

15 November 2014

TAX ISSUES RELATED TO MERGERS AND SE (“SOCIETAS EUROPEA”)

1 Taxation in International Settings

Taxation is a fundamental right in every state. A state’s financial interests are targeted to activities performed in its territory. Local tax regulations also impose taxes on certain foreign operations as well. In order to avoid double taxation in international matters, states have concluded numerous, generally bilateral, tax treaties whereby signatories agree to limit a portion of their taxation power.

2 Company Reorganisations

Within the EU, lawmakers strive to permit and promote corporate reorganisations in order to support the concept of freedom of establishment. The EU Merger Directive was implemented in domestic tax laws to ensure that company reorganisations can take place without triggering tax consequences for the restructured entity or its shareholders at the time of reorganisation. Cross-border arrangements are not currently permitted due to a lack of a legal framework.

3 Cross-border Mergers of SE

It seems apparent that there is currently no harmonised tax system applicable to merged SEs operating in different member states, and it thus seems likely that a structure will be created in which groups of entities located in different countries will be subject to only one set of locally imposed tax consequences. This tax structure will not differ from that applied today for international groups of companies.

In erecting this new structure, Special attention should be paid to the possibility of improving cost and income allocation. Tax authorities may be aggressive when trying to capture the largest locally taxable profit, which could prevent merged SEs from making independent decisions on such matters. Additionally, there is a need to have an efficient exchange of information mechanism in place between authorities in different countries to ensure the transparency of local taxation procedures.

Drafted by

Leena Romppainen