TAX PLANNING IN MERGER & ACQUISITION DEALS

Careful tax planning can increase the value of a merger or acquisition deal for the companies involved.

In any merger or acquisition deal, it is important to determine if any taxes will be triggered by the transaction itself and how the deal should be structured in a most tax–efficient manner.

It is important that the acquiring company performs a ‘tax due diligence’ on the target company to identify any potential or contingent tax liabilities which it may have.

This can give the acquiring firm a clear understanding of what’s in store when he acquires the target, and room to negotiate for a lower acquisition price.

In a deal involving the acquisition of a company, it is important to consider the following points:

- If the target is enjoying a tax incentive, check that the acquisition would not disqualify the incentive;
- If the target has unused tax losses and capital allowances, it may be possible to absorb these into the merged company to reduce the future tax bill, even though such deductions are usually disallowed.
- Typically, a company must pass a shareholders’ continuity test to qualify for unabsorbed losses and capital allowances to be used to offset its tax costs. However the requirement to meet the shareholders’ continuity test may be waived if the tax authorities are satisfied that a deal is not tax motivated.
- If a deal results in cross-border payments, having an efficient tax structure could avoid withholding tax issues.
- For cross-border deals, an existing tax treaty between the two jurisdictions could reduce the incidence of double taxation of the same income. It is essential to have a clear understanding of the tax laws in the jurisdiction where the target company is located, to minimize its tax exposure.
- The buyer should consider whether there are any taxes on the historical earnings not provided in the accounts;
- Will the deal trigger any transfer taxes such as stamp duties? If so, who should bear such taxes?
- How should the deal be funded to ensure tax-efficient debt structuring?
- Will the deal trigger a tax audit or tax filing?
- Should a new entity be set up to acquire the target? If so, what legal form should it take and where should it be registered or incorporated?
- Proper planning helps to make it easier to repatriate profits and exit from the investment subsequently.
- What are the tax merits of a share purchase versus an asset purchase, if the buyer has the option to choose between purchasing the shares or the assets of the target company.
- To review future tax positions and identify opportunities to minimize tax in evaluating the benefits and costs of post-acquisition restructuring.
- Tax planning to provide for their eventual exit from the investment is important; as taxes on any gain would reduce the return on their investment.

A **Tax Due Diligence** should not only focus on corporate taxes. It should also include a review of withholding taxes, transfer pricing, indirect taxes such as goods and services tax, value added tax and sales tax, and employment taxes.

To maximize the value of an merger and acquisition deal, tax planning should be done from the onset when a company is considering the deal.

Please feel free to email us at **ngaihung@lohocklingco.com.sg** to discuss your business needs.