevant purposes that must be tested was TDS's purposes in entering into (and continuing to be party to) the transactions that triggered the existence of the deemed loan relationship, i.e. entering into (and continuing to be party to) the Swap whilst holding the LGI shares.

This decision, in conjunction with the taxpayer's acceptance that one of the main purposes for entering into the Swap was the potential tax advantage, led the FTT to conclude that one of TDS's main purposes in being party to the deemed loan relationship was a tax avoidance purpose and that this continued until the swap was terminated.

Having determined this, the FTT considered that the whole of the debits claimed by TDS were, on a just and reasonable basis, attributable to the unallowable purpose and should therefore be disallowed.

LGI – party to novated loan relationship liability

The second element of the arrangement was the transfer of two interest bearing borrowings to LGI, for nominal consideration, to reduce its value and thereby trigger the debit in TDS.

Based on a review of the evidence, the FTT determined that all of the debits relating to the interest payable on the borrowings assumed by LGI should be attributed to the unallowable purpose; at the very least, one of LGI's main purposes in becoming party to the intra-group borrowings was to secure a tax advantage for TDS and all of the debits were to be disallowed.

What does this tell us about the unallowable purposes rule?

When assessing whether the unallowable purpose rule applies, it can be useful to focus on three elements.

Do the arrangements give rise to a tax advantage?

In the circumstances here, it was accepted that the deemed fair value debit in TDS and the interest debits in LGI each represented a tax advantage.

Is there a main purpose of obtaining the tax advantage?

Is a main purpose of the arrangements to secure a tax advantage, i.e. a "bad" main purpose?

▶Continued

Purpose is to be determined by undertaking a factual enquiry and then reviewing the facts. Where there is more than one main purpose, there is a question as to the degree and significance of the main purposes to the taxpayer.

The FTT reviewed the factual evidence presented, including evidence from management, as to the reasons why the companies were a party to each of the loan relationships and found it straightforward to conclude that one of the main purposes for being a party to each of the loan relationships was a tax avoidance purpose. It did not matter that the arrangements were commercial because there was a tax advantage main purpose.

In relation to TDS's deemed loan relationship asset, the FTT found that the relevant purposes that must be tested were TDS's purposes in entering into and continuing to be party to the Swap whilst holding the LGI shares. For completeness, the FTT also considered the analysis if the appropriate purposes to be tested were those of TDS in holding the shares. The FTT said that TDS's continuing commercial purpose in holding the LGI shares had been supplemented by a main tax avoidance purpose.

In reaching that conclusion, the FTT said it was clear that a company's purposes in being party to a particular set of arrangements could change over time. The FTT endorsed Julian Ghosh QC's example of a person who has owned a gun for years as a purely decorative item, then forms the intention to use it to shoot someone, did so, but then returns it to its former use as a decorative item. This is consistent with the approach adopted by the Upper Tribunal in Fidex Ltd.

The unallowable purposes rule applied to the borrowing by LGI from another UK group company even though, as it turned out, there was no tax advantage from the arrangement following the disallowance of the debit in TDS; the loans had a tax avoidance main purpose even if the tax advantage was not realised.

"At the time of the transactions, there was anti-avoidance legislation which applied where the effect of holding shares and other arrangements was to produce a return for the holder equivalent to a commercial rate of interest (s91B FA 1996)."

What adjustment is warranted on a just and reasonable basis?

How much, if any, of the debits are attributable to the unallowable purpose on a just and reasonable basis?

In relation to the deemed loan relationship held by TDS, the FTT attributed all of the debits to an unallowable purpose because the arrangement was specifically devised to create the debits and an unallowable purpose was found to exist for the (deemed) loan relationship giving rise to the debits.

In relation to the interest payable on the borrowings assumed by LGI, where the corresponding interest receivable was taxable, the FTT rejected arguments based on fairness on the grounds that an anti-avoidance provision need not necessarily produce a symmetrical solution. Instead, the FTT said that since LGI adopted one method of achieving what is said to be a commercial purpose by entering into a loan relationship with a main purpose of generating a tax advantage for TDS, it was just and reasonable to attribute the full amount of LGI's resulting debits to that main purpose, such that all of the debits were disallowed.

