



MERGERS AND ACQUISITIONS

New Zealand

Taxation of Cross-Border
Mergers and Acquisitions

2010 Edition

TAX

New Zealand

Introduction

The chapter proceeds by addressing three fundamental decisions that face a prospective purchaser.

- What should be acquired; the target's shares or its assets?
- What will be the acquisition vehicle?
- How should the acquisition vehicle be financed?

Tax is, of course, only one piece of the transaction structuring jigsaw. Company law governs the legal form of a transaction and accounting issues are also highly relevant when selecting the optimal structure. These areas are outside the scope of this book, but some of the key points that arise when planning the steps in a transaction plan are summarized later in the chapter.

Recent Developments

New Zealand's recent tax developments with regards to mergers and acquisitions (M&A) are summarized later in the chapter.

Limited Partnerships

The Limited Partnerships Act 2008 came into force on 2 May 2008, creating a new legal entity in New Zealand called a limited partnership. The limited partnership vehicle is designed to bring New Zealand into line with international norms.

Update of New Zealand's Treaty Network

New Zealand has recently re-negotiated its double tax agreements (DTAs) with Australia, the United States, and Singapore.

The main focus of the new DTAs has been the reduction in withholding tax (WHT) rates on dividends, interest, and royalties.

Fiscal Framework: Challenges for the Tax Policy Working Group

In May 2009 the New Zealand Government announced the formation of the Tax Policy Working Group, comprising private sector and academic experts, who are assisting it in analyzing and considering tax policy changes in New Zealand.

The main role of the Working Group is to consider the shape of New Zealand's tax system in the medium term. This will include exploring a range of changes to tax rates and new revenue-raising options. The Working Group was asked by the government to report its findings by December 2009.

The Government has not ruled anything in, or out. Decisions expected to be reached after the Working Group reported in December 2009. Changes, if any, will probably be included in the government's 2010 budget announcements.

Asset Purchase or Share Purchase

New Zealand does not have a comprehensive capital gains tax. As a result, gains on capital assets are subject to tax only in certain limited instances: for example, when the business of the taxpayer comprises or includes dealing in capital assets such as shares or land. The fact that capital gains are usually not subject to tax in New Zealand has an impact on the asset, versus share purchase decision.

Purchase of Assets

A purchase of assets will usually result in an increase in the base cost of those assets for tax depreciation (capital allowance) purposes, although this increase is likely to be taxable in the hands of the seller. In addition, historic tax liabilities generally remain with the company and are not transferred with the assets.

Purchase Price

Similarly, when assets are purchased at a discount there are no statutory rules on how the purchase price is to be allocated among the various assets purchased. In the event that the sale and purchase agreement is silent as to the allocation of the price, the New Zealand Inland Revenue (IRD) generally accepts a simple pro-rata allocation between the various assets purchased, on the basis of their respective market values.

Goodwill

Goodwill paid for a business as a going concern is not deductible, depreciable, or amortizable. For this reason, where the price contains an element of goodwill, it is common practice for the purchaser to endeavor to have the purchase and sale agreement properly allocate the

purchase price between the tangible assets and goodwill to be acquired. This practice is not normally challenged by the IRD, provided the purchase price allocation is agreed between the parties and reasonably reflects the assets' market values.

If the sale and purchase agreement is silent as to the allocation of the price, a simple pro rata allocation between the various assets purchased, on the basis of their respective market values, is usually accepted.

It may be possible to structure the acquisition of a New Zealand investment in such a way as to reduce the amount of goodwill that is acquired. Given that certain intangible assets can be depreciated in New Zealand (see later in the chapter), a sale and purchase agreement could apportion part of the acquisition price to certain depreciable intangible assets, rather than non-depreciable goodwill.

Depreciation

Most tangible assets may be depreciated for income tax purposes, the major exception being land. Rates of depreciation vary depending on the asset concerned. Taxpayers are free to depreciate their assets on either a straight-line or diminishing value basis.

Assets acquired from the beginning of the 1995–1996 income years onward generally qualify for an additional 20-percent loading to the basic depreciation rate, which accelerates the depreciation claim on most assets. Notable exceptions to the percent loading rule are buildings and second-hand imported vehicles.

New rates of depreciation have been introduced for any assets acquired from 1 April 2005 (19 May 2005 for buildings).

