Table of Contents

Foreword and Acknowledgements vii
List of Abbreviations xi
List of Tables xiii
Introduction xv

Chapter 1: The (Non-)Definition of Corporate Reorganizations

Grounds for Combination of Businesses 1

1.1. Introduction: Concept and classifications of corporate reorganizations 1
1.2. Combination of businesses through reorganizations 7
1.3. The different classes of mergers 12
1.4. Grounds for the combination of businesses and mergers 19
1.5. Are legal mergers efficient? 23

Chapter 2: The Taxation of Corporate Reorganizations 29

2.1. Introduction 29
2.2. The tax consequences of mergers 32
2.2.1. Introduction – Taxation of capital gains 32
2.2.2. The tax effects of mergers 35
2.2.2.1. Taxable mergers 37
2.2.2.1.1. Short-term effects of mergers 37
2.2.2.1.2. Long-term effects of mergers 43
2.2.2.2. Exemption of gains derived from mergers 44
2.2.2.3. Non-recognition of gains derived from mergers 45
2.2.2.3.1. Introduction 45
2.2.2.3.2. Tax treatment of gains derived in the course of the transaction 48
2.2.2.3.2.1. Rollover relief 48
2.2.2.3.2.2. Tax deferment mechanisms 63
2.2.2.3.2.3. Hybrid or intermediate systems 64
2.2.2.3.3. Long-term tax effects of mergers under preferential tax regimes 66
2.2.2.3.3.1. General overview 66
2.2.2.3.3.2. The possibility of carrying over losses previously incurred by the transferring company 66
2.2.2.3.3. Other long-term tax effects of mergers 71
2.2.3. Other aspects of preferential tax regimes: Specific anti-abuse provisions 79
2.3. Grounds for preferential tax regimes in the framework of corporate mergers and reorganizations 91
2.3.1. Grounds based on the lack of consideration of these transactions as realization events 92
2.3.2. Grounds based on practicability issues 96
2.3.3. Grounds based on neutrality and efficiency concerns 99

Chapter 3: The Cross-Border Tax Effects of Mergers 103

3.1. Introduction and basic hypotheses 103
3.1.1. Introduction 103
3.1.2. Research hypotheses 104
3.2. Basic structures to be analysed: Cross-border transactions and foreign-to-foreign transactions 107
3.3. The function of tax treaties 111
3.4. Foreign-to-foreign structures 116
3.4.1. The effects of mergers from the source state’s perspective 117
3.4.1.1. Effects at shareholder level in the source state 117
3.4.1.1.1. Characterization of proceeds from exchange of shares as capital gains 118
3.4.1.1.2. Characterization of proceeds from exchange of shares as dividends 127
3.4.1.1.3. Other allocation rules in the OECD Model 131
3.4.1.1.4. Deviations from the OECD Model: The substantial participation clause 134
3.4.1.1.5. Spain as the state of source 138
3.4.1.2. Effects at corporate level in the source state 141
3.4.1.2.1. Characterization under the capital gains article 141
3.4.1.2.2. Other articles that are relevant in the context of characterization of proceeds derived at corporate level 143
3.4.1.2.3. Spain as the state of source 146
3.4.2. The effects of mergers from the residence state’s perspective 147
3.4.2.1. Introduction 147
3.4.2.2. Elimination of double taxation and characterization issues 150
3.4.2.3. Elimination of double taxation and timing issues 156
3.4.2.3.1. Timing issues and application of the credit method 157
## Table of Contents

3.4.2.3.2. Timing issues and personal entitlement to claim relief for double taxation at corporate level 166  
3.4.2.3.3. Possible solutions from the perspective of the residence state for double taxation arising from timing mismatches 169  
3.4.3. Achieving global neutrality respecting foreign-to-foreign transactions 173  
3.4.3.1. The paramount preconditions for applying deferral 175  
3.4.3.2. Do foreign mergers deserve a different treatment than domestic transactions? 178  
3.4.3.2.1. Arguments against access to domestic reliefs 178  
3.4.3.2.2. Arguments in favour of granting foreign mergers access to domestic reliefs 179  
3.4.3.3. The influence of non-discrimination clauses 180  
3.4.3.4. Assimilation of foreign mergers 189  
3.4.3.4.1. Assimilation of foreign mergers under Spanish tax law 199  
3.4.3.5. Are there other instruments in tax treaties that would enhance global neutrality? 201  
3.4.4. Triangular cases in the context of foreign-to-foreign structures 205  
3.5. Cross-border structures 206  
3.5.1. Introduction 206  
3.5.2. Effects at corporate level 207  
3.5.3. Effects at shareholder level 208  

