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SMART ACQUISITION STRUCTURES FOR DEALS IN GERMANY AND THE UK

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What Are the Criteria for Smart Acquisitions via Corporations?

Inbound investment structures seeking to acquire a German or UK corporation should take into account the potential taxation of both the local entity and the shareholder. A corporation investing into Germany should seek to minimize any potential tax liabilities by taking advantage of the network of German double tax treaties and may even consider undertaking a reorganization to allow investment from a third country which enjoys a particularly favorable tax treaty with Germany.

In the UK, more favorable tax treatment of foreign shareholders means that foreign entities looking to invest in UK corporations generally have to undertake fewer steps to minimize any potential tax burden. The UK also has a very wide network of double tax treaties, which in most cases reduces the withholding tax on dividend income to zero.

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What Is the Corporate Tax Burden in Germany and the UK?

Corporations resident in Germany are subject to corporate income tax and municipal trade tax on their entire business income. The corporate income tax rate is currently 15.825% and the average municipal trade tax rate is approximately 14%, resulting in combined tax rate of approximately 29.8%. A corporation may seek to reduce its municipal trade tax liability by relocating to a municipality with lower trade tax rates.

Corporations resident in the UK for tax purposes are subject to corporation tax on all worldwide profits. A non-resident company doing business in the UK through a permanent establishment is subject to corporation tax on any profits attributable to that permanent establishment. The corporation tax rate is currently 20%, reducing to 19% in 2017 and 18% in 2020.

How Are Its Dividends Taxed?

Any dividends paid by a German corporation to a non-resident corporate shareholder will generally trigger withholding tax of 25%. If the shareholder is resident in a country with a double tax treaty with Germany, the rate of withholding tax will generally be reduced to 15%. This rate can be further reduced to between 0-10% if certain minimum shareholding thresholds are met. If the shareholder is a corporation based in another EU Member State and has held at least 10% of the German corporation's shares during the previous 12 months, withholding tax is generally not levied at all.

In the UK, dividends paid by a domestic corporation to a non-resident shareholder are not subject to withholding tax. Dividends received by a UK resident company will in most cases be exempt from UK corporation tax by virtue of the UK's form of participation exemption.

Are There Any Substance Requirements for the Corporate Shareholder?

In order to qualify for any withholding tax relief, the corporate shareholder must ensure that it complies with the German anti-treaty shopping rule, which dictates that relief can only be claimed to the extent that the shareholder of this corporate shareholder would also have been entitled to claim the relief. Relief may also be granted to the extent that the non-resident corporation generates "Active Business Income" or if there are economic or other valid reasons for the interposition of the non-resident shareholder and the shareholder operates with appropriate business equipment.

The UK also requires a taxpayer seeking to access its double tax treaty network to show substance. A so-called brass plate company will not be able to rely on the treaties.

How Are Capital Gains Taxed?

In Germany, capital gains form part of taxable income. However, any profits realized by a corporation resulting from the disposal of shares are 95% tax exempt. If the shareholder is resident in a country which enjoys a double tax treaty with Germany, that country generally has the right to collect any capital gains tax due.

The position differs slightly in the UK, where the taxation of capital gains at shareholder level can be reduced to zero via the substantial shareholding exemption. Put simply, this exemption provides that any gain made by an investor company on the disposal of shares in an investee company is not a chargeable gain, so long as the investor company complies with a number of conditions detailed within the legislation.

Summary

Non-resident corporations investing into Germany will usually seek to reduce their tax liability by investing via countries with which Germany has signed a double tax treaty. Other important factors, such as any trade tax burden, deductibility of financing costs, post-transactional establishment of a tax-efficient transfer pricing system, and potential consequences of an acquisition for existing tax losses should also be discussed prior to any investment.

The situation is more straightforward in the UK, where a lack of withholding tax on dividends paid to foreign corporates coupled with the substantial shareholding capital gains tax exemption negates the need to utilize double tax treaties to structure foreign investment.

CURRENT DEVELOPMENTS

Tech M&A Leaders Predict Steady 2016

According to the findings of the 2016 M&A Leaders Survey by Morrison & Foerster and tech market intelligence firm 451 Research now, a vast majority of dealmakers (76%) expect M&A spending to stay at the same level or increase in the first half of 2016.