While, as a general rule, the cost of intangible assets cannot be deducted or amortized, it is possible to depreciate certain intangible assets. Any of the following, if acquired or created after 1 April 1993 may, subject to certain conditions, qualify for an annual depreciation deduction.

- The right to use a copyright.
- The right to use a design or model, plan, secret formula, or process or any other property right.
- A patent or the right to use a patent.
- A patent application with a complete specification lodged on or after 1 April 2005.
- The right to use land.
- The right to use plant and machinery.
- The copyright in software, the right to use the copyright in software, or the right to use software.
- The right to use a trademark.

Other intangible rights that qualify for an annual depreciation deduction include the following.

- Management rights or license rights created under the Radio Communications Act 1989.
- Certain resource consents granted under the Resource Management Act 1991.
- The copyright in a sound recording (in certain circumstances).
- Plant variety rights, or the right to use plant variety rights, granted under the Plant Variety Rights Act 1987 or similar rights given similar protection under the laws of a country or territory other than New Zealand.

Value-Added Tax (VAT)

New Zealand has a VAT known as a goods and services tax (GST). The rate is currently 12.5 percent and must be charged on most supplies of goods and services made by persons who are registered for GST. The sale of core business assets to a purchaser by a registered person constitutes a supply of goods for GST purposes and would, in the absence of any special rules, be charged with GST at the standard rate.

However, if a business is a going concern it can be zero rated by the vendor (charged with GST, but at 0 percent). To qualify for zero-rating:

- both the vendor and purchaser must be registered for GST;
- the vendor and purchaser agree in writing that the supply is of a going concern;
- the business must be a going concern; and
- the purchaser and vendor intend that the purchaser should be capable of carrying on the business.

In most cases, the purchase price will be expressed as plus GST, if any, thereby granting the vendor the right to recover from the purchaser any GST later assessed by the IRD. However, this must be expressly stated. If the contract is silent the price is deemed to be inclusive of GST.

In the event that the sale of assets cannot be zero-rated, the purchaser may recover the GST paid to the vendor from the IRD, provided the purchaser is either registered for GST or is required to be registered for GST at the time the assets are supplied by the vendor. Goods and services are supplied at the earlier of the time that a payment (including a deposit) is received by the vendor or the time an invoice is issued by the vendor. An invoice is defined as a document giving notice of an obligation to make a payment.

There is presently a proposal to amend the GST Act to introduce a domestic reverse charge, which if introduced, will change the above treatment.

Assets imported into New Zealand are subject to GST of 12.5 percent at the border. From 1 January 2005, New Zealand has introduced a reverse charge on imported services to align the treatment of goods and services. However, the impact of the GST on imported services affects only organizations that are suppliers of GST-exempt supplies (such as financial institutions). Organizations that do not make GST-exempt supplies are not required to pay a reverse charge.

Transfer Taxes

No stamp duty is payable on sales of land, improvements, or other assets.

Purchase of Shares

The purchase of a target company's shares does not result in an increase in the base cost of the company's underlying assets; there is no deduction for the difference between underlying net asset values and consideration.

Tax Indemnities and Warranties

In the case of negotiated acquisitions, it is usual for the purchaser to request, and the vendor to provide, indemnities and/or warranties as to any undisclosed taxation liabilities of the company to be acquired. The extent of the indemnities/warranties is a matter for negotiation.

Tax Losses

To carry forward tax losses from one income year to the next income year a company must maintain a minimum 49-percent shareholder continuity from the start of the income year in which the tax losses were incurred. Unlike some jurisdictions, New Zealand does not have a same business test, so the ability to carry forward and use tax losses is solely based on shareholder continuity.

If there is a minimum 66 percent commonality of shareholding from the beginning of the income year in which the tax losses were incurred then a company can potentially offset its tax losses with another group company.

It is difficult to preserve the value of tax losses post acquisition as there is limited scope to refresh tax losses.

Crystallization of Tax Charges

Caution should be exercised if the purchaser is acquiring shares in a company that is a member of a consolidated income tax group, because the target company will remain jointly and severally liable for the income tax liability of the consolidated income tax group while the target company was a member. The Commissioner of Inland Revenue may grant approval for the target company to cease to be jointly and severally liable.

Pre-Sale Dividend

To carry forward imputation credits from one imputation year to the next imputation year a company must maintain a minimum 66 percent shareholder continuity from the date the imputation credits are generated.

