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Answer-to-Question-_1_

Report

To: Jack Hensforth and the board of Abertol Plc

From: Browne and Greene LLP

Subject: Tax implications arising from Project Rhine -
Mitigations and advice

Date: 2 May 2024

This report is for the members of the Board of Abertol Plc (Abertol) only. We do not accept any liabilities for any third parties relying on this report.

This report provides advice on the proposed acquisition of e-Boxes Ltd (e-Boxes) per Jack's letter as of 30 April 2024.

The report is based on tax law in force at the date of this report.

Abbreviations:

Abertol Manufacturing Ltd "AML"

Abertol US Inc ("Abertol US")

Abertol Plc ("Abertol")

e-Boxes Ltd ("e-Boxes")

Abertol Farland Ltd ("AFL")

Executive Summary

Option 1 Acquisition of shares

An acquisition of shares in e-Boxes will result in stamp duty of

£1 million payable by AML.

Subsequent transfers of assets to AML will be tax netural. The losses that have been acquired in e-Boxes will most likely be extinguished due to the propsoed future plans for the entity. We would not recommend having any value attributed to these losses.

The transfer of the patent from E-Boxes to AFL will result in a trading profit in AML of £60 million. This will suffer tax of £15 million. This may be somewhat mitigated by claiming an element of loss relief from AML.

We deem the transfer of the patenet into AFL particualrly risky from a UK tax perspective as this increases the change HMRC would view AFL as falling under the Controlled foreign company ruels. There is a risk of annual CFC charges to come to a quantum of £2.25 million per year.

We believe this makes option 1 unattractive and as such it should be avoided.

Option 2 - Purchase of trade and assets and transfer IP to Farland

Purchase of a trade and assets will result in stamp duty land tax of £4,989,500 payable by AML. AML will have a higher uplift on capital allowances assets being the net book value of the assets acquired. This will allow some immediate tax relief in the year of acquisition for capital allowances.

The separate acquisition of the patent by AFL is where we believe

the greatest risk arises in this option. Per B3, we note that the acquisition of the patent by AFL would likely result in the diversion of profits from the UK and Diverted Profits Tax (DPT) would likely be suffered on the the £11.25 million royalty charged from AFL to AML. This is a penalty tax of 31% resulting charges pf £3,487,500.

This option should be avoided.

Option 3 - Trade and Assets Purchase - Retain in the UK

We would recommend a third option to avoid the charges in option 1 and 2: the acquisition of trade and assets directly by AML and the assets all remain in that company. This will still reult in SDLT of £4,989,500.

The patent acquired will have a UK tax cost of £75 million, on which amortisation charged will be deductible in the UK. Additionally, if the patent is held in the UK the patent box election could be made on profits that arise from exploiting these. This election can reduce tax on those profits from 25% to 10%. The interaction of these two regimes will allow the group to keep a reduced effective tax rate, without having the increased risks of anti-avoidance legislation resulting in charges.

Issue of Losses arising from Abertol US Inc

The estimated losses in AML for the year ended 31 December 2024 will be restricted for tax purposes. Per section D of this report the £30 million fine and the associated £15 million legal fees will be disallowed. The remaining £10 million loss should then

be surrendered to group companies in this year (or against any of the charges that could arise per the transactions relating to e-Boxes).

Acquisition of e-Boxes

This report is covering an overview on the following areas:
The proposes acquisition of e-Boxes either via trade and assets purchase and by share purchase.

It provides an analysis on the current proposed acquisitions and post acquisition integration, and provides advice on how risks that are identified in the correct post acquisition integration may be structured to avoid these risks.

A1 Purchase of Shares

For the purposes of this report, an assumption has been made the acquisition will arise on 1 July 2024.

The purchase of the shares for £200 million will result in stamp duty of £1 million (0.5%*£200m).

Shares are out of the scope of VAT and as such there will be no VAT implications.

e-Boxes will then be a new 75% group member of Abertol. This is likely to not have any corporation tax impact as the wider group

is likely already suffering tax at 25% in the UK and paying in instalments.

A2 - Subsequent transactions to AML

The transfer of the land and buildings and the wider trade from e-Boxes to AML will be tax neutral.

This is because both companies are UK residnet companies and are part of a 75% group.

