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	<u>06</u> EXCHANGE OF SHARES Global Overview and taxation



MERGER OPERATIONS

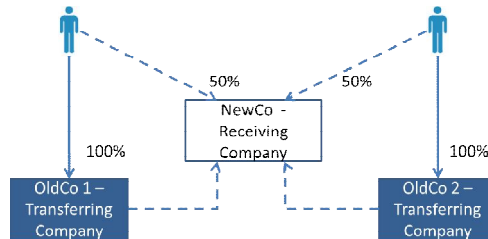
Global overview.



MERGER OPERATIONS:

Merger of two or more companies (OldCo) with the establishment of a new company (NewCo).

Merger with NewCo



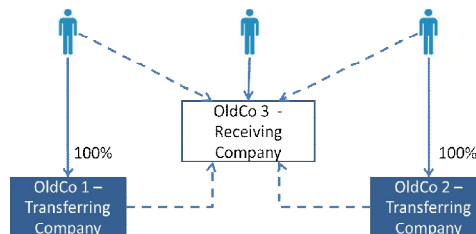
Example of a merger whereby two companies (OldCo), on being dissolved without going into liquidation, transfer all their assets and liabilities to a company that they form (NewCo), in exchange for the issue to their shareholders of securities representing the capital of that new company and, if applicable, a cash payment not exceeding 10 % of the nominal value, or, in the absence of a nominal value, of the accounting par value of those securities.



MERGER OPERATIONS:

Merger of one or more companies (OldCo) into another existing company (OldCo).

Incorporation merger



Example of a merger whereby one or more companies (OldCo), on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company (OldCo) in exchange for the issue to their shareholders of securities representing the capital of that other company, and, if applicable, a cash payment not exceeding 10 % of the nominal value, or, in the absence of a nominal value, of the accounting par value of those securities.

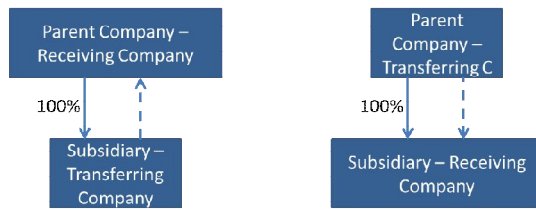


MERGER OPERATIONS:

Merger of one company (Parent Company) into its subsidiary company and reverse Incorporation.

Parent-sub
subsidiary
mergers

Incorporation Merger | Reverse Incorporation



Example of a merger whereby a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to the company holding all the securities representing its capital.

Example of a merger whereby a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to one of its subsidiaries.



DEMERGER OPERATIONS

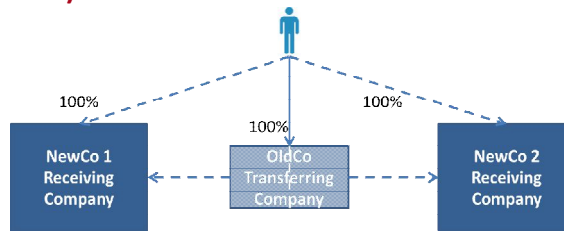
Global overview.



DEMERGER OPERATIONS:

Demerger of one company (OldCo) with the establishment of one or more new companies (NewCo).

Division



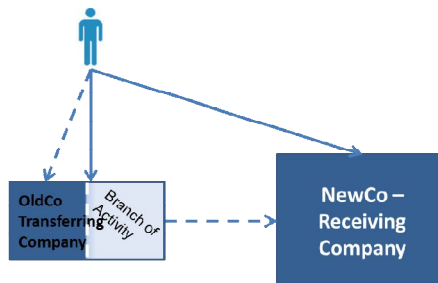
Example of a demerger operation whereby a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to two or more existing or new companies, in exchange for the pro-rata issue to its shareholders of securities representing the capital of the NewCos, and, if applicable, a cash payment not exceeding 10 % of the nominal value or, in the absence of a nominal value, of the accounting par value of those securities.