**Chapter 4: Reorganization Clauses in Tax Treaties** 211  
4.1. Introduction and previous analyses of the research topic 211  
4.2. The different types of reorganization clauses in tax treaties 218  
4.3. Statistics and contextualization of the different reorganization clauses 260  
4.3.1. General overview 260  
4.3.2. Reorganization clauses regarding registration duties 265  
4.3.3. Reorganization clauses regarding gains from alienation of participations in immovable property companies 269  
4.3.4. Reorganization clauses regarding alienation of shares in resident companies 274  
4.3.5. Comprehensive reorganization clauses 293
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.3.6.</td>
<td>Concluding remarks</td>
<td>304</td>
</tr>
<tr>
<td>4.4.</td>
<td>Legal analysis of reorganization clauses</td>
<td>306</td>
</tr>
<tr>
<td>4.4.1.</td>
<td>Reorganization clauses regarding registration duties</td>
<td>306</td>
</tr>
<tr>
<td>4.4.2.</td>
<td>Reorganization clauses regarding gains on alienation of immovable property company participations</td>
<td>314</td>
</tr>
<tr>
<td>4.4.3.</td>
<td>Reorganization clauses regarding gains on alienation of shares in resident companies</td>
<td>319</td>
</tr>
<tr>
<td>4.4.3.1</td>
<td>Material clauses</td>
<td>320</td>
</tr>
<tr>
<td>4.4.3.2</td>
<td>Distributive clauses</td>
<td>339</td>
</tr>
<tr>
<td>4.4.4.</td>
<td>Comprehensive reorganization clauses</td>
<td>353</td>
</tr>
<tr>
<td>4.4.4.1</td>
<td>The reorganization clause of article XIII(8) of the Canada-United States tax treaty</td>
<td>360</td>
</tr>
<tr>
<td>4.4.4.1.1</td>
<td>Legal analysis of article XIII(8) of the Canada-United States tax treaty</td>
<td>363</td>
</tr>
<tr>
<td>4.4.4.1.1.1</td>
<td>Introduction – The object and purpose of the clause</td>
<td>363</td>
</tr>
<tr>
<td>4.4.4.1.1.2</td>
<td>The scope of Article XIII(8)</td>
<td>364</td>
</tr>
<tr>
<td>4.4.4.1.1.3</td>
<td>Prerequisites for application of the relief: Double taxation arising from disparities in the timing of taxation</td>
<td>372</td>
</tr>
<tr>
<td>4.4.4.1.1.4</td>
<td>Agreement with the competent authority</td>
<td>373</td>
</tr>
<tr>
<td>4.4.4.1.2</td>
<td>Critical review of the clause</td>
<td>375</td>
</tr>
<tr>
<td>4.4.4.2.</td>
<td>Deviations from this model</td>
<td>377</td>
</tr>
</tbody>
</table>

## Chapter 5: Conclusions: Is Including Reorganization Clauses in the Context of Tax Treaties Feasible? 383

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1.</td>
<td>What are the consequences of reorganizations from tax treaty and neutrality perspectives?</td>
<td>383</td>
</tr>
<tr>
<td>5.2.</td>
<td>What measures have been adopted in the tax treaty network in order to overcome the obstacles faced by reorganizations?</td>
<td>387</td>
</tr>
<tr>
<td>5.3.</td>
<td>Is including reorganization clauses in the context of tax treaties feasible?</td>
<td>390</td>
</tr>
<tr>
<td>5.3.1.</td>
<td>Preliminary issues</td>
<td>390</td>
</tr>
<tr>
<td>5.3.2.</td>
<td>Partial relief clauses</td>
<td>392</td>
</tr>
<tr>
<td>5.3.3.</td>
<td>Comprehensive reorganization clauses</td>
<td>393</td>
</tr>
<tr>
<td>5.3.4.</td>
<td>Is the solution of the 1980 Canada-United States tax treaty a solution to be implemented globally?</td>
<td>394</td>
</tr>
</tbody>
</table>

## Appendix: Reorganization Clauses in Tax Treaties 399

## Bibliography 405