



Business restructuring

Using UK companies in business restructuring

Maksym Cherkasenko
Partner

Limassol 2009



Relevance of restructuring in times of crisis

Typical problems of business in times of crisis

- ✓ financing (absence of loan sources)
- ✓ recession in demand for products / goods / services
- ✓ low assets liquidity

Typical features:

- ✓ misbalanced and non-transparent ownership structure;
- ✓ informal management;
- ✓ absence of transparent accounting (double entry bookkeeping);
- ✓ impossibility to use efficient business estimation criteria.

Options:

1. Sale of business
2. Reduction of expenditures and optimization of processes
3. Market expansion through acquisition of competitors.

Introduction of new business-model – condition for business survival.

Restructuring – bringing company's structure in line with the new business-model.

Business restructuring – not additional expenditures but necessary reaction to the change of economic situation.

Business restructuring is the best investment into the business development.

Benefits

- ❖ Decrease of tax burden
- ❖ Tax optimization
- ❖ Attraction of investments
- ❖ Safety of business

Benefits of restructuring before the sale of business:

- ✓ The offer is more attractive for the potential purchasers;
- ✓ Reduced length of transaction;
- ✓ Increased price.

Main stages of the restructuring

Directions of restructuring:

✓ **Operational**

- Accounting policy
- Financial strategy
- HR management system

✓ **Legal**

- Ownership structure
- Corporate governance

Stages of restructuring:

1. Analysis of current situation;
2. Recommendations, development of business ownership and management scheme;
3. Development of restructuring program;
4. Execution of the plan.

New business structure and restructuring plan:

- ✓ Choice of jurisdiction and type of parent company of the holding.
- ✓ Definition of efficient legal system of gearing and repatriation of profits with the use of jurisdiction acceptable for the investor;
- ✓ Establishment or registration of intangible assets and their inclusion into the financial scheme of the holding operations;
- ✓ Reorganization of subsidiaries (amalgamation, conjunction, liquidation, buy-out minority stock etc.);
- ✓ Establishment of SPVs (for owning of real estate, production and intangible assets, operations, etc.);
- ✓ Exclusion or sale of non-core assets;
- ✓ Establishment of a simple, transparent and flexible corporate governance model.

Using of foreign jurisdictions. Main benefits

- ✓ Minimal taxation of dividends, interest rates, royalty.
- ✓ Protection of business using international instruments (shareholder agreements).
- ✓ Comprehensive and internationally-accepted reporting system in accordance with international standards.
- ✓ Efficient and safe company governance system.
- ✓ Special status of foreign investor under foreign law.

Choice of jurisdiction

- ✓ Availability of DTT
- ✓ Availability of agreement on mutual recognition and protection of investments
- ✓ Comprehensive tax system
- ✓ Minimum taxation of in- and out-coming dividends, profits from the assets value increase, share capital increase.
- ✓ Regulatory issues (registration costs, disclosure, servicing, etc.).

Benefits of using UK companies

- Respectability
- Not offshore country
- No VAT at purchase of goods from EU countries (subject to receipt of VAT number)
- Easy, quick and inexpensive establishment of companies.
- Possible purchase of ready-made companies.
- Possible use of nominee shareholders and directors
- More than 100 DTTs
- Most commonly used for structuring of international trading

Most commonly used types of UK companies

Private company limited by shares

- Share capital
- Liability of each member is limited to the amount unpaid on shares he holds
- Cannot offer its shares for sale to the general public

Limited liability partnership

- Organizational flexibility of a partnership
- Taxation peculiarities
- Other aspects – similar to the limited company

Private company limited by shares

- At least one shareholder
- At least one Director (starting from October 2008 - at least one – individual not younger than 16).
- No need of Secretary (starting from October 2008)
- At least one paid-up share
- Annual reports (both to the Companies House and to Inland Revenue)

Directors

- Possible corporate directors
- At least one – individual
- Any place of residence
- Restrictions:
 - not to be disqualified
 - not be an undischarged bankrupt

Possible use of nominee directors. At the same time, the UK “nominee” Directors require full disclosure of information and real participation in the company’s activity (issue of responsibility).

Personal liability for submission of account or annual returns.

Non-submission is a criminal offence. Fine up to £5,000 for each offence.

Limited Liability Partnership

- From 2 to 20 Partners (Partnership with one member may not exist longer than 6 months, otherwise it loses benefits of limited liability)
- Liability of Partners limited by the amount agreed between them
- Partners – both legal and natural persons of any jurisdiction
- At least two Designated Partners – representatives of the Partnership (if less – all members are considered as Designated Partners). All members may be Designated Partners at once (should be stated in incorporation documents). If there remains only one Designated Partner – all members are considered as Designated Partners.
- Annual return to the Companies House within 28 days from the anniversary of incorporation or made-up date (it is a criminal offence not to deliver the return).