Where there is a transfer of land a buildings to between 75% group members, any proceeds are ignored and the building is deemed to be transferred at indexed cost. This is tax neutral. As such AML will recognise the property for tax purposes at £30 million.

AML will continue the strutures and buildings allowances we assume e-Boxes would have claimed on the property. This is a 3% allowance each year onthe cost of the buildings. This will be a 750,000 deduction each year.

No stamp duty land tax (SDLT) will be due at this date due to the 75% group relationship. This allows for SDLT group relief.

The transfer of plant and machinery, automatically will occur at tax written down value (TWDV). This is once more because the companies are within a 75% group.

Please note, no annual investment allowance may be claimed on these assets and writing down allowances may be claimed from the

point they enter the company.

If e-Boxes has any stock on hand could also make an election to transfer at cost.

Please note, there should be no VAT on the transfers as there should be deemed to be a 'transfer of a going concern (TOGC)'. A TOGC arises where a trade is transferred and there is no significant break or change in the trade.

As AML will be continuing trade with no break or change and is VAT registered. Should be out of scope.

Regardless, to ensure this is out of scope, allowing e-Boxes to join the VAT group will mean the transfers will be out of scope.

Losses

Where there is a transfer of a trade between 75% groups losses may also be transferred.

The brought forward losses will be ringfenced, however, and may only be used in the historic e-Boxes trade for 5 years.

Where there are brought forward losses, only £5 million of the whole UK group's losses may be utilised unrestricted through the use of the deductions allowance, with any use of losses after that being restricted to 50% of profits.

Under current plans, we deem the brought forward losses from e-Boxes to be at risk of being extinguished.

Where there has been a change in ownership, as will occur on AML acquiring e-Boxes, the losses may be extinguished where there is a major change in the nature or conduct of the trade (MCINOCOT).

A MCINOCOT may arise on a number of factors, however, we ascertain the key risk to these losses arise from the future plans for e-Boxes trade. The trade of e-Boxes will have access to new markets and types of customers it could not previously access. HMRC will likely identify this as a major change and therefore restrict the losses

As such, there should be no value attributed to these losses under the sales and purchase agreement.

A3 - Impact of transfer of the patent to AFL (UK perspective)

When e-Boxes is part of the wider Abertol group the entity will then transfer its patent to AFL.

As these are connected companies and AFL is not UK resident, the transfer will occur at market value.

This will result in significant trading profit in the newly acquired e-Boxes.

The trading profit will be £60 million. This is based on the market value of £75 million at date of transfer less the 'tax written down value' of the asset.

We note that e-Boxes have been receiving tax relief on the patent

and assume this has been done via amortisation. The tax written down value will therefore equal net book value of £15 million.

Tax would arise in e-Boxes of £15 million (25% pf £60 million).

On our analysis per the losses arising in AML in the year ended 31 December 2024, we would recommend claiming as much of that allowable loss of £10 million against this above gain to reduce the tax.

A4 - Anti-Avoidance Risks of Patent overseas

We deem there to be a significant risk that the proposed transaction of moving the patent to ALF could result in a charge arising under the 'controlled foreign company' (CFC) regime.

A CFC is a company resident overseas controlled by a UK company. Clearly AFL is already a CFC. CFC's may have their profits apportioned back to the UK and taxed at 25%. Where local tax has been suffered, it possible to reduce the CFC charge by that element.

There are a number of exemptions from the CFC legislation, of which we do not ascertain any are in point.

These exemptions are as follows:

Exempt period exemption - AFL has been owned for more than 12 months

Excluded territories exemption - Farland is not on the list

Low profits exemption - we do not have full details but expect profits in excess of £500,000

Low profit margin exemption - the company will not have this as it is purely making profits on royalties

Low tax exemption - 5% is considerably lower than the UK tax rate.

As none of these exemptions apply, profits must therefore fall through one of the five gateways.

We only deem the gateway 'Profits arising from UK activities' to be the gateway at risk, the other ones are related to loans, insurance or banking.

Currently, the existing patent and income generated through that should not fall through this gateway on the basis that the AFL patent was originally developed there.

However, the transfer of this asset would represent a UK managed asset. A UK managed asset is an asset that has been developed or created in the UK.

Quite clearly the patents to be moved have been created in the UK as they were generated by e-Boxes ltd.

