ADVESTRA

Tax in M&A

M&A Academy

25 August 2026

Agenda

- Introduction
- Top 5 M&A Tax Topics
  - Seller's and Buyer's Objectives
  - Tax Due Diligence
  - Employee Participations
  - Structuring and upstreaming of cash
  - SPA Topics
- Special Considerations

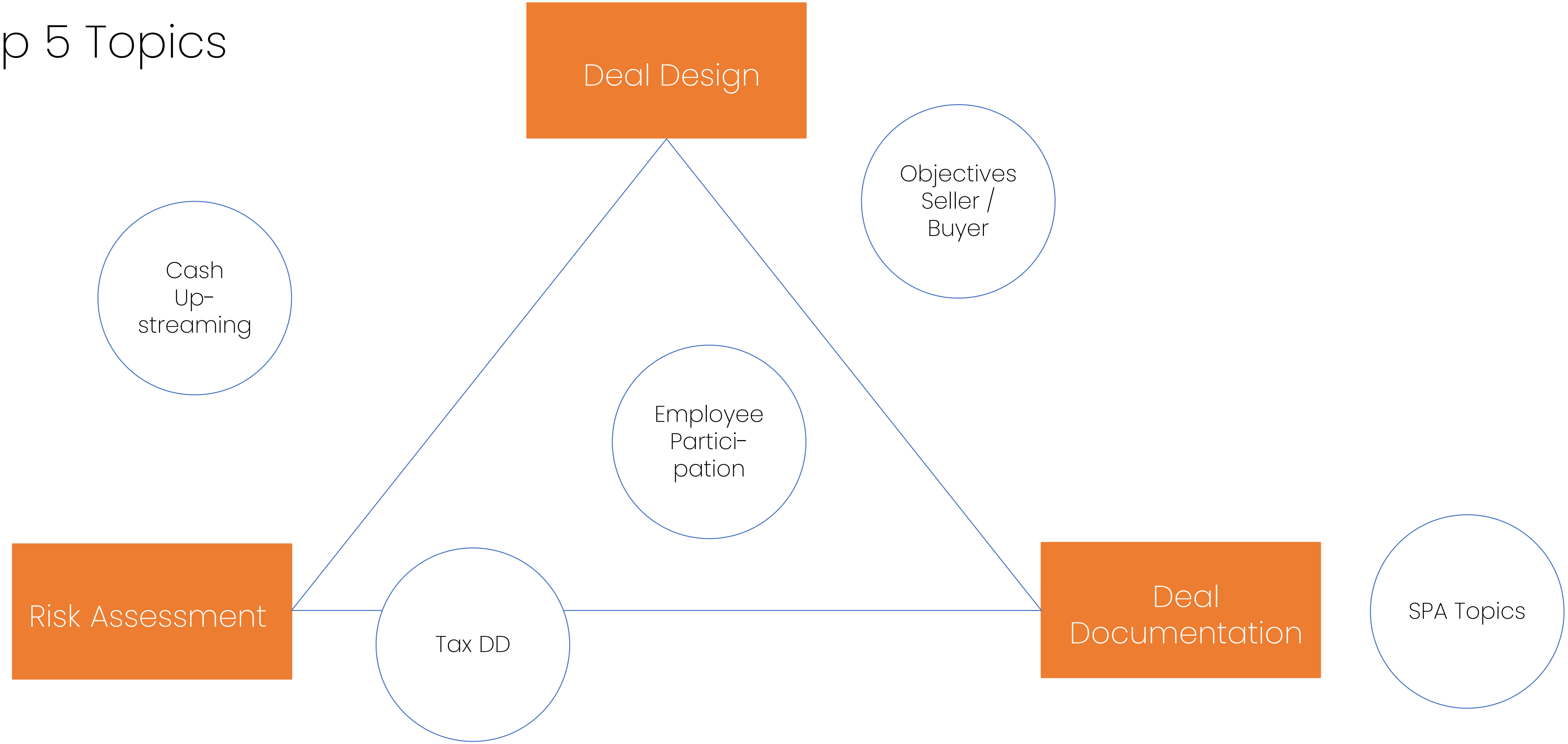
Introduction

Overview Key Swiss Taxes

Income Tax	– Income tax for Swiss individuals: 19.6%-43.2% (depending on canton/commune) – Corporate income tax for Swiss companies: 11.1%-18.9% (effective tax rate; depending on canton/commune)
Withholding Tax	– 35% Withholding tax on distributions – Withholding tax is deducted from distribution by dividend payor; dividend recipient may reclaim withholding tax, subject to certain conditions
Stamp Duties	– 1% stamp duty on share issuance and capital contributions – 0.15% (Swiss securities) or 0.3% (foreign securities) security transfer tax on transactions with taxable securities (e.g. shares) if Swiss security trader is involved in the transaction
VAT	– VAT on sale of goods or services – 8.1% standard rate