DEMERGER OPERATIONS:

Partial demerger of one company (OldCo) with the establishment of a new company (NewCo).

Partial Demerger



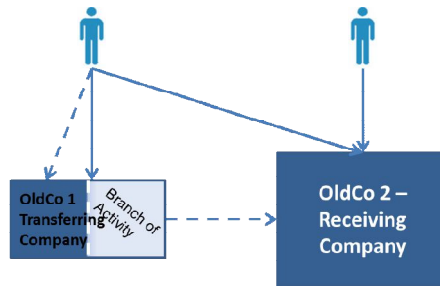
Example of partial demerger operation whereby a company transfers, without being dissolved, one or more branches of activity, to one or more new companies, leaving at least one branch of activity in the transferring company, in exchange for the pro-rata issue to its shareholders of securities representing the capital of the NewCo, and, if applicable, a cash payment not exceeding 10 % of the nominal value or, in the absence of a nominal value, of the accounting par value of those securities.



DEMERGER OPERATIONS:

Partial demerger of one company (OldCo) with the merger into an existing Company (OldCo 2).

Partial Demerger & Merger



Example of partial demerger and merger operation whereby a company transfers, without being dissolved, one or more branches of activity, to one or more existing companies, leaving at least one branch of activity in the transferring company, in exchange for the pro-rata issue to its shareholders of securities representing the capital of the companies receiving the assets and liabilities, and, if applicable, a cash payment not exceeding 10 % of the nominal value or, in the absence of a nominal value, of the accounting par value of those securities.



PERSONS AND OPERATIONS TAXED IN MERGERS AND DEMERGERS

Global overview.

TL

PERSONS AND OPERATIONS TAXED IN MERGERS AND DEMERGERS: GLOBAL OVERVIEW.

3 levels of taxation.

Shareholder Exchange of shares
NewCo/OldCo Assets received
OldCo Assets transferred

Example of a merger where two companies (OldCo), on being dissolved without going into liquidation, transfer all their assets and liabilities to a company that they form (NewCo), in exchange for the issue to their shareholders of securities representing the capital of that new company

TL

PERSONS AND OPERATIONS TAXED IN MERGERS AND DEMERGERS: SHAREHOLDER.

Shareholders' taxation.

Shareholder Exchange of shares

The exchange of capital shares and any payment made to the shareholder shall be taxed under the personal income tax (PIT, "IRS" – Portuguese acronym) or corporate income tax (CIT, "IRC" – Portuguese acronym) rules. Gains shall be assessed under the capital gains regime.

Relevant rates:

PIT: 28% on capital gains /reduction of 50% regarding micro or small business companies. => Effective tax rate of 14%

CIT: Participation exemption. If not applicable, 21% plus municipal and state surcharges. The municipal surcharge ranges up to 1.5%, depending of the municipality. A state surcharge of 3% applies to profits varying between €1,500,000 and €7,500,000. For income between €7,500,000 and €35,000,000 the surcharge rises to 5%. Above €35,000,000 the surcharge rises to 7%.



PERSONS AND OPERATIONS TAXED IN MERGERS AND DEMERGERS: SHAREHOLDER.

Shareholders' taxation.

Micro or small business – DL n.º 372/2007, of November 6

A small business is defined as an enterprise which employs fewer than 50 persons and whose annual turnover or annual balance sheet total does not exceed 10 million euros.

A micro enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover or annual balance sheet total does not exceed EUR 2 million.

Participation exemption – capital gains tax exemption

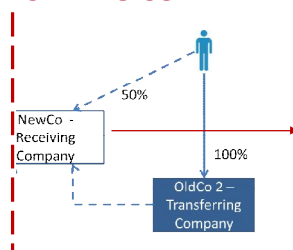
The regime applies to:

- direct or direct and indirect minimum 5% participations in share capital or in voting rights,
- Participations held for a minimum period of 24 months.