We also ascertain that these transactions would have a tax avoidance motive on the basis that the royalties being paid from the UK of £11.25 million (£75 million*15%), would be deductible in the UK reducing tax at 25% and only being taxable in Farland

at 5%.

We note that when the patent is transferred profits in AFL will increase significantly and as such this will increase the risk of HMRC deeming AFL to be a CFC.

Where a CFC charge arises, it could result in additional tax £2.25 million per annum (being the 20% tax differential between the UK and Farland tax rate on the £11.25 million royalty).

This charge would effectively wipe out the UK tax advantage arising on the payment of the royalties.

We deem this to be high risk and therefore to be avoided.

B1)Purchase of Trade and assets

Purchase of trade and assets is likely to be initially more expensive from a UK perspective due to SDLT. Please note, we have assumed in our calculations there will be no VAT on the sales purchase.

This is due to either the following cases:

- As per the above scenario the purchase of trade and assets is likely to

be a transfer of a going concern so no VAT would be due

- Alternatively, the factory is more than 3 years old and should be exempt from VAT on that basis.

Please ask as part of the wider due diligence exercise if the

property had the OTT applied as this could impact the below figure significantly.

On purchase of the land and buildings stamp duty of £4,987,500 will be due:

0-150,000	@0%	0	
150,000-250,000	@2%	2,000	
250,000-100,000,000	@5%	4,987,500	
Total		4,989,500	

Corporation Tax:

AML will be able to claim Structures and Buildings allowances (SBA's) on the building as it was constructed after 2018.

Will take over historic value. If were to buy as of 30 June 2024 4.5 years

Have had £750k SBA's per year taken so AML will take over with £21,625 of SBA's to be claimed over next few years. (Same position on the share purchase).

AML would be able to claim the £1 million annual investment allowance (if there is any remaining) on any plant and machinery acquired from e-Boxes.

No enhanced allowances will be allowed, however, as all of the assets are second hand.

Should try to ensure an election is made to transfer fixtures and fittings in factory at cost. Will provide the group with more capital allowances and tax relief (particularlry more than a share purchase) but e-Boxes likely to try and counteract this as will result in additional charges in that co.

This would provide some additional tax relief in the company, and could result in more capital allowances than a transfer at TWDV as highlighted in A2.

It appears that all of the assets acquired are for market value coming up to the £200 million and as such there will be no Goodwill recognised.

Please note, the losses are not acquired under an acquisition of trade and assets.

Once again, we deem likely that this will be a transfer of a going concern and out of scope for VAT.

B3 Impact of the acquisition of patent by AFL

AFL will then acquire the patent from e-Boxes directly once it has received the £75 million from Abertol via the share subscription.

Note, there should be no UK considerations on this share subscription, as it is below the reporting requirement on movements on international capital (the reportable limit is £100 million).

There may be an equivalent stamp duty tax to consider in Farland, local advisors should confirm any such costs.

The £75 million will then be used to acquire the patent. AFL will then charge AML £11.25 million (£75m *15%) in royalties.

We deem the proposed transaction as it stands to be highly risky from a tax perspective. HMRC is likely to view this as a transaction that should fall under the diverted profits tax rules.

Diverted profits tax (DPT) is an additional penalty tax of 31% that can arise under certain circumstances where profits are diverted offshore. This impacts companies that are large. The Abertol group is clearly large.

There are two types of transactions that are caught under diverted profits tax. One where there is an avoidance of a UK permanent establishment, the other relating to transactions that have insufficient economic substance.

We deem the latter of the two to be the risk for the proposed transactions.

For DPT to arise there needs to be the following points:

1. Transaction between connected companies -
2. There must be an effective tax mismatch

3. There is insufficient economic substance in the transaction.

Condition 1 met as AFL and AML are controlled by Abertol and are in the same group, and the royalty payment is arising between them.

Condition 2 will be met as the tax paid in Farland will be less than 80% of that suffered in the UK, being only 20% of the UK tax. (see appendix 2).

Condition 3 - There is an insufficient economic substance behind these transactions. This is because all things considered, AML is the company that requires the use of the patent. If there were to be a transaction that had economic substance, HMRC would view the logical step to be Abertol inject capital in to AML (or loan funds), and then AML acquire and utilise the patent itself.