If imputation credits are to be forfeited then a taxable bonus issue (TBI) can be used to maintain the value of the imputation credits.

The advantage with a TBI is that it achieves the same outcome as a dividend in respect of crystallizing the value of imputation credits for the ultimate benefit of the company's shareholders. However, since a TBI does not require cash to be paid the solvency of the company is not adversely affected and there is no WHT cost.

The TBI essentially converts retained earnings to available subscribed capital (ASC) for income tax purposes. This ASC can then be distributed tax free to the company's shareholder(s) in the future as long as certain conditions are satisfied.

The TBI provides a potential benefit to the purchaser and is of no benefit to the vendor. This is something the purchaser may need to raise with the vendor.

Transfer Taxes

No stamp duty is payable on transfers of shares.

Tax Clearances

A party to a transaction can seek a binding ruling from the IRD on the tax consequences of an acquisition or merger, but it is not possible to obtain an assurance

from the IRD that a potential target company has no arrears of tax and is not involved in a tax dispute.

Choice of Acquisition Vehicle

The following vehicles may be used to acquire the shares and/or assets of the target:

- Local holding company
- Foreign parent company
- Non-resident intermediate holding company
- Branch
- Joint venture
- Other special purpose vehicles (such as, partnership, trust, or unit trust)

Local Holding Company

A local holding company may be used as a mechanism to allocate interest-bearing debt to New Zealand (that is, the local holding company borrows money from a financial institution to help fund the acquisition of the New Zealand target).

From a New Zealand perspective, a tax-efficient exit strategy would involve selling the shares of the local holding company as opposed to selling the shares of the underlying operating subsidiary. If the shares in the underlying operating subsidiary were sold then a WHT liability would arise on the repatriation of any capital profit unless an applicable DTA reduced the WHT rate (potentially to 0 percent).

New Zealand operates an imputation system of company taxation. Shareholders of a company gain relief against their own New Zealand income tax liability for income tax paid by the company. Tax payments by the company are tracked in a memorandum account, called an imputation credit account, which records the amount of company tax paid that may be imputed to dividends paid to shareholders. New Zealand-resident investors use imputation credits attached to dividends to reduce the tax payable on the dividend income. For non-resident shareholders, dividends are subject to Non-resident Withholding Tax (NRWT) at either 15 percent if fully imputed or 30 percent (although most double-taxation agreements limit this to 15 percent).

The Foreign Investor Tax Credit (FITC) regime was introduced into New Zealand to ensure that foreign investors in New Zealand companies also pay an effective tax rate of 30 percent on profits earned by the New Zealand companies in which they have invested.

The FITC regime is being modified as a result of New Zealand's recently re-negotiated DTAs imposing a minimum 0-percent WHT on dividends.

Foreign Parent Company

The foreign purchaser may choose to make the acquisition itself, perhaps to shelter its own taxable profits with the financing costs. This will not necessarily cause any tax problems in New Zealand, because there is no capital gains tax regime as such.

Non-Resident Intermediate Holding Company

If the foreign country taxes capital gains and dividends received from overseas, an intermediate holding company resident in another territory could be used to defer this tax and perhaps take advantage of a more favorable tax treaty with New Zealand. However, the purchaser should be aware that certain DTAs contain treaty shopping provisions that may restrict the ability to structure a deal in a way designed solely to obtain tax benefits.

Local Branch

New Zealand resident companies and branches established by offshore companies are subject to income tax at 30 percent of taxable profits.

The choice between operating a New Zealand company or a branch will in most cases be neutral for New Zealand tax, because of the FITC regime.

As a branch is not a separate legal entity, its repatriation of profits is not considered a dividend to a foreign company, and, hence, NRWT is not imposed. The effective tax rate on a New Zealand branch operation is therefore 30 percent.

It is important to note that, in effect, New Zealand's thin-capitalization and transfer pricing regimes apply equally to branch and subsidiary operations.

Joint Ventures

Where an acquisition is to be made in conjunction with another party, the question arises as to the most appropriate vehicle for the joint venture. Although a partnership can be used as the vehicle, in most cases the parties prefer to conduct the joint venture via a limited liability company, which offers the advantages of incorporation and limited liability for its members. In contrast, a partnership has historically had no separate legal existence and the partners are jointly and severally liable for the debts of the partnership, without limitation.