Tax in M&A

Top 5 Topics



Seller's and Buyer's Objective

Key Tax Aspects for seller and buyer

Conflict of objectives

Sellers objectives

- Tax-free capital gains/investment deduction
- Any deductible capital loss
- Tax-efficient receipt of the proceeds of sale
- No tax consequences due to violation of any current lock-up periods

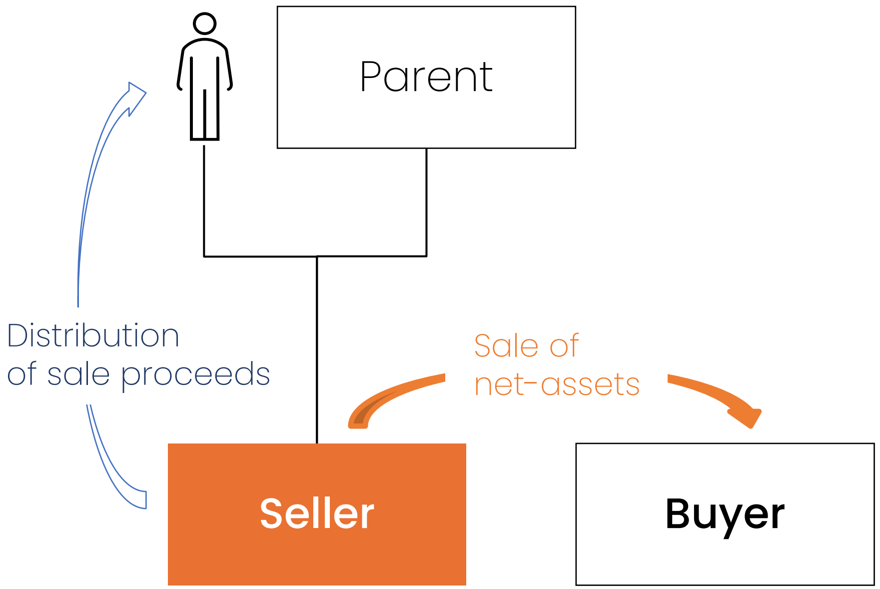
Buyer objectives

- Step-up/tax-accepted depreciation
- Takeover of tax loss carryforwards
- Debt interest as tax-deductible expense
- Efficient integration into existing structures

- Lowest possible and/or tax-deductible transaction costs

Key Tax Aspects for seller and buyer

Asset Deal

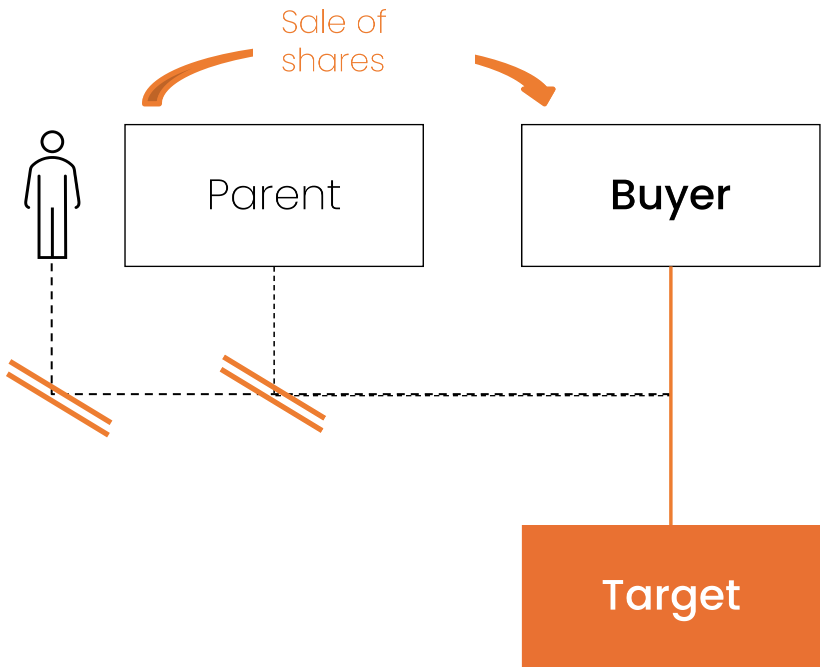


- **Tax Aspects of Seller**
  - Corporate Seller: Taxation of net proceeds
  - Individual Shareholder: Taxable dividend if the selling company subsequently distributes the net proceeds to the individual shareholder

