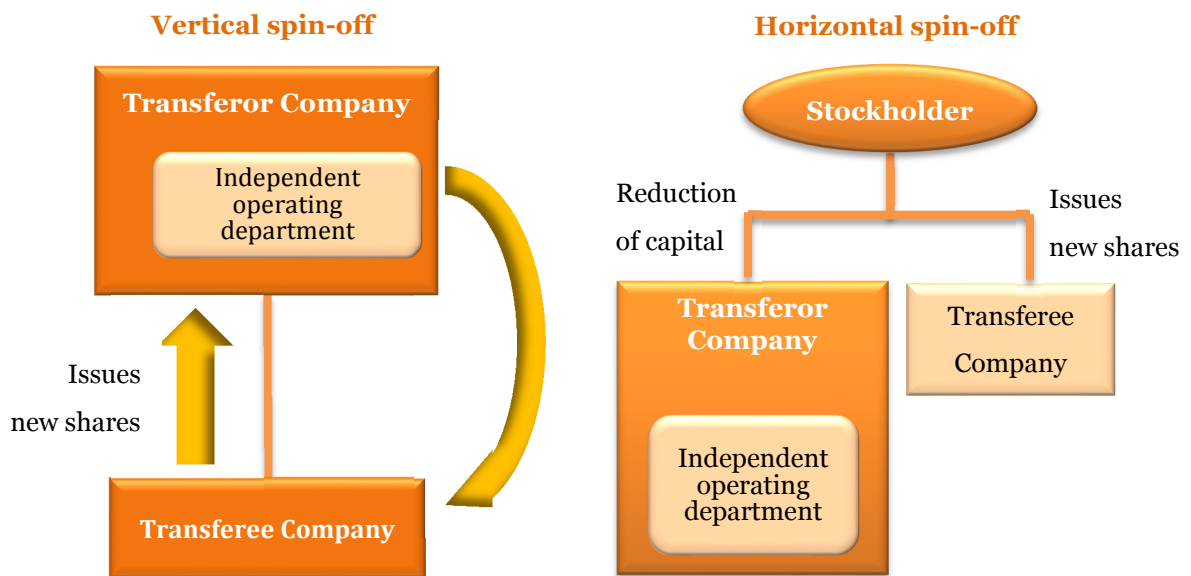


Taiwan Tax Update

August 2017

Tax incentives and limitations prescribed under Article 39 of M&A Act applicable to horizontal spin-offs

Where voting shares are used as consideration for spin-off, such spin-off can be classified as either a vertical or horizontal spin-off, based on which entity receives the consideration. Vertical and horizontal spin-offs are briefly illustrated below.



Based on Paragraph 1, Article 39 of the Business Merger and Acquisition (“M&A”) Act, which provides for various tax incentives in M&A transactions, only vertical spin-offs qualify for tax incentives provided under the M&A Act; whereas, whether the same applies to horizontal spin-off is uncertain. In accordance with Tax Ruling No. 10600029170 issued on July 28, 2017 by the Ministry of Finance (“MOF”), where issuance of new voting shares comprise more than 65% of total consideration payable to shareholders of the transferor company, a horizontal spin-off can be exempt from stamp tax, deed tax, securities transaction tax, business tax, and land value increment tax (“LVIT”) can be deferred. A horizontal spin-off is also subject to the limitations prescribed under Paragraph 2, Article 39 of the M&A Act, where the transferor company should pay the deferred LVIT if the total value of shares held by the transferor company’s shareholders is reduced to less than 65% of total consideration received, as

a result of subsequent share transfer taking place within three years of the land transfer registration date following M&A activities.

This ruling also clarifies the definition of “total consideration” (except for land acquisition), stating that it should comply with the Business Entity Accounting Act, Regulation on Business Entity Accounting Handling, Enterprise Accounting Standards, International Financial Reporting Standards recognized by the Financial Supervisory Commission, International Accounting Standards, and relevant accounting rulings and guidance. Land purchase, however, should use the definition of total consideration for land acquisition as stipulated in Tax Ruling No. 09404570380 issued on October 11, 2005.

PwC Observation

The MOF has now clarified that horizontal spin-offs can utilize tax incentives prescribed under the M&A Act, which increases flexibility of merger and acquisition transactions. However, companies should still evaluate whether the M&A transactions meet the criteria required for utilizing tax incentives. When evaluating potential M&A transactions, companies should evaluate the commercial purpose, nature of target acquired, and tax incentives applicable, etc. to select the most appropriate M&A methodology, and professional advice from M&A consultants should be obtained to ensure the anticipated results are achieved.

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