New Zealand has special rules for limited partnerships. The key features are as follows:

- Limited partners' liability is limited to the amount of their contributions to the partnership.
- Limited partners can undertake certain activities (safe harbors) that allow them to have a say in how the partnership is run, without being treated as participating in the management of the partnership and consequently losing their limited liability status.
- A limited partnership is a separate legal entity to provide further protection for the liability of limited partners.
- Each partner in a limited partnership is taxed individually, in proportion to his/her share of the partnership income, in the same way that income from general partnerships is taxed. Limited partners' tax losses in any given year are restricted to the level of their economic loss in that year.

Choice of Acquisition Funding

A purchaser using a New Zealand acquisition vehicle to carry out an acquisition for cash will need to decide whether to fund the vehicle with debt or equity, or even a hybrid instrument that combines the characteristics of debt and equity. The principles underlying these approaches are discussed later in the chapter.

Debt

Subject to the thin-capitalization regime most companies can claim a full tax deduction for all interest paid, irrespective of the use of the borrowed funds. For other taxpayers the general interest deductibility rules apply. These rules allow an interest deduction when interest is:

- payable in gaining or producing assessable income for any income year;
- necessarily payable in carrying on a business for the purpose of gaining or producing assessable income for any income year; or
- payable by one company included in a group of companies on monies borrowed to acquire shares in another company included in that group of companies.

The timing of the deductibility of interest on financial arrangements (widely defined to include most forms of debt) is governed by legislation known locally as the financial arrangements rules. The financial arrangements rules require that interest be calculated either on the yield-to-maturity basis or in accordance with some other method that uses the principles of accrual accounting, is

adopted for financial reporting purposes, and conforms to commercially acceptable practice. These rules do not apply to non-residents, except in relation to financial arrangements entered into by non-residents for the purpose of a fixed establishment (that is, a branch) situated in New Zealand.

In an acquisition, it is more common for borrowings to be undertaken by the new parent of the target (rather than the target itself), and for any cash flow requirements of the borrowing parent to be met by extracting dividends from the target. Provided the companies are part of a wholly-owned group, dividends between the companies are exempt.

Deductibility of Interest

Generally, the funding of a subsidiary by a parent by the use of interest-free loans will not produce any adverse taxation consequences. Such loans are not included in thin-capitalization calculations for New Zealand income tax purposes. However, an interest-free loan from a subsidiary to its parent could be deemed to be a dividend, thereby creating assessable income in the hands of the parent company. Such transactions will also potentially be subject to the transfer pricing regime if the counter-party is a non-resident related party.

Withholding Tax on Debt and Methods to Reduce or Eliminate

New Zealand imposes WHT on interest and dividend payments. Payments of interest and dividends between New Zealand residents are (with some exceptions) subject to resident WHT, unless a certificate of exemption is obtained. Entities with gross assessable income (prior to deductions) of NZD 2 million or more are entitled to an exemption certificate, along with financial institutions, exempt entities, entities in loss situations, and certain others.

NRWT is imposed on interest, dividends, and royalties paid to non-residents. The rate on royalties and interest is 15 percent; however, most double taxation treaties reduce these rates to 10 percent. Fully imputed dividends are subject to NRWT at 15 percent for treaty and non-treaty countries. As discussed earlier, the effect of the FITC regime is to fund the cost of NRWT on imputed dividends from a tax credit provided to the dividend paying company, effectively eliminating the cost of the NRWT for non-resident shareholders.

Unimpeded dividends paid to a resident of a non-treaty country are subject to NRWT at 30 percent. NRWT on interest is not a final tax when the payer and the recipient are associated persons. In these cases, a

calculation of income tax at ordinary rates on the net interest (after expenses) must be made. The final tax liability is the greater of NRWT on the gross interest, or income tax on the net interest. While most tax treaties limit the maximum tax on interest paid between associated persons to the treaty rate, several treaties do not limit the maximum tax that can be imposed under New Zealand law in such cases.

Most royalties paid to non-residents are subject to income tax in a manner similar to that applying to interest paid between associated persons. That is, a calculation of income tax on the net royalty must be made and the final liability is the greater of NRWT on the gross royalty or income tax on the net royalty. All New Zealand tax treaties (with the exception of the treaty with Japan) limit the tax payable under New Zealand law to 10 percent or 15 percent of the gross royalty, provided the non-resident does not have a permanent establishment in New Zealand. The Japanese treaty does not limit the New Zealand tax payable on royalties.