- **Tax Aspects of buyer**
  - Buyer can depreciate the purchase price (including goodwill)
  - Generally, no or only limited assumption of tax liabilities (except VAT)
  - Financing costs usually deductible at the buyer level

Key Tax Aspects for seller and buyer

Share Deal



- **Tax Aspects of Seller**
  - Corporate Seller: Factually tax-exempted capital gain possible (participation deduction on sale of min. 10% shareholding)
  - Individual Shareholder: Potentially tax-free capital gain (subject to e.g. indirect partial liquidation, or reclassification partly into taxable salary)

- **Tax Aspects of buyer**
  - Generally, no tax-effective depreciation of purchase price
  - Assumption of tax liabilities at the target company level
  - Tax deduction of finance costs with acquisitions vehicle/holding company difficult to achieve

Tax in M&A

What is the target?

Acquisition of a start up?

- Tax-free private capital gains through sale of company shares by the founders
- Cash upfront purchase price
  - Consideration for sale of shares
  - Tax-free private capital gain
- Additional purchase price/earn-out/milestone payments
  - Objective criteria: tax-free private capital gains
  - Subjective criteria: income from employment?
- Buyers' interest in the founders continuing to work for the company
  - Other contractual components, e.g. non-competition clause or other personal obligations of the founders in connection with the continuation of their activities for the company
  - Salary before and after the acquisition?
- Participation in the new structure: at market values (no preferential terms)
- Employee shareholdings/cap table adjustment

Acquisition of "a life's work"?

- Sale of a financially and operationally sound company
- "Full wallet" ?
- Tax-free private capital gains for the seller?

Tax Due Diligence

Tax Due Diligence

Top Topics

Past reorganizations /acquisitions
Blocking periods?
Tax neutral?
Pre-deal transactions?

Past tax audits
Status?
Outcome?
Impact/Measures?

Tax Compliance
Status?
Disputes?
Provisions?
Tax Management

Social Security
Compliance
"Freelancers"

Tax Rulings
Still valid?
International exchange of information?

Intercompany/ shareholder/ related party transactions
arm's length?
Tax exposure?

Tax Attributes
Tax losses?
Tax holidays?

Tax Nexus to other countries
Taxable presence abroad?
Registration requirements?

Employee Participation

Employee Participation

Overview

- Swiss tax law distinguishes between two broad categories of employee participations:

Category	Description	Tax-free capital gain possible?
Genuine employee participation	– Direct equity securities (shares, share options or share awards etc.) – Participation of the employee as a shareholder in the company's equity – Usually with vesting period or blocking periods	Yes; depending on structuring of plan and valuation.
Non-genuine employee participations	– Cash-settled plans (phantom stocks, stock appreciation rights, certain co-investment arrangements, etc.)	No: fully taxable as employment income generally at time of payment

Employee Participation

Valuation of employee shares

Listed Companies	Valuation of shares in listed companies at market value
Non-Listed Companies	Valuation of shares in non-listed companies at third party price or tax formula value – **Third party price**: third-party price paid in transactions between independent parties. Transactions with the employer group, shareholders or between employers are not recognized as third party price. Different cantonal tax practice whether third party price paid for Target by buyer/investor is also accepted as basis for third party price for investment of employees in the Acquisition structure. – In the absence of relevant third-party price, value of shares is determined by application of an **economic valuation appropriate for the company** (valuation typically needs to including earning component and may not be based on forward-looking assumptions). If no valuation formula is available, or if the formula is deemed inappropriate by the tax authority, tax authority generally applies the 'practitioner's valuation method': (2 x earnings value + net asset value) / 3

Employee Participations

Formula Value

- **Purchase of employee shares:** Difference between formula value and lower purchase price is taxable income and subject to social security contributions.

Purchase Price	CHF 200	Taxable income at purchase CHF 300
Formula value at time of purchase	CHF 500	

- **Sale of employee shares**: tax-free capital gain up to formula value; difference between formula value at time of sale and higher sale price is taxable income and subject to social security contributions.