Future considerations

We are seeing an increasing number of disputes where HMRC are looking to apply the unallowable purposes rule, e.g. in relation to intra-group reorganisations. In coming to their views on the application of the unallowable purposes rule, HMRC can be expected to test their conclusions against the increasing body of case law, including the Ladbrokes decision.

Finally, as a reminder, it is noted that the loan relationships and derivative contracts unallowable purposes rules have been amended by Finance (No. 2) Act 2015 for accounting periods beginning on or after 1 January 2016.


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The Netherlands: Recent Private Equity Developments

In recent years there have been a number of discussions on the influence of the private equity industry in the Netherlands. More specifically, in August 2015 members of the Dutch parliament presented an Initiative Memorandum to the Dutch Government that included a number of proposals to amend both tax law, and civil and business law, which are particularly relevant to private equity investments. The Dutch Government responded to the Initiative Memorandum but decided not to implement the majority of the proposals. However, with respect to an interest deduction limitation rule on acquisition debt, the Government indicated that it is prepared to tighten such rules. Amendments are, at the earliest, expected by 1 January 2017.

The Initiative Memorandum on private equity

The Initiative Memorandum titled "Private Equity: an end to excesses" contained twelve proposals aimed at the protection of Dutch companies from "harmful" private equity firms that invest in target companies with the sole purpose of obtaining as much money as possible from their investment.

The memorandum suggested private equity firms adopt standard reporting lines to provide better insight into fees, but it has also called for greater transparency on the investor side. The proposals consist of changes to both Dutch tax law, and civil and business law. It should be noted that this Initiative Memorandum is a suggestion to the Dutch government to implement changes in the existing legislation. However, it does not have the status of a formal bill and the Dutch Government has the discretion to determine whether or not to transpose the proposals into a bill.

The proposals included in the Initiative Memorandum

The most important proposals from a tax and structuring perspective are the following:

- Tightening of the interest deduction limitation rule on acquisition debt that was introduced in 2012 to limit the deductibility of interest on acquisitions that are excessively debt-financed;
- Target companies should be prohibited from providing security on their assets as security for the acquisition debt; and
- Target companies should be prohibited from providing loans to their new shareholders if the proceeds of such loans are used for the repayment of the acquisition debt.

Government's response – General

In its response to the Initiative Memorandum, on 21 December 2015 the Government stated that private equity investors play an important role as an alternative source of financing for Dutch businesses, in addition to bank credit. Furthermore, private equity funds are an important alternative form of investment for Dutch pension funds, besides shares and bonds, which offers them the opportunity to diversify their investments. The Government indicated, however, that it is important to have insight into the scale at which incidents occur, whereby insufficient account is taken of the long-term interests of the acquired businesses. With respect to most of the proposals, the Dutch Government does not agree that amendments to the existing law are necessary at the moment.

▶Continued

With respect to the proposals to tighten the rules on providing security on the target's assets as security for the acquisition debt and financing of the shareholder by the target, the Dutch Government responded that the rules in this respect have been eased with the implementation of the new company law rules on private companies (known as the Flex BV Act) that were implemented on 1 October 2012 and that there are sufficient safeguards included in the current legislation. Hence, no amendments are currently to be expected in this respect.

In respect of the interest deduction limitation rules, the Government indicated that it is prepared to tighten these rules on three points (described below).

Suggested amendments to acquisition debt rules

Where a Dutch acquisition holding company raises loans to acquire a Dutch company (or group of companies) and they form a fiscal unity (tax group), the acquisition interest will be non-deductible under the acquisition debt rules insofar as the acquisition holding company does not generate enough profit to cover the deduction of the acquisition interest on a standalone basis. However, this limitation does not apply if the acquisition debt remains below the threshold of 60% of the acquisition price in the year of the acquisition. During the following seven years, this percentage will be reduced annually by 5% points to a final threshold of 25%. According to the Government, the implementation of the acquisition debt rules has led to a significant decline in the extent to which private equity acquisitions are debt-financed.

