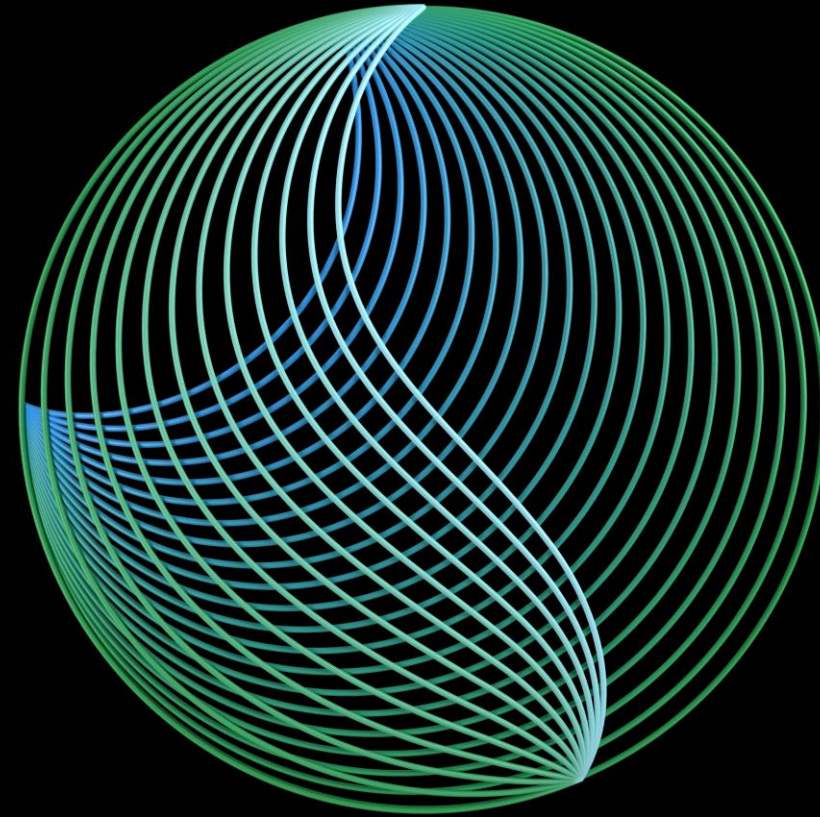
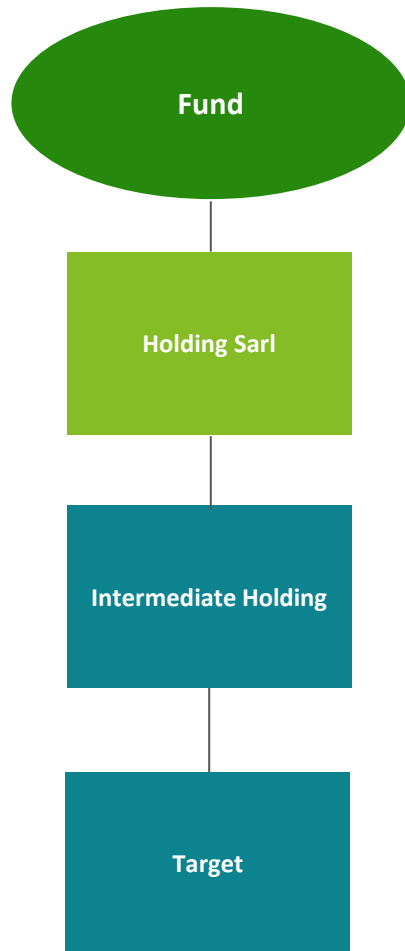


Deloitte Broker & Advisory Tax liability insurance

Case studies



Tax Insurance: German exit tax exposure



Relevant facts

- Client is planning to exit portfolio asset in Germany. As such Lux HoldCo will sell all shares in Intermediate Holding (AcquiCo).
- During the planning of the exit concerns were flagged by advisory team that the residency of Lux HoldCo may have been in Germany as during Covid times the board meetings could not be held and attended in Luxembourg and the company had 50% German resident directors.
- In December 2022 it was decided to replace the German resident board members with Luxembourg resident board members (making the board consist of 100% Lux residents).
- Arguably the replacement of the board members could trigger an exit tax exposure in Germany if in the period up to replacement the place of management of Lux HoldCo was in Germany.
- According to the tax advisor there are good arguments to claim that the residency was always in Luxembourg and thus no exit tax charge would be due upon the replacement of the two German resident managers.

Specifics of policy

- Because of known aggressive position taken by the German tax authorities that not declaring the facts could by definition be considered fraud, client wanted and was advised to file a letter explaining why registration and thus tax filing would not be required.