PERSONS AND OPERATIONS TAXED IN MERGERS AND DEMERGERS: RECEIVING COMPANY - NEWCO.

NewCo's taxation.




NewCo Assets' received

The transfer of assets is taxed under VAT ("IVA" – Portuguese acronym) rules. Should any of the assets transferred be real estate, the transfer of such asset shall be taxed under municipal property transfer tax ("IMT") and stamp duty ("Imposto do Selo"). Both taxes shall be due by the acquiring company, the NewCo. The transfer of asset will also lead to equity variation, which in some circumstances, could be taxed at CIT, at the level of the receiving company.

Relevant rates:

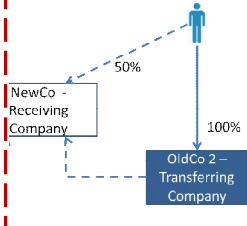
VAT: 23%, 16% or 6%
 IMT: From 1% to 6.5%. Rate of 10% applicable to purchasers established in tax heavens.
 Stamp Duty: 0.8%



PERSONS AND OPERATIONS TAXED IN MERGERS AND DEMERGERS:

TRANSFERRING COMPANY - OLD CO.


OldCo's taxation.



OldCo Assets' transferred

Any gains derived from the transfer of assets or profits derived from the transfer of stock shall be taxed under CIT rules.

Relevant rates:
CIT: 21% plus surcharges / Participation exemption may apply



MERGER/DEMERGER TAX REGIMES

CIT, PIT, VAT, IMT and Stamp Duty.



MERGER/DEMERGER TAX REGIME.

CIT, PIT, VAT, IMT and Stamp Duty.

Exemptions & deferral of taxation.

Merger/Demerger operations may benefit from several tax regimes that will allow :

- Deferral of taxation at PIT (individual shareholders);
- Deferral of taxation at CIT (corporate shareholders and transferring companies);

This means that the operation shall benefit from tax neutrality.

- Exemption of VAT;
- Exemption of Real Estate Municipal Transfer Tax (IMT) and Stamp Duty.



MERGER/DEMERGER TAX REGIME.

Deferral of Taxation at PIT and CIT level.

Deferral of taxation.

The Portuguese Tax Regime is based on the EU Mergers Directive, The Councils Directive n.º 2009/133/EC, from October 19, 2009.

The objective is to remove fiscal obstacles to internal and cross-border reorganizations involving companies.

The requirements mentioned below shall apply to internal and cross-border reorganizations – however, cross-border reorganizations shall have to fulfill additional requirements.



MERGER/DEMERGER TAX REGIME.

Deferral of Taxation at PIT and CIT level (Cont. 1)

Deferral of taxation.

1. At the transferring companies and receiving companies level:

In the case of mergers or demergers, the transferring company transfers all assets and liabilities to one or more receiving companies. In the case of partial demerger (including a partial demerger and merger operation), the assets transferred must constitute a branch of activity, i.e. all assets and liabilities of a demerger of a company which from an organisational point of view constitute an independent business, that is to say an entity capable of functioning by its own means.

This regime provides for deferral of the taxes that could be charged on the difference between the real value of such assets and their value for tax purposes.

The deferral is granted provided that the receiving company **continues with their tax values**.

Should the assets transferred be sold at a later date by the receiving company, gains will be assessed considering the above mentioned tax value.

If such assets are not sold, no taxation arises.



MERGER/DEMERGER TAX REGIME.

Deferral of Taxation at PIT and CIT level (Cont. 2)

Deferral of taxation.

2. At the shareholders level:

In the case of mergers or demergers, the receiving company issues capital shares that are given to the shareholders of the transferring companies. The issuance of capital shares is not mandatory in the parent/subsidiary merger operations.

This regime provides for deferral of the taxes that could be charged for the "exchange" of shares. Note that if any payment is made (up to the below mentioned limit), it shall be taxed.