Though the majority of M&A leaders remain bullish, their optimism is slightly waning compared to the findings of the last year's survey. While 44% of respondents still expect an increase in tech M&A activity in 2016, that number is down from the 48%

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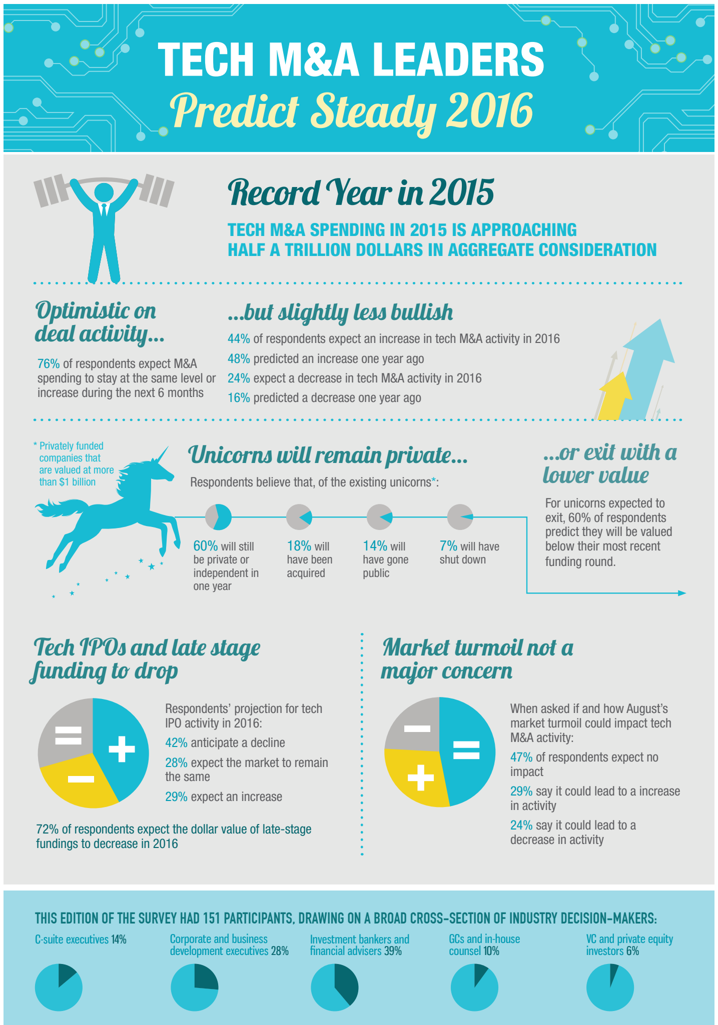
of M&A leaders who predicted an increase when surveyed at the same time last year. Respondents forecasting a decline in tech deals also increased year over year from 16% to 24%.



Other key findings from the M&A Leaders' Survey include:

- Unicorns Will Remain Private; Value Will Dip for Those That Exit.

  Respondents believe 60% of existing "unicorns," or privately funded companies that are valued at more than USD 1 billion, will still be private or independent in one year. Only 14% will have gone public, 18% will have been acquired, and 7% will have shut down. About 60% of respondents anticipate those unicorns that are expected to go public or be acquired to be valued below their most recent funding round.

- Tech IPOs and Late-Stage Funding to Decrease in 2016

  Forty-two percent of M&A leaders anticipate a decline in tech IPO activity for 2016. Twenty-eight percent expect the market to remain the same, and 29% expect an increase. Seventy percent of respondents expect the dollar value of late-stage fundings to decrease in 2016, after watching a number of companies receive lower valuations on the public market than private in 2015.

More information about the key paper can be found here.

NOTEWORTHY DEALS

Japanese Hitachi-Koki Acquires German Electronic Tools Manufacturer Metabo

Hitachi-Koki, an affiliate of Japanese Hitachi Group, acquired German company Metabo, a manufacturer of battery-operated tools. Metabo was founded in 1924 and has 1,800 employees; a holder of more than 500 patents and utility models, it generated a turnover of approximately EUR 374 million in 2014. Hitachi-Koki, a manufacturer of tools for the construction industry, acquired Metabo from financial investor Chequers Capital, the management, and the three founding families. The deal is still subject to approval by the relevant competition authorities.

Wincor Nixdorf to Merge with U.S. Competitor Diebold

Germany's IT corporation Wincor Nixdorf announced plans to merge with U.S. competitor Diebold. The merger will create a global tech group, with total sales in the amount of about

EUR 4.8 billion and a combined workforce of approximately 25,000 employees worldwide. The deal is estimated to have a value of approximately EUR 1.8 billion. The deal is still subject to approval by the relevant competition authorities.

U.S. Semiconductor Producer Integrated Device Technology Acquires German ZMDI

Nasdaq-listed Integrated Device Technology, the California-based manufacturer of semiconductors, acquired German stock corporation Zentrum Mikroelektronik Dresden (ZMDI) for USD 307 million. ZMDI, which was founded in 1961, manufactures, inter alia, sensors for the automotive industry. The deal was completed in December 2015 and brings to IDT a highly regarded automotive and industrial business.

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Cisco to Take Over German Data Analysis Specialist ParStream

U.S. technology corporation Cisco announced plans to take over Parstream, a German startup company which provides a database for companies to analyze a large amount of information and data and turn it into strategic business information. Following various financing rounds, ParStream was founded in 2008 and has gained since then a total of 20 investors, including Khosla Ventures, Baker Capital and Tola Capital. ParStream, which was already part of Cisco's Entrepreneurs in Residence startup program in the past, will be added to Cisco's Analytics and Automation portfolio upon completion of the deal. The deal is said to close in the second quarter of 2016.

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