A concession in the area of NRWT on interest is the Approved Issuer Levy (AIL) regime. Interest payments to non-residents who are not associated with the New Zealand payer will be exempt from the WHT upon application by the New Zealand payer for an approved status and payment of a levy, similar to stamp duty, equal to 2 percent of the interest.

A New Zealand incorporated company can transfer its incorporation from the New Zealand Companies' Register and become registered on an overseas companies register. The company is no longer considered to be incorporated in New Zealand and, provided that the other tests for tax residence are not met, becomes a non-resident for New Zealand tax purposes. This process is known as migration. Until 21 March 2005, a company that migrated to another jurisdiction was not considered to have been liquidated for tax purposes and for this reason, NRWT was not generally triggered on migration. In many instances, this produced a substantial tax saving as compared to liquidation.

From 21 March 2005, a migration was treated as a deemed liquidation of all assets of the company followed by a deemed distribution of the net proceeds. Income tax consequences, such as depreciation claw-back, now arise and NRWT obligations are imposed on the deemed distribution to the extent it exceeds a return of capital for tax purposes. The amount subject to NRWT will typically include the distribution of retained

earnings and, for shareholders owning 20 percent or more of the liquidating company, capital reserves. The WHT cost may be reduced by attaching imputation credits to the deemed dividend distribution.

Checklist for Debt Funding

- The use of local bank debt may avoid transfer pricing problems and should obviate the requirement to withhold tax from interest payments.
- Holding company tax losses not used in the current year may be carried forward and offset against a group company's profits in a future income year; subject to shareholder continuity and commonality rules.
- The purchaser should consider whether the level of profits would enable tax relief for interest payments to be effective.
- It is possible that a tax deduction may be available at higher rates in other territories.
- WHT of 15 percent, 10 percent, 5 percent, or in some cases 2 percent (under the AIL), will apply on interest payments to non New Zealand entities.

Equity

Dividends and certain bonus share issues are included in taxable income. Payments of dividends are not deductible.

Tax assessed on the dividend may be offset by any imputation credits attached to the dividend of the payer company. There are two main exemptions to the taxability of dividends in the case of companies. These are when:

- both the payer and recipient company are in a wholly-owned group (that is, the same ultimate ownership); and
- dividends are received from offshore companies, because these dividends are subject to a dividend withholding payment when received.

Consolidated Income Tax Group

Two or more companies that are members of a wholly-owned group of companies may elect to form a consolidated group for taxation purposes. The effect of this election is that the companies are treated for income tax purposes as if they were one company. The group only has to file one income tax return and receives one tax assessment. However, all members of

the group become jointly and severally liable for the entire group's taxation liabilities.

Intra-group transactions are disregarded for income tax purposes, although asset transfers result in deferred income tax liabilities. For a consolidated group, the income tax impact of inter-company asset transfers arises when the recipient company of any asset leaves the consolidated group while still holding the property acquired, or alternatively the asset itself is sold.

The main advantage of the consolidation regime is that assets can be transferred at tax book value between consolidated group companies. Companies that are not part of such a regime must transfer assets at market value, realizing a loss or gain on the transaction for income tax purposes.

KPMG in New Zealand notes that this only consolidates income tax and other tax types will still need to be reported individually.

Type	Treatment
Convertible notes	Debt, subject to financial arrangements rules. Possible equity gain on conversion
Perpetual debt	Debt, subject to financial arrangements rules
Subordinated debt	Debt, subject to financial arrangements rules
Floating rate debentures	Deemed to be shares if the rate is linked to profits or dividends, otherwise debt and subject to financial arrangements rules
Debentures issued in substitution for shares	Deemed to be shares if issued in proportion to shareholding, but interest may be deductible if tied to economic, commodity, industrial or financial indices, or banking or general commercial rates
Share options	Not subject to financial arrangements rules (gain or loss is capital and may be neither assessable nor deductible except if issued to employees, in which case any benefit is taxed as remuneration.)
Others	Usually debt subject to financial arrangements rules

Source: KPMG in New Zealand, 2008

Discounted Securities

Interest deductions are available for discounted securities as determined under an accrual basis over the term of the security. Typically deductions are spread over a yield-to-maturity basis.

