

Tax structuring of fund raising transaction

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Agenda

Possible forms of debt financing instruments

- Tax implications for Eurobond issue
- Tax implications for convertible bond issue
- Tax implications for securitisation

Tax issues related to share placements

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Key Tax Implications for Eurobonds

Tax implications for the issuer:

- Tax deduction of interest expenses
- Application of thin capitalization limitations
- Tax costs related to the debt servicing:
 - taxation of the issuing vehicle
 - taxation of servicing fees

Tax implications for the investors:

- Withholding taxes levied at the level of the borrower and the issuing vehicle
- Possibility to apply treaty protection
- Tax treatment of income in the investor's domestic jurisdiction

Tax Implications for a Eurobond transaction: Investor Issues

- Taxation of interest payments:
 - 15% income withholding tax at source in Ukraine
 - Possibility to apply treaty benefits to reduce tax costs
 - Beneficial ownership requirements vs. actual ownership rules: will Indofood Case apply?
 - Tax exemption procedures
- Taxation of other payments:
 - Penalties
 - Redemption premiums
 - Guarantees

Eurobonds: Choice of the issuing vehicle

- Jurisdiction choice:
 - Treaty network and treaty provisions with Ukraine
 - Possibility to avoid thin capitalization rules
 - Transfer pricing requirements to the level of income
 - Possibility to obtain tax rulings
 - Stamp duties and other levies
 - Taxation of interest payments to investors
- SPV form:
 - Orphan vs. group company

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Convertible Bonds: Special Tax Issues

- Tax implications for the borrower:
 - Thin capitalization rules and deduction of interest expense
 - Taxation of premiums paid to investors
 - Profit extraction mechanism
- Tax implications for the issuing vehicle:
 - Application of treaty protection to interest and other payments
 - Tax treatment of capital gains on conversion
 - Tax treatment of income paid to investors
 - Taxation of profit extraction
 - Possibility to apply special tax regimes/ complex structures
 - Possibility to agree rulings
 - Capital duties and levies
 - Other tax implications

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Securitization Transactions (1 of 2) - Special Tax Issues

- VAT on disposal of property rights
- Transfer pricing on sales of the loan portfolio
- Transfer pricing on servicing fees
- Taxation of commissions and other payments (if they are transferred)
- Domestic withholding taxes on payments of income
- Taxation of interest payments to investors
- Profit extraction mechanisms
- Taxation of the issuing vehicle
- Possibility to obtain tax rulings
- For foreign securitization vehicles:
 - Beneficial ownership
 - Permanent establishment

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IPOs and Private Placements

- Tax implications for the issuer and majority shareholder:
 - Taxation of capital gains on the sale of securities into the IPO program
 - Profit extraction costs (including withholding taxes for the main shareholder)
 - Capital and stamp duties and other taxes
 - Tax deduction of transaction fees and costs, VAT
- Tax implications for the investors:
 - Taxation of shareholders:
 - Dividend tax
 - Capital gains
 - Taxation of GDR/ ADR holders: is treaty relief available?
 - RDRs: will the tax costs of investors decrease?

Thank you!

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