Tax Insurance: Permanent establishment risk



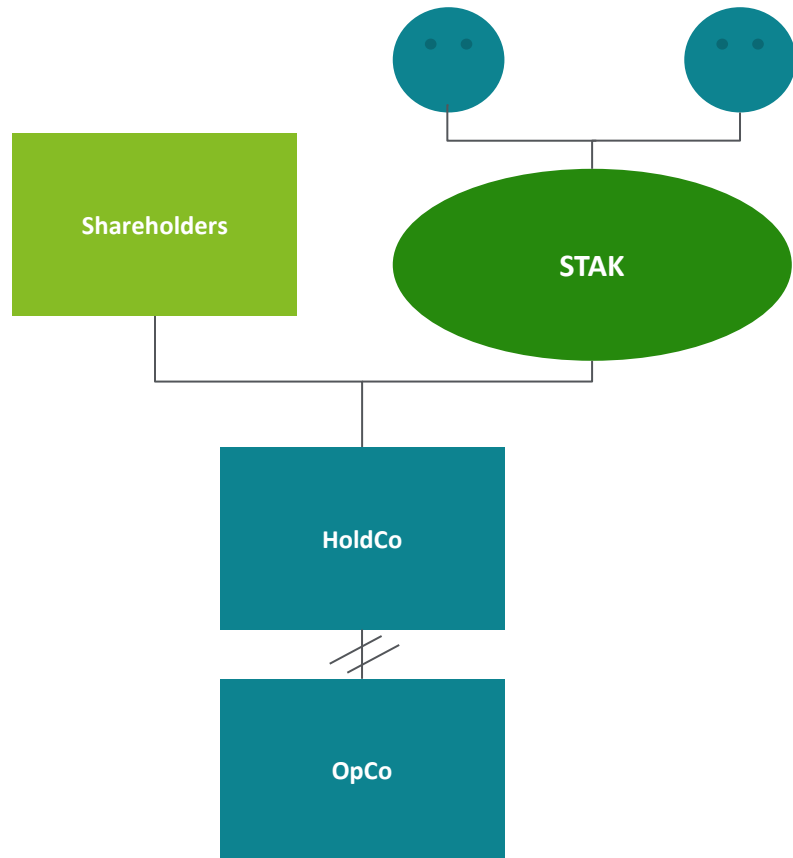
Relevant facts

- OpCo resident of the Netherlands has a director, resident in France and operating in France.
- The question is whether the French director triggers a taxable permanent establishment in France considering he is also doing home office.
- Meetings of the board were held in the Netherlands.
- The director was next to responsible for sales strategy also doing sales management and visiting the offices of clients based in France.

Need for insurance

- As it could not be excluded that the French tax authorities could successfully claim the presence of a taxable permanent establishment in France, the client requested for insurance cover.
- The policy confirmed that no permanent establishment was present and thus protected against any French corporate income taxes due because of such permanent establishment for OpCo in France.

Tax Insurance: MPP payment upon exit



Relevant facts

- HoldCo has sold all shares in OpCo and as part of the exit the HoldCo after transactions buys back the MPP shares held by STAK.
- Part of the management group that participate are Swiss resident managers.
- It is unclear whether the buy back of the shares by HoldCo is considered income from employment, a taxable distribution of dividends or a tax free capital gain.
- For the receipt of the shares in the MPP in the past, all managers paid a fair market value.

Need for insurance

- Client wanted the managers at least be protected against an exposure for individual income/wage tax and social securities.

Specifics of policy

- Arguments to claim that the payment under the buy back should be considered a tax free capital gain were not strong enough to get to a comfort level above likely.
- As such insurance only covered the Swiss tax authorities successfully claiming that the payment should be considered income from employment and subject to individual income/wage tax and social securities.
- The four Swiss managers were allowed to file their tax return based on position that the received payment qualified as a tax free capital gain.

W&I and M&A insurance

Case study

Contingent risk insurance as deal-enabler on sellside



Relevant facts

- Holding wants to sell target
- Buyer's legal advisors flags risk that pension waiver enforced during difficult economic times in the early 2000s, could be challenged by employees due to uncertainty over legal validity of approval.
- Potential claims of up to EUR 15m

Need for insurance

- Negotiations at deadlock, risk that transaction would break over this
- Seller requests for a solution from their legal adviser and they request us to look for cover for the risk with a contingent risk policy

Process

- Memos from both buyer's and seller's advisors are taken as basis to discuss legal risk with insurers
- Negotiation of Policy – key element: the precise definition of the event which triggers the policy