The three points the Dutch Government is prepared to tighten are:

1. A further clarification of the seven-year period in order to prevent this period being renewed in the interim by transferring the acquired company to a new acquisition holding company;
2. A clarification of the provision on acquisition holding companies in the event an acquisition debt is transferred to the level of the acquired company by way of a debt-pushdown; and
3. A review of the scope of the transitional rules, which are such that the acquisition debt rules do not apply to acquisitions made before 15 November 2011. On the basis of these transitional rules, old loans can be continued or refinanced, without the application of the acquisition debt rules.

European Initiatives

The Government stated that it wishes to continue multilateral discussions on and take steps with regard to a generic interest deduction limitation, as proposed in the G20/OECD's BEPS project and which may also be part of the anti-BEPS directive that the European Commission has launched recently. Although the Government wants to review the usefulness and necessity of the acquisition debt rules when the outcomes of that project are implemented at a later stage, it is prepared to amend the acquisition debt rules as of 2017, because this will give the Dutch tax authorities a better instrument to achieve the goals of that provision, and a change in the law will probably also have a preventive effect.

Next Steps

The Government wishes to gain more insight into the nature of private equity investments; however, it is not currently expected that the Government will adopt the proposals that are included in the Initiative Memorandum until the outcome of this research is available.

The proposed amendments of the acquisition debt rules will at the earliest be included in the 2017 Tax Plan, which will be presented on Budget Day in September 2016. However, in March 2016 a public online consultation will be held about the proposed amendments of the acquisition debt rules. It is of particular interest as to how a potential new interest-deduction rule (earnings-stripping rule) based on the new anti-BEPS directive will have an impact on the potential changes to the specific acquisition debt rules. After the BEPS outcomes are implemented at a later stage, the Government will review the usefulness and necessity of the acquisition debt rules.

Therefore, the Initiative Memorandum should not have a major impact on the private equity environment in the Netherlands at the moment. However, amendments to the acquisition debt rules are expected to be implemented as of 1 January 2017 at the earliest and may result in interest deductibility on acquisition debts being limited.


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Stamp Tax Updates

The Finance Bill 2016 will introduce various new Stamp Tax provisions. In this article, we look at the Stamp Duty Land Tax ("SDLT") seeding relief provisions for Property Authorised Investment Funds ("PAIFs") and Co–ownership Authorised Contractual Schemes ("CoACS"), as well as the new targeted anti-avoidance rule ("TAAR") on Deep in the Money Options. Seeding relief will be of particular interest for real estate investments whilst the new TAAR should be considered by option holders with a strike price significantly lower than market value.

SDLT seeding relief for CoACS and PAIFs

The Finance Bill 2016 will contain provision for a 100% 'seeding' relief from SDLT for the initial transfer of real estate into a PAIF or CoACS. It will also make provision for new SDLT rules relating to the treatment of CoACS. These changes will come into effect on Royal Assent of the Finance Bill 2016. This follows a consultation in 2014.

SDLT can be a significant cost when establishing vehicles for collective investment in real estate. The introduction of a seeding relief is intended to remove that barrier and encourage the use of vehicles that have to date been relatively overlooked as real estate fund vehicles.

Under the proposed rules, the availability of seeding relief will be subject to meeting various conditions within a period of 18 months, including a portfolio test of 100 residential properties which have a value of £100 million (or 10 non-residential properties which have a value of £100 million). The relief will be subject to withdrawal if, within three years of the end of the 18-month seeding period, a disqualifying event happens – for instance, the fund ceasing to qualify as an authorised PAIF or CoACS.

We have met HMRC and HM Treasury ("HMT") to discuss the draft legislation and query its application to certain specific fact patterns. Some changes are expected to be made before the Finance Bill is published. We understand that HMRC and HMT's focus is to ensure that the SDLT changes benefit growing funds, rather than contracting funds, or enable existing funds to transition to a PAIF or CoACS.

