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Tax Risks in Acquisition Financing

Introduction

In practice, the acquisition of companies (so-called share deals) is often carried out through specially established acquisition vehicles. Such structures are frequently chosen for private equity transactions, succession planning, and strategic corporate acquisitions. The purchase price is typically financed with substantial debt. In a recently published ruling (9C_606/2025 of February 24, 2026), the Federal Supreme Court noted that such acquisition structures can entail significant tax risks.

Financing through Debt

In a so-called leveraged buyout, the acquisition of shares in a target company by an acquiring company is financed predominantly with debt (e.g., loans from banks, funds, etc.). The goal is to finance the purchase price with minimal equity, which is why the target company often serves as collateral or provides security. From an economic perspective, it is assumed that the target company will be able to repay the loan using future cash flows.

When the subsequent structural simplification becomes tricky

To simplify the structure, the acquiring company is often merged with the target company. Which company is acquired and thus ceases to exist under civil law depends on various factors. If the acquiring company is merged into the target company (reverse merger), the target company assumes the acquiring company's loan and thus bears the interest on the debt (so-called "debt push down").

In the case reviewed by the Federal Supreme Court, a real estate company was acquired through an acquisition vehicle and subsequently merged. As a result, the acquisition debt was transferred to the operating real estate company, which subsequently recorded the interest expense as an expense. However, the tax authorities largely offset this expense in a back-tax proceeding. They did so on the grounds that this interest expense served, from an economic perspective, to finance the shares in the real estate company rather than its operating activities. In this specific case, the real estate company's operational activities consisted primarily of holding and managing a property. There were no actual investment or financing activities. According to the Federal Supreme Court, the interest expense therefore did not serve the company's business activities and was thus not commercially justified.

Options for Action: How can the Tax Risk be reduced?

The ruling does not mean that debt push-down structures are generally impermissible. The decisive factor is whether the financing is economically justifiable and commercially reasonable from the perspective of the company claiming the deduction.

To reduce tax risks, it is therefore advisable to conduct a comprehensive tax analysis of the proposed acquisition structure before implementing a transaction. In particular, the analysis should assess whether, and to what extent, the financing supports the target company's operational activities or primarily serves, from an economic perspective, to finance the acquisition of the target company itself.Clear and comprehensible documentation of the economic purpose of the financing and the specific use of funds is also of central importance.

Particular attention must be paid to the corporate purpose and the specific business activities of the target company. The more limited these activities are, the higher the risk that interest expenses will be deemed not to be commercially justified.

Particularly in the case of highly leveraged corporate acquisitions, a thorough tax review is recommended prior to implementing the transaction. This applies especially if a subsequent merger between the acquiring company and the target company is planned.

Recommendation

For acquisition financing, early planning is recommended, as well as a binding advance ruling from the relevant tax authorities to secure the tax consequences. Careful tax structuring prior to implementing the transaction is generally significantly more cost-effective than the consequences of a tax reassessment proceeding. This applies not only to restructurings and reorganizations but also to succession planning.

Please do not hesitate to contact us with any questions—we are happy to assist you.

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