Sale Price	CHF 800	Taxable income at sale CHF 200
Formula value at time of sale	CHF 600	

Employee Participations

Formula Value

- **Exemption from tax and social security if:**
  - Full tax-free purchase and sale if shares are bought at third party fair market value price
  - Full tax-free capital gain upon sale, if sale to third party (not including employer group or other employees) after 5 years
  - Full tax-free capital on sale of shares by founders

Up-streaming of cash

Indirect Partial Liquidation

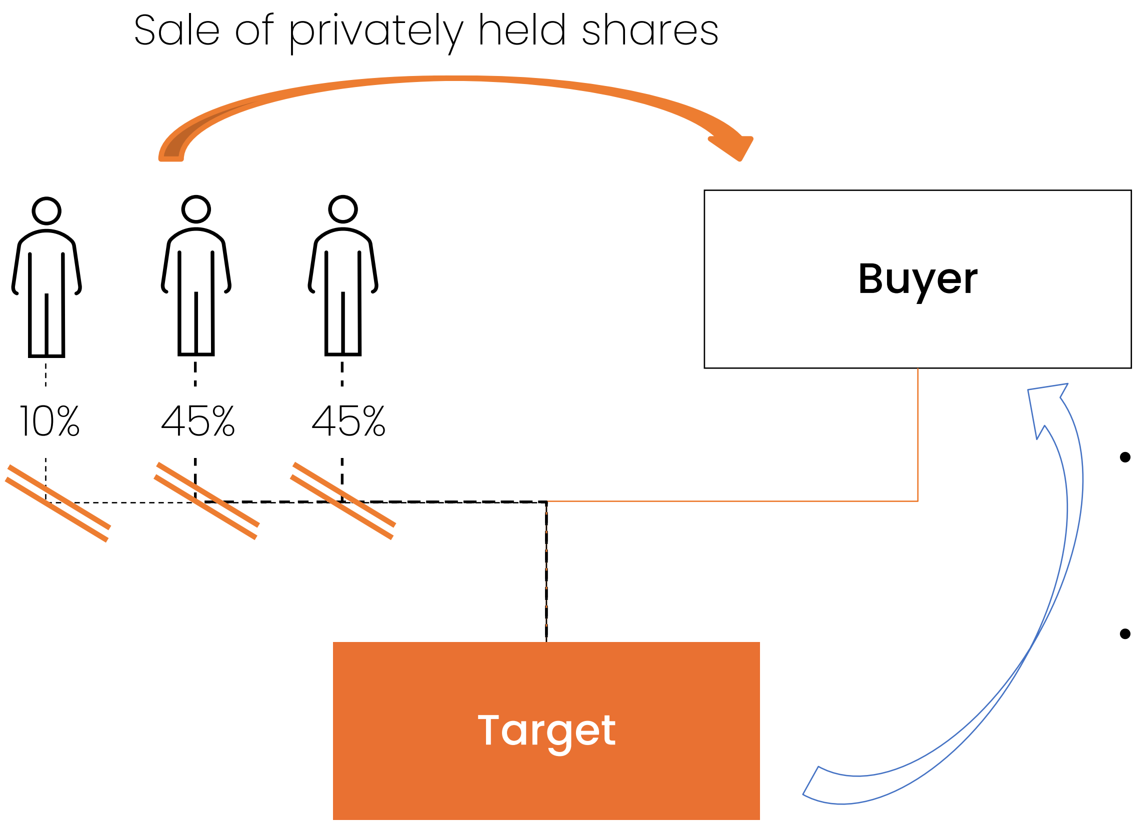
Concept

- **Taxable dividend distribution:** Dividend income received by a Swiss tax resident individual is taxable income (privileged taxation may apply if shareholder holds minimum 10% of the shares)
- **Tax-free capital gains for individual sellers**: Capital gains resulting from the sale of privately held assets (e.g. shares) by a Swiss tax resident individual are generally income tax-free according to Swiss tax law
- **Indirect partial liquidation doctrine:** However, such tax-free capital gain on the sale of shares is reclassified (partially/fully) as taxable income to the individual seller, if:
  - Sale of at least 20% of the shares of a company (target)
  - Seller is individual Swiss tax resident holding sold shares as his private assets
  - Buyer holds the acquired shares as business assets
  - The company (target) has distributable non-business assets at date of sale
  - Within 5 years of the sale, the company (target) distributes such distributable non-business required assets.