The deferral is granted provided that:

- a) besides the issuing of new shares, any cash payment does not exceed 10 % of the nominal value, or in the absence of a nominal value, of the accounting par value of those securities;
- b) The new shares are registered in the accounts of the shareholder, for tax purposes, for the tax values of the previous shares.

Should the new shares be sold at a later date by the shareholder, gains will be assessed considering the above mentioned tax value.

If such shares are not sold, no taxation arises unless the shareholder exits the country (exceptional exit tax).



MERGER/DEMERGER TAX REGIME.

VAT exemption.

VAT Exemption.

The transfer of a branch of activity (including goods and rights) will not be deemed a taxable transfer for VAT purposes if the receiving company is, or shall become, a non-exempt VAT tax payer.



MERGER/DEMERGER TAX REGIME.

IMT, Stamp Duty, Notary and Register fee exemptions – article 60.^o Tax Benefit Code.

IMT and Stamp Duty Exemption.

Merger operations shall be exempt from IMT and Stamp Duty regarding the transfer of non-residential properties. Should this regime fail to apply, one may consider a reverse merger.

Demerger operations (regarding which activity branches are detached) shall be exempt from IMT and Stamp Duty regarding the transfer of non-residential properties. Should this regime fail to apply, one may consider a reverse merger.

Stamp duty exemption also applies to the constitution, capital increase or asset increase of the receiving company necessary to restructuring operations.


Exemption from notary and register fees and other legal charges that may be due to perform the acts included in restructuring processes or cooperation.

These exemptions must be requested prior to the register of all acts related with the restructuring. The request must be presented to the Minister of Finance.



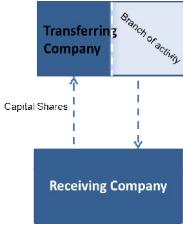
TRANSFER OF ASSETS

Global overview and taxation.



PERSONS AND OPERATIONS TAXED IN A TRANSFER OF ASSETS: GLOBAL OVERVIEW.

2 levels of taxation.



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graph TD
    TC[Transferring Company] -- "Branch of activity" --> RC[Receiving Company]
    RC -.->|Capital Shares| TC
            
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Transferring Company
Exchange of a branch of activity for capital shares.

Receiving Company
The transfer of assets will lead to equity variation, which will be exempt of CIT.

'Transfer of assets' - an operation whereby a company transfers, without being dissolved, all or one or more branches of its activity to another company in exchange for the transfer of securities representing the capital of the company receiving the transfer.



TRANSFER OF ASSETS TAX REGIME.

CIT and VAT

Exemptions & deferral of taxation.

Transfer of assets may benefit from several tax regimes that will allow :

- Deferral of taxation at CIT (corporate shareholders and transferring companies) – tax neutrality;
- Exemption of VAT;



TRANSFER OF ASSETS TAX REGIME.

Deferral of Taxation at CIT level.

Deferral of taxation.

The Portuguese Tax Regime is based in the EU Mergers Directive, The Councils Directive n.º 2009/133/EC, from October 19, 2009.

The objective is to remove fiscal obstacles to internal and cross-border reorganizations involving companies.

The requirements mentioned below shall apply to internal and cross-border reorganizations – however, cross-border reorganizations shall have to fulfill additional requirements.



TRANSFER OF ASSETS TAX REGIME.

Deferral of Taxation at CIT level (Cont. 1)

Deferral of taxation.

At the transferring companies and receiving companies level:

In the case of transfer of assets, the assets transferred must constitute a branch of activity, i.e. all assets and liabilities of a demerger of a company which from an organisational point of view constitute an independent business, that is to say an entity capable of functioning by its own means.

This regime provides for deferral of the taxes that could be charged on the difference between the real value of such assets and liabilities and their value for tax purposes.

The deferral is granted provided that the receiving company continues with their tax values.

Should the assets transferred be sold at a later date by the receiving company, gains will be assessed considering the above mentioned tax value.

If such assets are not sold, no taxation arises.



TRANSFER OF ASSETS TAX REGIME.