The Scottish Government has confirmed that it will introduce a land and buildings transaction tax ("LBTT") seeding relief for PAIFs but has, so far, failed to confirm that a similar relief will be introduced for CoACS. An announcement is expected to be made in the Autumn as part of the Scottish Budget.

New TAAR on Deep in the Money Options

On the transfer of UK shares, stamp duty or stamp duty reserve tax ("SDRT") – depending on whether the shares are in paper form – will be chargeable at a rate of 0.5% of the value or amount of the consideration provided for the transfer. Where shares are transferred to a depository receipt scheme or clearance service, SDRT will apply at a higher rate of 1.5%.

When shares are purchased on the exercise of an option, stamp duty or SDRT will be charged on the price paid for the shares (the strike price), as opposed to the market value of the shares. This means that buying shares under a deep in the money option ("DITMO"), where the strike price is significantly lower than the market value of the shares being transferred, is an effective way of saving stamp taxes, especially in instances where the higher rate of 1.5% will apply.

The Finance Bill 2016 will contain a targeted anti-avoidance provision ("TAAR") to counteract this. Where shares are transferred to a depository receipt scheme or clearance service following the exercise of a DITMO, the transfer of the shares will be chargeable to stamp duty or stamp duty reserve tax at 1.5% on the higher of the market value of the shares or the strike price.

Any other transfer of shares, even where a DITMO is entered into, will remain unaffected. The measure will have effect from Budget Day 2016 (16 March 2016), and will apply to any options entered into on or after 25 November 2015, and exercised on or after Budget Day 2016.

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Budget 2016: Summary of impacts on M&A

On 16 March 2016, the Chancellor of the Exchequer, George Osborne, presented the 2016 Budget. Along with the announcement of a reduction in the main rate of corporation tax to 17% in 2020, the Business Tax Roadmap was published, containing an outline and timetable of changes to business taxation due to be introduced during this Parliament.

This year's budget introduces a number of changes that will affect M&A transactions. One of the most notable aspects was the announcement that the UK will be introducing a restriction on the tax deductibility of interest expenses consistent with the OECD recommendations. The new rules will apply from 1 April 2017. The key elements of this will be:

- A Fixed Ratio Rule limiting corporation tax deductions for net interest expense to 30% of a group's UK EBITDA;
- A Group Ratio Rule based on the net interest to EBITDA ratio for the worldwide group as recommended in the OECD report; and
- These rules are subject to a de minimis group threshold of £2 million net of UK interest expense.

Other highlights in the Budget 2016 which may be of interest include:

- More flexibility in the use of UK losses incurred from 1 April 2017, balanced by a new restriction limiting the losses that can be offset from the same date to 50% of profits – similar to the existing restriction for banking companies. The new restriction will apply where, broadly, group profits exceed £5 million.
- An extension of the proposed hybrid mismatch rules to cover hybrid mismatches arising from permanent establishments. These rules will be introduced in Finance Bill 2016, and come into effect from 1 January 2017.
- The loans to participators tax rate is to be increased from 25% to 32.5%.
- Entrepreneurs' relief will be extended to long term external investors in unlisted companies. The new rules will apply to newly issued shares purchased on or after 17 March 2016, providing they are held for a minimum of 3 years from 6 April 2016, and subject to a separate lifetime limit of £10 million of gains. It appears that this extension will not apply to employees or officers of the company in which the shares are acquired, who would still need to meet the 5% threshold.
- Employee Shareholder Status – an individual lifetime limit of £100,000 will be introduced on gains eligible for Capital Gains Tax exemption through the Employee Shareholder Status. This limit will apply for arrangements entered into on or after 17 March 2016.

For further commentary on the measures included in Budget 2016, visit KPMG's dedicated website:

- https://home.kpmg.com/uk/en/home/campaigns/2016/03/chancellors-budget-2016.html

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M&A investment into emerging markets continues to decline

Developed market investments into emerging markets hit 10-year low, but emerging market deals with one another show strong growth

- 3 percent fall in developed-to-emerging (D2E) market deals
- 25 percent rise in emerging-to-emerging market (E2E) deals
- 50 percent drop in D2E activity in China, but Indian D2E deals rise sharply

KPMG International's Cross-Border Deals Tracker* shows a continuing decline over the latter half of 2015 in the volume of M&A activity involving acquirers in developed markets and targets in emerging markets (D2E).