Indirect Partial Liquidation

Concept

- **Reclassification** of tax-free capital gain into taxable income (lowest of sale price, distribution, distributable reserves, distributable reserves)



- Distribution within 5 years after transaction
- out of distributable non-business required assets that existed at time of closing

Indirect Partial Liquidation

Consequence

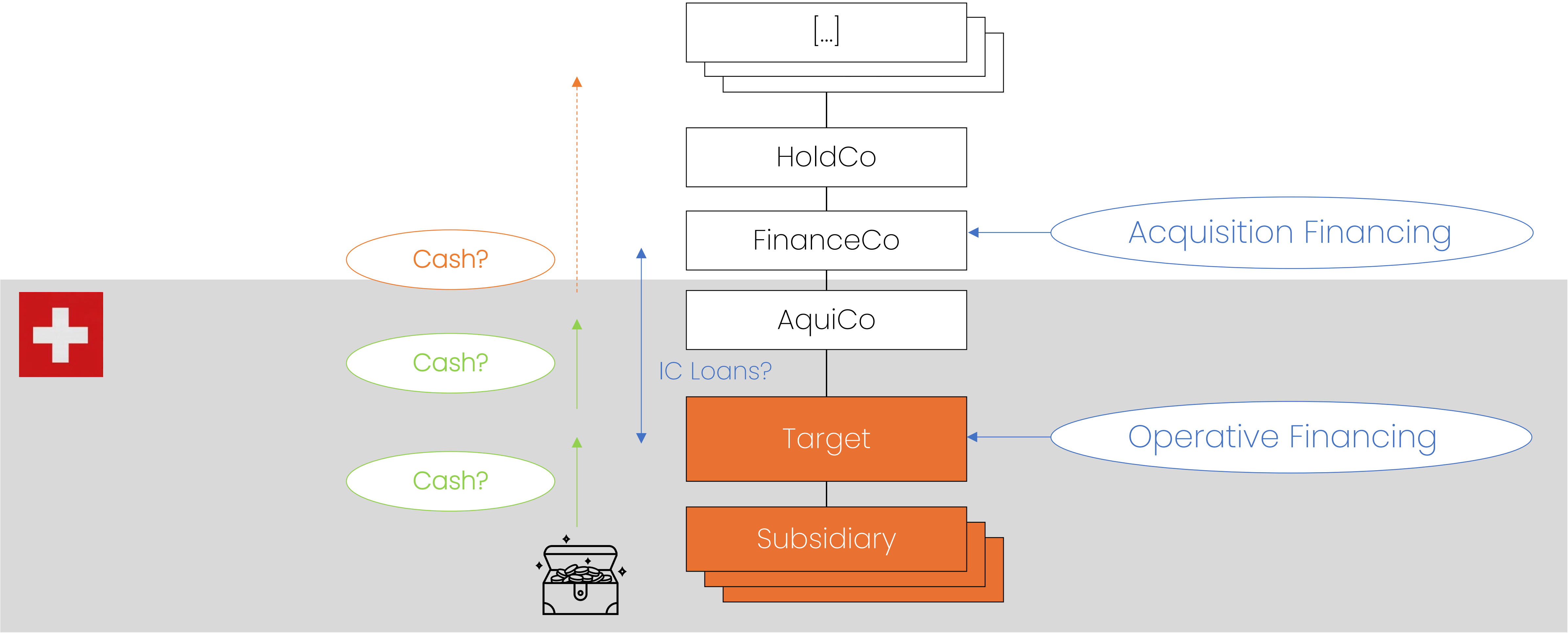
Share purchase agreement usually includes that buyer has to indemnify the sellers for any income tax consequences out of an indirect partial liquidation.

The indirect partial liquidation restricts flexibility for distributions and reorganizations, at least for the first five years after the acquisition

Structuring Ideas	Risks to monitor for 5 years
– Pre-closing distribution of distributable reserves (taxable to seller) before closing to eliminate/reduce indirect partial liquidation risk – Distribution of future earnings – Up-stream loans that are at arm's length terms and conditions (depending on specific circumstances) – Distributions and reorganization within target group – Add-on acquisitions by target	– No distributions (incl. deemed dividend distribution) of distributable non-business required substance that existed at closing from Target – No Liquidation of the target company – No Merger of target companies with acquisition structure – Securitization/deemed financing of loans of the acquisition structure (depending on circumstances)

Distributions to Service Financing

Swiss Withholding Tax



SPA Topics

Spa Topics

Top Topics

- Representations & Warranties
- Tax Indemnity
- Duty to cooperate
- Seller's Transaction costs
- Transaction Bonus
- Transaction taxes
- Purchase price/ Earn out

Special Considerations

Special Considerations

Tax Avoidance Practice

Where's the magic?

