

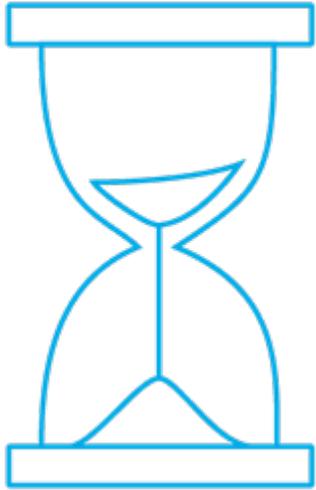


# NAVIGATING CROSS-BORDER TAX CONSIDERATIONS IN M&A TRANSACTIONS

Wednesday, September 13 | 11a.m. EDT

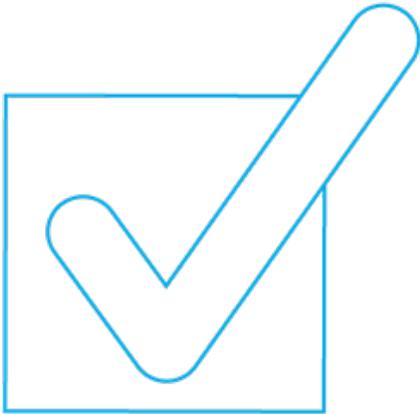


# Agenda



- Current trends in M&A tax sell-side advisory services in the U.S. and Europe
- Sell-side strategies and planning opportunities
- Cross-border tax considerations for multi-jurisdictional sellers

# Learning objectives



- Discuss sell-side tax diligence trends in both the U.S. and Europe.
- Evaluate and navigate the cross-border tax considerations involved in selling a business with multijurisdictional operations.
- Identify strategies and planning opportunities that can optimize tax outcomes for sellers.

# Speakers



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## Sell-side quality of earnings

- Conceptually different than European Vendor Due Diligence (VDD)
- Growth accelerated approximately 10 years ago
- Bankers, especially middle-market bankers, partially responsible for growth

## Sell-side tax advisory work

- It has always been done in some shape or form
- Growth accelerated approximately 5 years ago
- Factors for accelerated growth
  - Market education
  - Competitive M&A market
  - Deal issues and hurdles

# Sell-side tax advisory services

## Primary goal

Assist clients with **maximizing value received** on a potential sale



### Transaction tax modeling

Tax basis step-up modeling | tax attribute modeling | gross-up / make whole payments



### Tax readiness assessments



### Full sell-side tax due diligence



### Transaction structuring

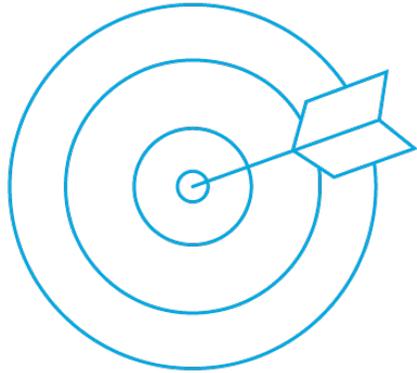
# Current trends - SALT PTE elections

Over 30 states have enacted or have proposed pass-through entity tax (PTE) elections.

## Why?



- \$10,000 limitation on SALT deduction for 2018 – 2025 tax years.
- IRS: S corporations and Partnerships may deduct SALT payments at the entity-level for federal income tax purposes (Notice 2020-75)
- Rules vary by state on issues such as:
  - Timing
  - How to make election
  - Eligible shareholders/owners
  - Credits for taxes paid
  - Tax base
- Early review – evaluate the benefits and costs of election
  - Review aggregate effective tax rate (federal/state) on transaction, factoring in federal benefit of PTE election
  - Costs and effects to individual partners/shareholders (including cash tax payments)
  - State of domicile of shareholder/owner

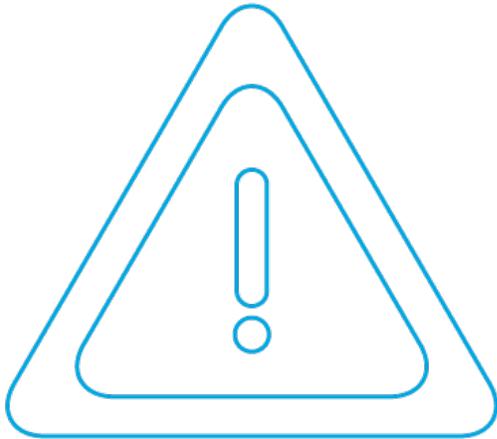


- Shareholder rollovers – tax deferred vs. post-tax
- “Consolidation” of multiple entities
- Sales tax nexus and taxability
- State income tax sourcing of proceeds
- Employee retention credits
- Multi-jurisdictional operations in the middle and lower-middle market



This allows for:

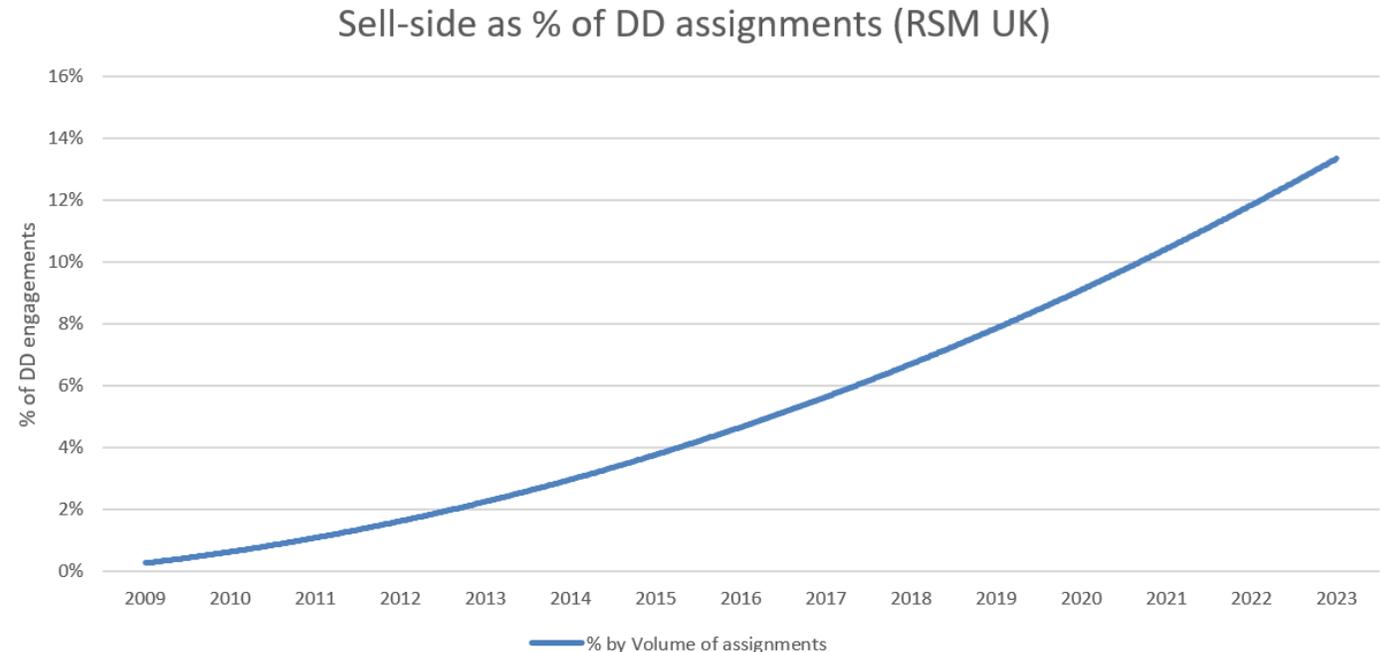
- Possible mitigation of issues raised
- Determination of a strategy for addressing issues likely to be raised during buy-side due diligence
- Enables a buyer to engage in pre- sale restructuring and/or determine a tax optimal sales strategy



- Lack of transfer pricing documentation / arm's length intercompany transactions
- Permanent establishment exposures
  - Management PE/central management and control
- Lack of FATCA/withholding tax compliance

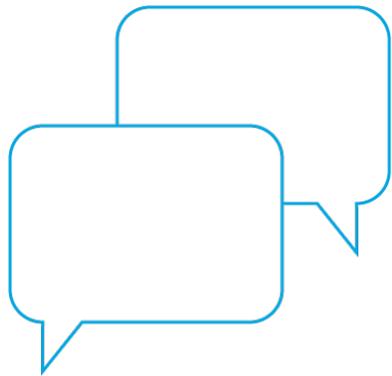
# Sell-side M&A in Europe - history and trends across Europe

- VDD origin approximately 20 years ago
- Historically larger groups
- Increasingly mid-market / particularly international
- Broadly consistent across UK, Netherlands, Germany



Ranges from vendor assist to vendor due diligence

- Vendor assist
- Vendor due diligence – reliance basis (recent trends in Europe)



The good, the bad and the ...

- Same client service team as due diligence team – self review
- Wrong scope
- Hidden ‘limitation of scope’ / too optimistic / emphasis on wrong aspects / lack of quantification / not credible
- Not done early enough to get the benefits from

## Protect / enhance value

- Historical tax **exposures** / tax authority investigations
- Tax treatment on **transacting** (wage taxes, tax assets retained etc)
- Attribute **value to tax assets**
- Pre-transaction '**packaging**' / **modelling**

## Control the process

- **Bandwidth** (legal DD, commercial DD, multiple bidders)
- Get on front foot – no '**unknown unknowns**'
- **Credibility**

## Competitive tension

- Increase value through **retaining multiple bidders**

# Sell-side M&A in Europe - sell-side tax support – getting it right

Hot topics in cross border tax due diligence:



- International taxing rights (BEPS / anti-avoidance / withholding taxes) / transfer pricing
- Global cash repatriation and tax leakage / transfer pricing
- Pre-transaction structuring
- Sales taxes (EU VAT / Sales & Use)
- Employment Related Securities



# QUESTIONS AND ANSWERS

THANK YOU FOR  
YOUR TIME AND  
ATTENTION

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