Between July and December 2015, the number of D2E deals fell by 3 percent, reaching its lowest level in 10 years. The figures follow a disappointing first-half to the year as well, leaving the yearly total 9 percent down on the previous 12 months.

Increased M&A opportunities within emerging markets

M&A deals between investors and acquirers who were both in emerging markets (E2E) saw significant increases in a number of important markets. Overall, E2E deals rose by 25 percent compared to the first half of the year, to 149 deals, a similar level to the same period in 2014 (152). However, the yearly total for 2015 was not so positive – down 8 percent on 2014.

Chinese E2E acquirers were particularly active, with deals up by 78 percent from 9 to 16 deals. Other markets that saw big increases in E2E activity were CEE (up 50 percent), Sub-Saharan Africa (up 50 percent), South and East Asia (excluding ASEAN) up 60 percent, Middle East and North Africa (up 325 percent), and CIS up 400 percent (most of which was accounted for by an increase in transactions into Russia).

"We are hitting a new era in emerging markets," said Leif Zerz, KPMG's Global Head of Deal Advisory. "There has been a maturation over the last few years and emerging market companies are more comfortable with larger and more complex deals. China and the CEE, for instance, are not shying away from significant investment in the right markets despite market volalitity. While regulatory environment will be a strong driver for deal making, like the financial services sector in Europe, we expect developed countries investments to stay within their safe havens."

D2E transactions lose their lustre

Slower growth rates in China, low interest rates in the United States and continuing challenges in several key markets, including Russia, the Middle East and South America, seem to be holding back investors in developed markets from undertaking D2E M&A transactions.

Even China, one of the most important emerging markets for foreign direct investment activity over the past few decades, saw a substantial tailing off of D2E activity. The number of D2E transactions involving Chinese targets declined by over 50 percent to just 35 transactions in the second half of 2015, a 10-year low. Also struggling to attract D2E M&A investment was South East Asia, excluding ASEAN, where transactions fell by 36 percent, from 42 during the first six months of 2015 to 27 in the second.

Other important markets, however, managed to buck the trend for declining D2E investment. This was most notable in India, where inbound D2E transactions increased by over 50 percent in the latter half of 2015, from 35 deals to 54 deals.