Deferred Settlement

If settlement is to be deferred, then there is a possibility that the financial arrangements rules may deem a part of the purchase price to be interest payable to the vendor. This may be avoided by the purchase and sale agreement specifically stating whether interest is payable and, if so, the terms. However, from the purchaser's perspective, it may be desirable to have an element of the purchase price deemed to be interest payable to the vendor, as this may give rise to a deduction of the portion of the purchase price deemed to be interest.

Hybrids

Hybrid instruments (with the exception of options over shares) are deemed to be either shares (treated as equity) or debt (subject to the financial arrangements rules).

The following is a list of the major types of instruments and their treatment for tax purposes.

Other Considerations

Concerns of the Seller

When a purchase of assets is contemplated, as opposed to the purchase of shares, the vendor's main concern is likely to be the recovery of depreciation (assessable income) if the assets are sold for more than their book value for tax purposes.

Company Law and Accounting

Company law

The Companies Act 1993 prescribes how New Zealand companies may be formed, operated, re-organized and dissolved.

Merger

A merger usually involves the formation of a new holding company to acquire the shares of the parties to the merger and is usually achieved by an issue of shares

in the new company to the shareholders of the companies that are to merge. Once this step is completed, the new company may have the old companies wound up and their assets distributed to the new company. Certain companies (that is, Code Companies, as defined) will need to comply with the obligations of the Takeovers Code.

Acquisition

A takeover involving large, publicly-listed companies may be achieved by the bidder offering cash, shares, or a mixture of the two. Acquisitions involving smaller or privately-owned companies are accomplished in a variety of ways, and may involve the acquisition of either the shares in the target company or its assets. Again, Code Companies will need to comply with the obligations of the Takeovers Code.

Amalgamation

An amalgamation is a statutory reorganization under New Zealand company law. Concessionary tax rules facilitate amalgamations. In New Zealand an amalgamation involves a transfer of the business and assets of one or more companies to either a new company or an existing company. All amalgamating companies cease to exist on amalgamation (unless one of them becomes the amalgamated company), with the new amalgamated company becoming entitled to and responsible for all the rights and obligations of the amalgamating companies.

Accounting

Consideration should be given to any potential impact that IFRS may have on asset valuations, and, therefore, how the deal should be structured. For example, is any goodwill on acquisition recorded as an asset in a New Zealand entity's financial statements and is there a potential impact on asset valuations for thin-capitalization purposes?

Group Relief/Consolidation

Companies form a group for taxation purposes if at least 66 percent commonality of shareholding exists. When companies form a group, the profits of one can be offset against the losses of the other by the profit company making a payment to the loss company. Alternatively, a loss company can make an irrevocable election directly to offset its losses against the profits of a group profit company. Companies must be members of the group from the commencement of the year of loss until the end of the year the loss is offset.

There is no requirement to form a consolidated tax group in order to offset losses.

Transfer Pricing

New Zealand has a comprehensive transfer pricing regime based on Organization for Economic Cooperation and Development (OECD) guidelines. In general terms, the regime applies with respect to cross-border transactions between related parties that are not made at an arm's-length price. Where this occurs, the rules enable the IRD to reassess a taxpayer's income to ensure that New Zealand's tax base is not eroded.

Two companies are generally considered related for transfer pricing purposes where there is a group of persons with voting (or market value) interests of 50 percent or more in both companies.

Dual Residency

New Zealand has an anti-avoidance rule that prevents a dual resident company from offsetting its losses against the profits of another company.

Foreign Investments of a Local Target Company

New Zealand's controlled foreign company (CFC) regime has been significantly amended, effective from the 2009-10 income year. The new rules include the following:

- an active income exemption (with a 5-percent passive income threshold);
- dividends from CFCs will be exempt;
- the grey list exemption will only include Australia; and
- new outbound interest allocation rules will apply.

Comparison of Asset and Share Purchases

Advantages of Asset Purchases

- The purchase price (or a proportion) can be depreciated or amortized for tax purposes (but not goodwill).
- A deduction is gained for trading stock purchased.
- No previous liabilities of the company are inherited.
- There is no acquisition of a tax liability on retained earnings.
- It is possible to acquire only part of a business.

- There is greater flexibility in funding options.
- Profitable operations can be absorbed by loss companies in the acquirer's group, thereby effectively gaining the ability to use the losses.

