

Securitisation – achieving tax neutrality

Why is tax important in a securitisation deal? In this publication we discuss some of the tax implications for both the originator and the issuer.



Why is tax important in a securitisation deal?

Ensuring that the tax consequences of a securitisation transaction are known with certainty in relation to both the originator and the issuer is a vital aspect of structuring and implementing the transaction.

The key tax objective in a securitisation transaction is to achieve tax neutrality. This means to ensure, as far as possible, that the securitisation transaction does not lead to any additional tax liabilities arising nor to any acceleration of tax liabilities other than would have been the case had the securitisation not taken place.

In practice, a securitisation transaction may lead to some level of tax cost.

In these cases it is important that such costs are known with certainty in advance so that a decision can be taken by the originator on whether the costs can be considered as acceptable deal costs, in regard to the overall commercial benefits of the transaction.

Achieving a high degree of certainty in relation to the tax position of the issuer is also a pre-requisite of any securitisation transaction since the rating agencies will require a high degree of assurance that there will be no unexpected tax charges arising for the issuer in order to provide a rating on the bonds to be issued by the issuer. Indeed, in some cases the rating agencies may require an indemnity from the originator in respect of any unforeseen tax charges which may arise.

On a general level, it is possible to structure securitisation transactions to achieve the required tax treatment.



However, it is vital that tax input into the structure is provided at an early stage in order to ensure that any potential tax pitfalls are identified as early as possible and that any amendments required to the structure can be put in place. Furthermore, any advance tax clearances that are required from tax authorities can be obtained at an early stage in the process.

In addition to the structuring phase, detailed tax input is also required as part of the implementation process.

This includes ensuring that the transaction documentation meets the necessary tax requirements and that the transaction implementation process is robust from a tax perspective.



Key tax issues

Some of the key taxation issues which require consideration in connection with securitisation transactions are as follows:

In relation to the originator:

- Taxation of the transfer of the receivables to the issuer, e.g. whether the sale will give rise to a taxable profit/loss for the originator or whether the transfer will be liable to transfer duties and other indirect taxes e.g. VAT.
- Taxation of profits extracted from the issuer, e.g. timing of recognition of profits extracted for tax purposes.
- Ensuring that the structure will provide effective tax relief for bad debts arising in connection with the receivables.
- Taxation of the servicing arrangements with the issuer, for example, whether the servicing fees will be liable to VAT or whether the servicing activities would create a taxable presence of the issuer in the originator's country e.g. if the issuer is offshore.

- Consideration of the impact of the securitisation transaction on the thin capitalisation position of the originator.
- Taxation of any credit enhancement provided to the issuer, e.g. subordinated loans, guarantee arrangements, etc.
- The impact of the transfer pricing regime on the structure.

In relation to the issuer:

- Ensuring there are nil or minimal taxable profits within the issuer on which direct tax could be charged e.g. by avoiding any tax mismatches or timing differences in relation to the receivables income and the funding and other expenses incurred, by ensuring the profit extraction method adopted is effective for tax purposes, etc.
- Ensuring the issuer is not tax resident nor has a taxable presence in any other territories which could lead to a tax charge arising, e.g. as a result of the originator's servicing activities if the issuer is offshore.

- Ensuring as far as possible that no withholding taxes will be imposed on the receivables income of the issuer or on the interest payable by the issuer in respect of the bonds issued.
- Ensuring that any indirect taxes e.g. VAT, transfer duties, etc. at the issuer level are minimised.
- A key consideration relevant to the above issues will be the location of the issuer (i.e. onshore or offshore).

The above issues need to be considered in regard to the specific circumstances of the originator and the nature of the underlying receivables to be securitised, together with the commercial and legal requirements of the structure.

The tax analysis (and preferred structure) will also depend on the specific tax rules in the country of residence of the originator and these can vary widely from country to country. These issues are particularly acute in relation to multi-jurisdiction transactions involving securitisation of receivables from originators located in various different countries. When this occurs, specific local, legal or tax rules in some countries (such as France and Italy) may require adoption of a specific structure in those countries. In these circumstances, the overall securitisation structure may need to be flexed so that it can accommodate the specific requirements in the relevant territory (e.g. through use of a two-tier structure involving a local special purpose vehicle company in the territory, together with an issuer located in a suitable third country such as Ireland).

How can PwC help?

PwC can provide tax advice in connection with all aspects of your securitisation transaction from deal structuring through to implementation and monitoring. Through our network of securitisation tax specialists within the PwC global network we are able to deliver quality tax advice in all major territories. The European Securitisation tax network within our European Structured Finance Group is able to provide both local and cross-border tax advice in relation to transactions in any European or Middle East country and to coordinate with PwC securitisation tax specialists across the globe in order to deliver seamless advice in relation to multi-territory transactions.

Our services include:

Deal structuring

Advising on the most tax efficient structure for the securitisation transaction, taking into account corporation tax, VAT and stamp duty considerations, including:

- Structure and location of the securitisation vehicle.
- Mechanics for the transfer of assets from the originator to the securitisation vehicle.
- Achieving gross cash flows.
- Profit extraction mechanism in relation to the securitisation vehicle.

- Future operation of the securitisation structure once implemented (e.g. regarding new notes issuances, new asset transfers, etc.).
- Dismantling of the structure on maturity.

Deal implementation

Advising on all tax-related issues associated with the implementation of the securitisation transaction.

This would include:

- Liaising with the tax authorities in order to obtain any necessary tax clearances required in relation to the originator and/or the securitisation vehicle.
- Advising on any necessary tax filings to be made by the securitisation vehicle and/or the originator.
- Provisions of tax opinions in relation to the tax position of the originator.

Deal monitoring

Advising on tax issues associated with the ongoing operation of the structure post implementation including:

- Advising on tax reporting/tax compliance obligations of the securitisation vehicle.
- Advising on any future tax changes/issues which could potentially affect the tax efficiency of the structure going forward.

Contacts

To discuss any of the issues raised in more detail, please speak to your usual PwC contact or one of our structured finance leadership team listed below:

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