We deem that HMRC would consider the additional step, in AFL being provided the cash to buy the patent, and then for the company to subsequently charge royalties would not have economic substance.

On this basis, as the £11.25 million royalty is being diverted from the UK, we consider that the £3,487,500 of diverted profits tax may be due each year these transaction would be undertaken. This is considerably more than the risks under the CFC charge in A4 regarding a share purchase.

This charge of diverted profits tax would mean that the company would end up losing overall tax on the transaction arising. There would be a UK deduction at 25%, but this penalty at 31%. As such, overall this would result in more tax due.

CFC

If the DPT were not to apply, there may also be a risk that the company would fall under the CFC charges as identified in A4.

On this basis, this option is initially more expensive than the option laid out in section A of the report by virtue of the SDLT charges on acquiring the factory, but is also considerably more expensive due to the DPT that could be charged annually.

Impact on the vendors of e-Boxes

Please note, that although this report is for the advice of the board of Abertol, a recognition of the costs for e-Boxes has also

been taken in to account.

The company should be able to utilise their significant losses brought forward and the current year loss of £10 million up to 30 June.

On the disposal of the patent e-Boxes will have a profit arising of £15 million per the calculation in A3. However, unlike in the above analysis, should get some element of loss relief. This profit will arise in e-Boxes and will result in tax in that entity.

Per the appendix below we have estiamted they would recognise a gian on the land and buildings of £73,375,000 and a profit on the IFA of £15 million.

After current year losses use this would net off to 88,375,000.

After restricted loss use the amount still chargeable to tax would be £41,687,500. This would suffer tax in the company of £10.42 million.

We only note this becuase that would be a charge due by e-Boxes, and then the shareholders of e-Boxes may have additional tax charges on extracting the funds from e-Boxes, either via dividend or liquidation.

This could result in the vendors wishing to increase the price on a sale of trade and assets.

Alternative Option - C1

We deem any transfer of the patent from the UK to Farland to result in unacceptable tax risks, and as such would reccomend a purchase of the trade and assets directly from e-Boxes.

There could be alternative options to the above option we are considering, such as a purchase of shares in e-Boxes outright, or a hive down from e-Boxes in to a new clean company

The key benefits of a purchase of shares or a purchase of shares in to a new company would be if there would be scope to utilise the losses that e-Boxes has acquired over the years. However, per our analysis is A2 we deem that any losses generated by e-Boxes will be extinguished by HMRC under the MCINOCOT rules.

Additionally if the shares are purchased, the patent brought in to the Abertol group will remain at its current tax written down value of 15 million. We believe purchase of trade and assets can provide additional relief at a much greater rate. We will discuss this below.

Purchase of trade and assets - C2

Much of the analysis on the purchase of trade and assets by AML directly will mirror that of B1.

SDLT will be due on the factory of £4,989,500. The plant and machinery will be acquired and may have capital allowances claimed on the cost of which they are acquired at.

The key distinction will, however, be the treatment of the patent. The patent will have a tax cost in AML of £75 million. This will mean that any amortisation of the patents will have an allowable tax deduction in the UK. If this is written down over 10 years there would be a tax deduction of 7.5 million per year.

Although this deduction in itself is smaller than the royalties that would be paid by AML to AFL under the previous examples, there will be no penalty charges effectively wiping out the UK tax deduction.

Additionally, where a UK company exploits a UK generated patent it may be possible to claim patent box relief on the profits that arise from the patent.

Patent box relief is an election that allows profits arising from the exploitation of a patent to be taxed at 10% percent rather than 25%.

The calculations for the patent box relief are complex, and this will not result in all of the future profits generated by AML to be taxed as 10%, but there would be significant savings through the planned refreshing of the Abertol group product range.

The use of the patent box regime in tandem with the allowable deductions that arise on intangible fixed assets in the UK will allow for the purchase of trade and assets and holding the patent in the UK to be competitive with holding the patent in Farland, and does not have any risks associated with either CFC charges or diverted profits tax charges.

Therefore, we recommend this method is used to acquire e-Boxes, and that the trade is integrated in to the UK group rather than overseas.

Newco continues the trade and retains the patent

Although there will be no tax savings from shifting profits from the UK at 25% to Farland at 5%, it may be possible to reduce taxable profits that arise from the exploitation of the patent in the UK under the following methods.