VAT exemption & Stamp Duty.

VAT Exemption.

The transfer of business as a going concern (including goods and rights) will not be deemed a taxable transfer for VAT purposes if the receiving company is, or shall become, a non-exempt VAT tax payer.

Should VAT exemption apply, Stamp Duty shall be applicable if the operation refers to a transfer of business as a going concern (TOGC or “*trespasse*”), at a rate of 5%.

Note that the Portuguese Tax Authority has an understanding according with which the transfer of a going concern will only be taxable, under Stamp Duty rules, if it includes a tenant position in a real estate lease agreement.



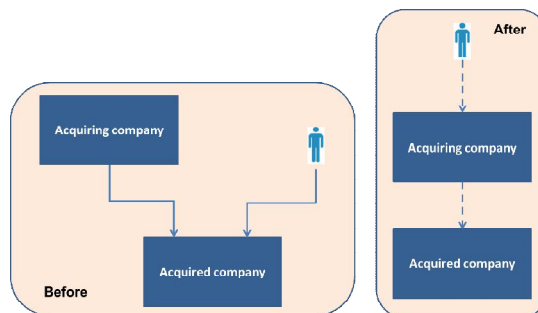
EXCHANGE OF SHARES

Global overview and taxation.




EXCHANGE OF SHARES

Exchange of shares



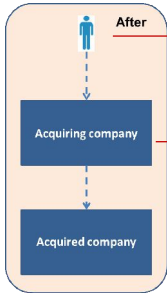
'exchange of shares' - an operation whereby a company acquires a holding in the capital of another company such that it obtains a majority of the voting rights in that company, or, holding such a majority, acquires a further holding, in exchange for the issue to the shareholders of the latter company, in exchange for their securities, of securities representing the capital of the former company, and, if applicable, a cash payment not exceeding 10 % of the nominal value, in the absence of a nominal value, of the accounting par value of the securities issued in exchange.



PERSONS AND OPERATIONS TAXED IN AN EXCHANGE OF SHARES:


GLOBAL OVERVIEW.

2 levels of taxation.



Individual/corporate shareholders of acquiring company. Exchange shares shall be taxed at PIT/CIT level. At CIT level Participation Exemption regime may apply.

Acquiring Company. The transfer of shares will lead to equity variation, which will be exempt of CIT.



EXCHANGE OF SHARES TAX REGIME.

Exemptions & deferral of taxation.

PIT AND CIT.

Exchange of shares operations may benefit from several tax regimes that will allow:

- Deferral of taxation at PIT (individual shareholders);
- Deferral of taxation at CIT (corporate shareholders);
- Exemption on the acquiring company



EXCHANGE OF SHARES TAX REGIME.

Deferral of Taxation at PIT and CIT level.

Deferral of taxation.

In the case of exchange of shares, the acquiring company issues capital shares that are given to the shareholders of the acquired company.

This regime provides for deferral of the taxes that could be charged for the “exchange” of shares. Note that if any payment is made (up to the below mentioned limit), it shall be taxed.



EXCHANGE OF SHARES TAX REGIME.

Deferral of Taxation at PIT and CIT level (Cont. 1)

The deferral is granted provided that:

Deferral of taxation.

1. Shareholders of the acquired Company

- a) besides the issuing of new shares, any cash payment does not exceed 10 % of the nominal value, or in the absence of a nominal value, of the accounting par value of those securities;
- b) The new shares are registered in the accounts of the shareholder, for tax purposes, for the tax values of the previous shares;

2. Acquiring Company

- c) The holding acquired is registered in the accounts of the acquiring company, for tax purposes, for the tax values of the previous shares;

Should the new shares be sold at a later date by the shareholder, gains will be assessed considering the above mentioned tax value.

If such shares are not sold, no taxation arises unless the shareholder exits the country (exceptional **exit tax**).

TELLES
TELLES DE ABREU | ADVOGADOS

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Thank you very much.

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