Costs and terms for establishing of a UK company

- ✓ Costs related to the establishment (including registration agent, notary fees, courier services, making of a company's seal) ~ 1500 £
- ✓ Registered office and related costs ~ 500 £
- ✓ Nominee shareholder ~ 125 £
- ✓ Nominee Director ~ 250 £
- ✓ Accounting services - min. 1000 £ per year.

- ✓ Term for establishment (including collection of all necessary documents and their submission to the agent, due diligence by the agent) ~ 10 days

Using UK companies in the restructuring

There are four most commonly used tax optimization schemes using the UK companies

- ❖ Agency
- ❖ Partnership
- ❖ Management from law tax jurisdiction
- ❖ Transfer pricing

UK company - agent

Purpose: to avoid direct contacts of Ukrainian and offshore companies.

The Agent receives commission (0.5-5%) which is subject to tax deductions.

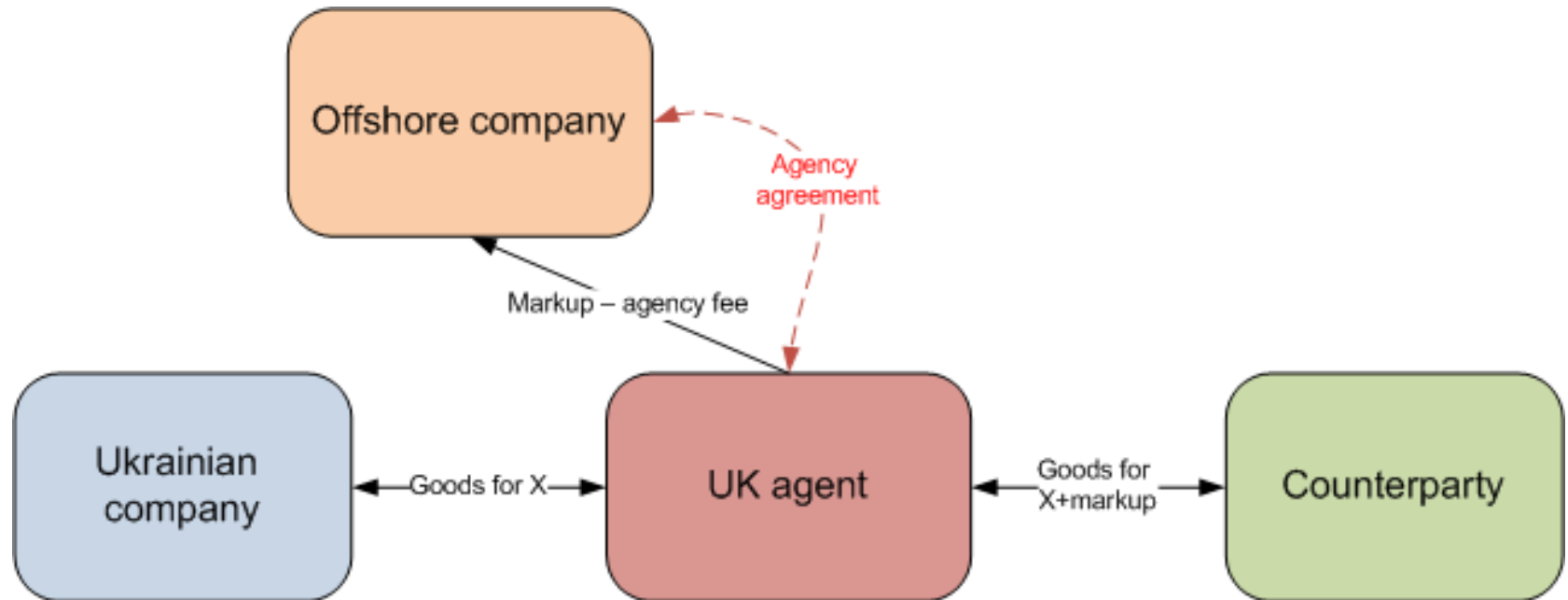
The UK complies with 3 key conditions for being the tax-advantageous resident country for the Agent:

- Not in the list of offshore zones;
- DTT between the UK and Ukraine;
- UK legislation does not prohibit entering into deals with offshore companies.

Risks: tax authorities may use “long arm” rule when all profits are taxable in the UK (but not only commission).

The UK company could also be a “partner” of an offshore company and to receive 5-10% of profit under partnership agreement which form tax base.

UK company - agent



UK partnership

Purpose: to avoid taxation in the UK.