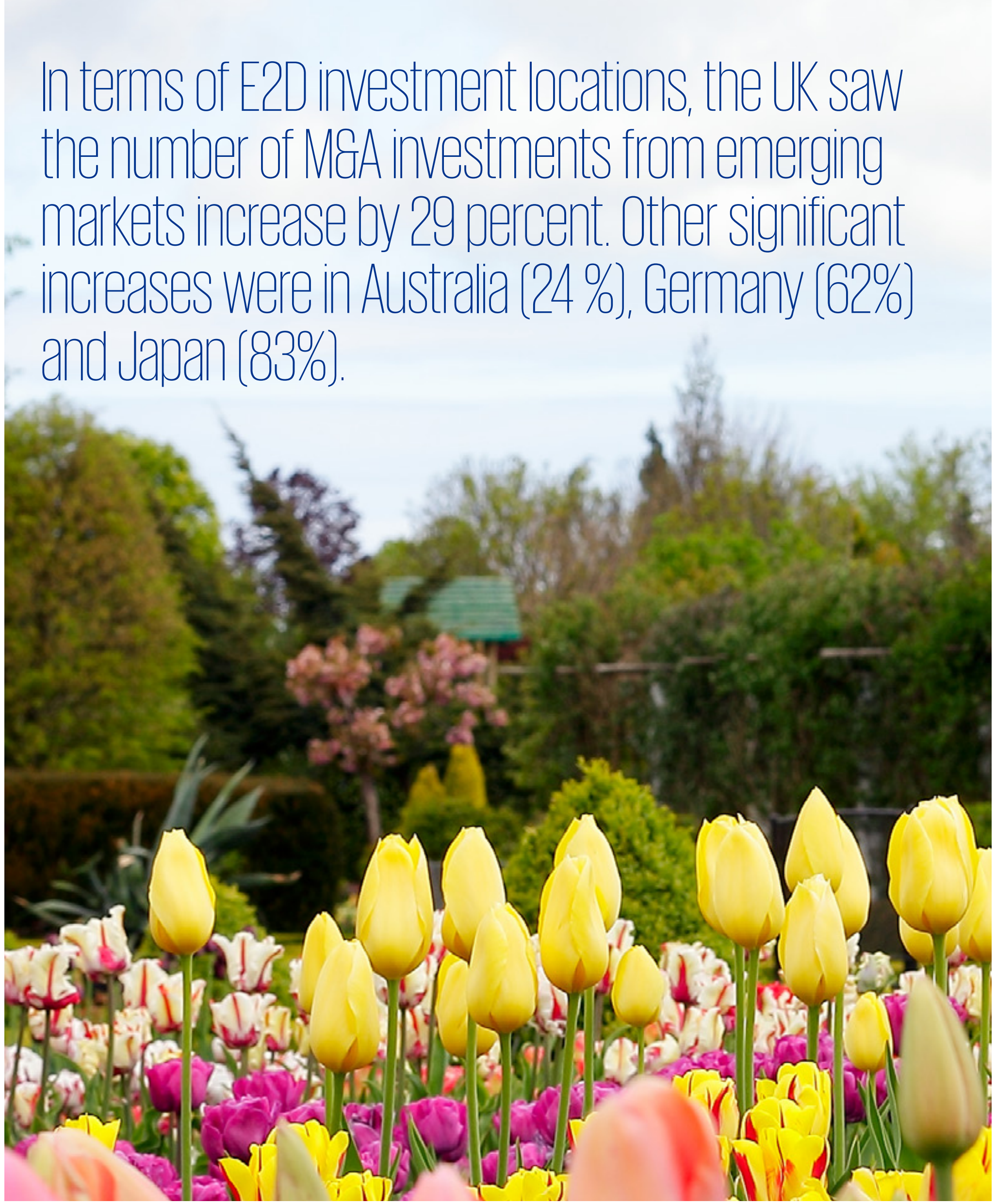
E2D deal volumes remain steady

M&A transactions involving emerging market acquirors of developed market targets (E2D) showed more resilience, with deal volumes increasing by 2 percent from 250 deals to 255 deals.

The highest increase in outbound E2D deals was CEE, where the volume of deals rose by 50 percent, mostly to other European countries. Increases for E2D were also shown in Middle East & North Africa (23 percent), and Russia (22 percent). China saw a modest 5 percent increase in outbound E2D M&A transactions, completing 62 deals – a 10-year high.

In terms of E2D investment locations, the UK saw the number of M&A investments from emerging markets increase by 29 percent. Other significant increases were in Australia (24 percent), Germany (62 percent) and Japan (83 percent).

"M&A is a critical tool for achieving growth throughout the developed world and, increasingly, in emerging markets," said Phil Isom, KPMG's Global Head of M&A. "However, in times of greater uncertainty, developed market companies will more closely scrutinize unfamiliar regions to assess the level of risk associated with local economic trends, regulatory environment, and industry specific factors. Given today's economic volatility, we expect developed markets to focus more on regions where they currently operate, while emerging market players will seek targets in both other emerging markets and developed market areas."



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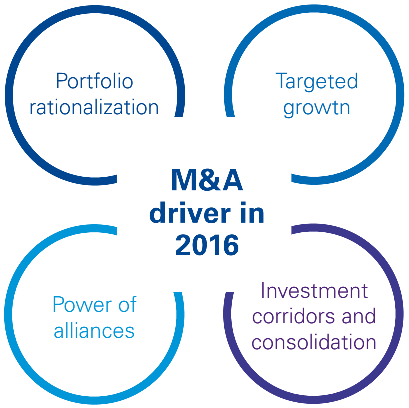
Insurance M&A trends: A year in review and predictions for 2016

KPMG International's latest Insurance M&A Trends: A Year in Review and Predictions for 2016 looks back at the events of 2015 and provides insights for the year ahead.

