

Tax Aspects in M&A in China

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Tax Aspects in M&A in China

I. Assessment


II. Tax Planning

III. Implementation

I. Assessment

Tax System

- Generalized legislation by central government
- Supplementary regulations by central and local tax authorities
- Localized operation and local influence
- Autonomy of tax authorities



A complicated and fast changing system

I. Assessment

- Tax Risks – On a domestic target company
 - Different understanding on tax compliance
 - “*Yin-and-Yang*” accounting books
 - False tax declaration
 - Under paid tax exposure
 - ➔ 3 years for non-compliance with negligence
 - ➔ 5 years for more than RMB 100,000 unpaid tax
 - ➔ no limit for non-compliance with gross negligence or intent

I. Assessment

- Some common issues
 - False recording
 - Delay or failure in revenue recognition
 - Delay or failure in income recognition
 - Underpaid social insurance
 - “Special deal” with local authority
 - Related transaction

I. Assessment

- Tax Due Diligence
 - More significance in transaction management
 - Less reliance on report and record
 - Wider scope and deeper extent to investigate

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II. Planning

For asset deal

Tax	Scope of Tax	Land & Property	Tangible Assets	Intangibles
Corporate Income Tax	Gain on transfer	25%	25%	25%
Business Tax	Transfer value	5.5%	-	5.5%
Value Added Tax	Transfer value			
	-Inventory	-	17%	-
	-Fixed Assets	-	2%	-
Real Property Gains Tax	Gains on transfer	30%-60%	-	-
Stamp Duty	Executed contract value	0.05%	0.03%	0.05%
Deed Tax	Transfer value	3%-5%	-	-

II. Planning

For share deal

Tax	Scope of Tax	Shares	Tangible Assets	Intangibles
Corporate Income Tax	Gain on transfer	25%	-	-
Business Tax	Transfer value	-	-	-
Value Added Tax	Transfer value	-	-	-
Real Property Gains Tax	Gains on transfer	-	-	-
Stamp Duty	Executed contract value	0.05%	-	-
Deed Tax	Transfer value	-	-	-

II. Planning

- Acquisition Structure: asset deal vs. share deal
 - Cost management
 - Tax efficiency
 - Minimized operation influence
 - Legal compliance

II. Planning

- Holding structure
 - 10% withholding tax on dividends
- Financing arrangement
 - Limitation on shareholder loan
- Contractual arrangement
 - Less reliance on representations and warranties

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III. Implementation

- Payment of Price
 - Individual income tax
 - ➔ No withholding obligation
 - ➔ Linked to transaction closing
 - Offshore payment
 - ➔ Withholding obligation of payer
 - ➔ Reporting obligation of the target
 - ➔ Potential influence on the transaction

III. Implementation

- Set up modern accounting system
- Supervise tax compliance
- Set up smooth communication with local authorities
- Seek political support