- ✓ Partnerships are not subject to taxation in the UK.
- ✓ Partners – non-residents do not pay taxes in the UK (unless tax bodies decide that the Partnership has its permanent presence in the UK)
- ✓ DTT does not cover UK Partnerships.
- ✓ Accounting and reporting in the UK

Management from low tax jurisdiction (Cyprus)

A UK company is considered to be a tax resident of Cyprus if:

- ✓ it is managed and controlled in Cyprus : the majority of directors reside in Cyprus and Board Meetings held in Cyprus ,
- ✓ the UK company has its representative office (branch) in Cyprus
- ✓ the centre of financial interests is in Cyprus (bank account with Cypriot bank).

A UK register company managed and controlled from Cyprus and with activities outside UK will not be taxed in the UK but it will be considered a tax resident of Cyprus.

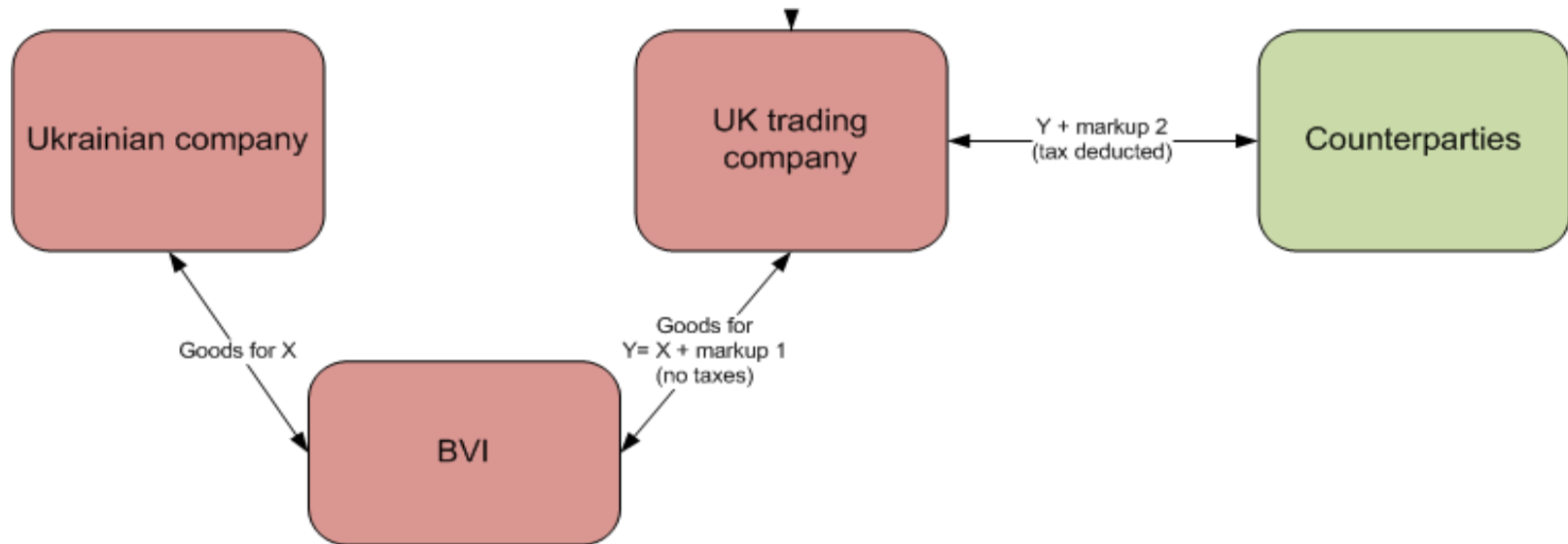
The UK Company will be register in Cyprus with the Registrar of Companies as a foreign company and with the tax authorities as a tax resident of Cyprus .

Corporation tax 10 %

Advantage of the UK reputation.

Advantage of DTTs concluded by Cyprus .

Transfer Pricing



Requires throughout analysis and engagement of tax advisers.

Additional attention of tax authorities.

Increase in the number of transfer prices regulations

Main tax rates

Net profit (starting from 31 March 2009):

- 21% - net profit within £0 - £300,000;
- 29,75% - net profit within £300,001 - £1,500.000;
- 28% - net profit more than £1,500.000.

VAT – 17,5% (quarterly reporting)

Contacts

Business-centre “Eurasia”

75, Zhylyanska Str.,

01032, Kyiv, Ukraine

tel.: +38(044) 390 55 33

fax: +38(044) 390 55 40

www.arzinger.ua

mail@arzinger.ua

Maksym Cherkasenko

Partner,

Corporate Law / M&A

Arzinger

maksym.cherkasenko@arzinger.ua