- *Teleological interpretation – economic approach*
- According to established practice, tax avoidance occurs when
  - A legal arrangement chosen by the taxpayer appears unusual, inappropriate or peculiar, and completely inappropriate to the economic circumstances (objective element)
  - it can be assumed that this choice was made with the intention of evading tax (subjective element)
  - the chosen approach would actually lead to relevant tax savings (effective element)
- Limited codified elements of tax evasion
  - Example: Art. 20 DBG "Income from movable assets is taxable..."
  - Art. 20a DBG (Special cases): "Income from movable assets [...] also includes:"
- General provision for withholding tax
  - Art. 21 para. 2 VStG "Refunds are not permitted in any cases where they would lead to tax evasion."
- **Practice**, in particular that of the SFTA with regard to withholding tax

Special Considerations

Tax Rulings

Protection of legitimate expecta-tions

- Assurance by the tax authorities regarding the tax consequences of implementing a specific plan that has been fully disclosed to the tax authorities
- Administrative act (claim to get a tax ruling?)
- Protection of legitimate expectations (Art. 9 of the Federal Constitution: "Every person has the right to be treated by the organs of the state without arbitrariness and in good faith.")
- Binding effect
  - Specific **circumstances**
  - Competent authority
  - Incorrectness of the information not readily apparent
  - Disposition that cannot be reversed without disadvantage
  - No change in the legal situation
- To be obtained **in advance**
- FTA | Cantonal tax office | Municipal tax office
- **Allow** 3-6 weeks, preferably more
- Administrative assistance: spontaneous exchange of information (Art. 9 para. 1 StAHiV)

Special Considerations

OECD Minimum Tax

Is the OECD 15% minimum tax applicable in Switzerland?

Yes.

- In the context of Pillar Two, a minimum effective tax rate of 15% for multinational companies with turnover of more than EUR 750 million has been implemented in the vast majority of EU member states, Switzerland, the United Kingdom and other industrialized nations providing for national supplementary taxes to ensure that any profits taxed below the minimum effective tax rate of 15% are brought up to such minimum taxation as well.
- Based on the Pillar Two Agreements, Switzerland introduced the Minimum Tax with effect from 1 January 2024.
- Switzerland introduced a domestic minimum tax (QDMTT), i.e. if a Swiss entity's tax rate is below 15%, Switzerland collects the top-up itself (no use of IIR or UTPR in other jurisdiction).
- Switzerland also introduced IIR on low-tax profits of subsidiaries of a Swiss parent. UTPR currently not being applied.

Does the new side-by-side arrangement with the US mean that Swiss subsidiaries of a US group no longer have to pay Swiss top-up tax?

No.

- The "Side-by-Side Safe Harbour" agreed in 2026 for mainly for US-parented multinational groups recognizes that the US has its own minimum tax system.
- If a group qualifies for the system and elects its application, the international "top up" mechanisms of the OECD minimum tax are switched off (IIR, UTPR)
- Swiss domestic top up tax (QDMTT) still applies and if the effective tax rate in Switzerland is below 15%, Switzerland levies the domestic top-up tax.
  - Example: Effective CIT rate in the Canton of Zurich 21%: no domestic top-up tax
  - Example: Effective CIT rate in the Canton of Basel-Stadt 13%/in the Canton of Zug 12%: difference to 15% is levied as domestic top-up tax by the Canton

QDMTT – Qualified Domestic Minimum Top-up Tax) – jurisdiction levies top-up tax where companies in that country pay less than the 15% minimum rate
IIR – Income Inclusion Rule – parent jurisdiction taxes low-taxed subsidiaries
UTPR – Undertaxed Profits Rule – other jurisdictions tax if the parent jurisdiction doesn't

Your Contacts

Laurent Riedweg

Laurent focuses on tax structuring and solutions for domestic and international M&A transactions. He is also sought after by clients for tax-neutral reorganizations (mergers, demergers, asset and business transfers), the structuring of management incentive plans, and he advises domestic and international clients on complex corporate tax matters.

Laurent is a Swiss certified tax expert and attorney-at-law. He has been a Partner at Advestra since 2020.

Céline Martin

Céline is highly experienced in complex investment and financing structures and regularly advises clients on matters of structuring, transactions and strategic tax planning. She is particularly recognized for her expertise in cross-border contracts and intra-group relationships, including transfer pricing matters. Céline regularly represents clients in proceedings before tax authorities, including MAP and APA procedures as well as appeals on all court levels.

Céline is a Swiss certified tax expert and attorney-at-law. She has been a Partner at Advestra since 2022.

Thank you!