Disadvantages of Asset Purchases

- Possible need to renegotiate supply, employment, and technology agreements.
- A higher capital outlay is usually involved (unless debts of the business are also assumed).
- It may be unattractive to the vendor, thereby increasing the price.
- Accounting profits may be affected by the creation of acquisition goodwill.
- 12.5 percent GST may apply to the purchase price, giving rise to a possible cash flow cost, even if the GST can be claimed by the purchaser.

Advantages of Share Purchases

- Lower capital outlay (purchases net assets only).
- Likely to be more attractive to the vendor, so price is likely to be lower.
- May gain benefit of the existing supply or technology contracts.

Disadvantages of Share Purchases

- Acquire unrealized tax liability for depreciation recovery on the difference between market and tax book value of assets.
- Liable for any claims on or previous liabilities of the entity.
- No deduction for the purchase price.
- Acquire tax liability on retained earnings that are ultimately distributed to shareholders.
- Less flexibility in funding options.
- Losses incurred by any companies in the acquirer's group in years prior to acquisition of the target cannot be offset against any profits made by the target company.

Withholding Tax Rate Chart

The rate information and footnotes contained in this table are from the 2009 IBFD/KPMG Global Corporate Tax Handbook.

Country	Dividends		Interest ¹ (%)	Royalties (%)
	Individuals, Companies (%)	Qualifying Companies (%)		
Australia ⁸	15	15	10	10
Austria	15	15	10 ²	10
Belgium	15	15	10	10
Canada	15	15	15	15
Chile	15	15	10/15 ³	10
China (People's Rep.)	15	15	10	10
Czech Republic ⁷	15	15	10	10
Denmark	15	15	10	10
Fiji	15	15	10	15
Finland	15	15	10	10
France	15	15	10	10
Germany	15	15	10	10
India	15	15	10	10
Indonesia	15	15	10	15
Ireland	15	15	10	10
Italy	15	15	10	10
Japan	15	15	_ ⁴	_ ⁴
Korea (Rep.)	15	15	10	10
Malaysia	15	15	15	15
Mexico	15	15	10	10
Netherlands	15	15	10	10
Norway	15	15	10	10
Philippines	15	15	10	15
Poland	15	15	10	10
Russia	15	15	10	10
Singapore ⁸	15	15	15	15
South Africa	15	15	10	10
Spain	15	15	10	10
Sweden	15	15	10	10
Switzerland	15	15	10	10
Taiwan	15	15	10	10
Thailand	15	15	10/15 ⁵	10/15 ⁶
United Arab Emirates	15	15	10	10
United Kingdom	15	15	10	10
United States ⁸	15	15	10	10

Notes

- Many of the treaties provide for an exemption for certain types of interest, such as interest paid to public bodies and institutions or in relation to sales on credit. Such exemptions are not considered in this column.
- Art. 6 of the protocol states that no interest WHT will be payable if an approved New Zealand resident borrower, in relation to a registered security, pays the approved issuer levy in accordance with the domestic legislation.
- The lower rate applies to interest derived from loans granted by banks and insurance companies.
- The domestic rate applies; there is no reduction under the treaty.
- The lower rate applies to interest received by a financial institution (including an insurance company), and in respect of indebtedness arising as a consequence of a sale on credit of equipment, merchandise, or services.
- The lower rate applies in respect of payments for use of or right to use a copyright; or industrial, scientific or commercial equipment; or a motion picture film, television film or videotape or recording, or radio broadcasting tape or recording; or the reception or right to receive visual images or sounds transmitted to the public, or used in connection with television or radio broadcasting transmitted, by satellite, or cable, optic fiber, or similar technology.
- The treaty was effective from 1 January 2009 for WHT and 1 April 2009 for other taxes.
- At the time of publication a new DTA had been negotiated, however, it is yet to come into force. The new DTA has significantly reduced rates of WHT on dividends, interest, and royalties.

KPMG in New Zealand

Greg Knowles
KPMG
18 Viaduct Harbour Avenue
Auckland
1140
New Zealand

Tel. +64 (9) 367 5989
Fax +64 (9) 367 5871
e-Mail: gknowles@kpmg.co.nz

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2010 KPMG, a New Zealand partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (KPMG International), a Swiss entity. All rights reserved.

KPMG and the KPMG logo are registered trademarks of KPMG International Cooperative ("KPMG International"), a Swiss entity.