The UK IFA regime provides for allowable deductions on intangibles under the scope of IFA's. This would mean that amortisaiton would allow deductions in the UK at 25%.

Additionally, where patents are utilised to generate profits as clearly will be done here, it will be possible to utilise the patent box regime in the UK.

The calculations are complicated, however, certain relevant profits that are related to exploitation of IP may be taxed at 10%.

An analysis should be done as to how many profits fall under this, however, if they are significant, the PB regime in tandem with the tax relief on the intangibles in the UK should be able to provide an overall ETR that is not dissimialr to the the tax on profits in Farland.

This in tandem with hopefully being able to utilise brought forward losses would make this significantly mroe attractive than the above options.

If time potential discussion on if T&A acquire the IFA would be £75m and that would allow for larger amounts of amortisation.

D1 Issue of US cost in Abertol Manufacturing

We note that AML is likely to be in a loss making position for the year ended 31 December 2024. The loss of £55 million estimated inculdes the total £60 million in costs that have occurred due to Abertol USA Inc losing a court case.

This section of the report discusses the deductibility of the expenses identified.

Imposition of £30 million fine

Where there are fines that have been imposed on a company due to illegal action, any such fines will be disallowable.

They are not for the purposes of the trade and therefore cannot be used to reduce profits in the UK.

Anticipated remediation and recall costs

These costs may however, be allowed against the profits of the UK company in general. Once again, it has to be ascertained whether this expense would be required to ensure that the company can continue its trade.

In order to ensure that the sales can continue to be made in the US and that these assets can effectively be fixed, the £15 million recall costs should be allowable. Although somewhat more serious than fixing a broken machine under warranty, this is what is effectively being done in relation to this cost.

These costs will therefore allow the company to continue trading and should be revenue in nature.

legal costs

When considering the deductibility of legal and professional fees, once again, it must be considered why those costs were incurred.

If the costs were incurred to defend the trade of the company, then the costs would be deductible.

These costs, however, have been incurred to try and fight against the position of the US courts on a matter of illegality.

As such, HMRC would most certainly treat these legal costs in the same manner as the fine in itself. As such this £15 million would not be deductible.

Additional points

Although unlikely to be relevant due to the above points, HMRC may also seek to argue as to whether or not all of these expenses

should be recognised in AML.

The costs for remedial work will be required to be undertaken by AML being the manufacturer, so we deem HMRC would not challenge those costs, but the fine and the legal fees could be challenged further.

Ultimately, HMRC may argue that those costs should be borne by the entity that actually entered in to the sales agreements, and that would be Abertol US.

Overall impact on costs and losses in year ended 31 December 2024

The losses of £55 million would be restricted by the fine and the legal fees (both totalling £45 million). This should reduce the tax losses in 31 December 2024 to £10 million.

It may be possible to utilise these via group relief around the wider UK group, if Abertol UK Retail is profit making in the same period.

Alternatively, the losses may be carried back in to the 31 December 2023 year end, but this would not be as tax efficient as the tax rate for that year was 23.5% compared to the 25% in this year. Any unused losses would be carried forwards.

Conclusion

The current plans for the acquisition of the e-Boxes trade should be avoided. We deem the risk of CFC charges under option 1 and the DPT that could arise under option 2 to be to great a risk.

Buying the trade and assets and keeping the assets in the UK will provide for greater tax relief and access to the patent box regime without falling foul of the anti-avoidance rules highlighted above.

Please note, however, that the shareholders of e-Boxes may insist on a purchase of shares rather than trade and assets. This would be less attractive due to the lower value of the patent for tax purposes but would still allow the group to use the patent box regime, and would avoid the risks in options 1 and 2.

Please ensure that the costs related to the fine and the legal fees are disallowed as HMRC will deem these are not allowable for the trade.

Appendices

Proceeds	100,000,000
SBA's assumed claimed	3,375,000
less cost	(30,000,000)
Gain	73,375,000

Appendix 2

Royalty charges:
£75 million * 15% = 11.25 Million.

UK tax saving on payment: 2,812,500
(11.25*25%)

Overseas tax on payment: 562,500
(11.25*5%)

Difference as a percentage: 20%