Looking back on 2015, the report discusses:

- The cross-border M&A and transactions driven by regulatory change and insurers' focus on efficiency and service capabilities dominated 2015.
- The impressive volume of reverse deal flow as acquirers from Asia, particularly China and Japan, invested in mature markets across Europe and the US.
- Positive regulatory developments, such as Obamacare in the US and increase in Foreign Direct Investments limits in India, acted as a catalyst for activity.
- Large P&C deals, driven by continuing margin pressure, creating the need for scale and complementary underwriting capability, as it was also one of the main driver behind 2015 deals.

The report predicts that 2016 will be a year where key players in the insurance market will 'grow or go'. This mindset will lead to targeted M&A to support growth and exit of non-core businesses. Supporting this strategy are four key themes, which are explored in the report:



We expect the key trends that started to emerge over the last 12 months to continue or accelerate throughout 2016.

Review the Insurance M&A Trends report in full.

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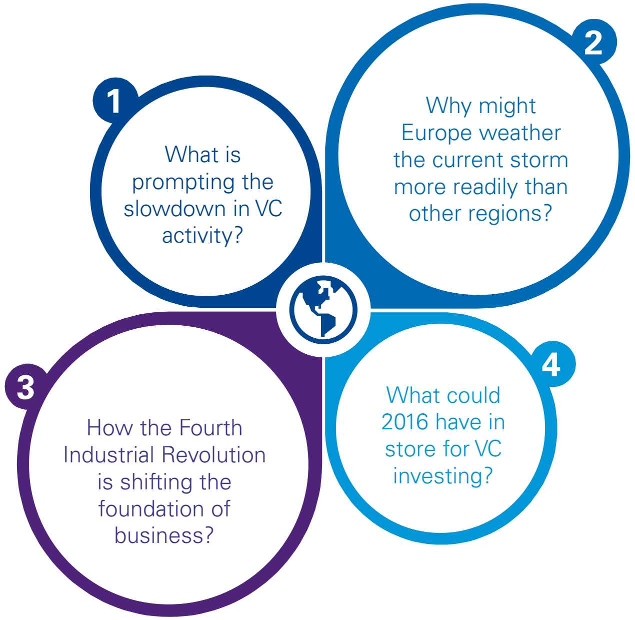
Venture pulse explores key trends in venture funding

The third edition of Venture Pulse – Q4'15 Global Analysis of Venture Funding reports the following highlights:

- After a record setting year for Unicorns, mega-rounds and tech bubble chatter in 2015, the overall market concerns around valuations, burn rates and over-funding put the brakes on investment in Venture Capital-backed companies in Q4'15.
- Q4'15 saw US$27.2 billion invested across 1,742 deals globally, marking a 30 percent drop in funding – the lowest quarterly deal activity since Q1'13.

The report, which is released quarterly, leverages global venture capital investment data from CB Insights as well as insights from KPMG's Enterprise Innovation Star-ups network. Data presented in this report was reinforced in the recently released **Global M&A Predictor**, which found corporate appetite rise for technology through inves-ments in Venture Capital.

The latest issue provides overviews from a global perspective as well as regional (North America, EMA, ASPAC) points of view. In doing so, it explores the following questions:



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Additional KPMG publications you may find of interest are listed below

Weekly Tax Matters

KPMG's weekly newsletter which covers the latest issues in taxation and government announcements relating to tax matters.

Taxation of Cross-Border Mergers and Acquisitions

Taxation of Cross-Border Mergers and Acquisitions features information from 60 countries on their current laws and regulations and the possible implications for tax-efficient structuring and financing of a merger or acquisition.

Visit the new KPMG Capital and Deals Insights section at: kpmg.com/uk

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