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M&A Tax Talk
Global Trade

Why global trade issues matter to a successful divestiture or acquisition

Global trade operations are strategically important to international supply chains. Due to the complex global footprint of many companies today, effectively managing global trade considerations also impacts various facets of mergers and acquisitions (M&A). This holds true for both post-merger integration (PMI) activities as well as divestitures of companies importing or exporting goods, technologies, and/or services.

When addressing global trade considerations, the focus is on how to continue the supply chain without business disruptions, avoid compliance exposures, and find incremental value. This effort involves things as basic as whether relevant entities have authorizations needed to export and import goods and whether the necessary trade data will be transferred and available for them to do so. It also may involve matters as complex as how to integrate global trade management software systems, reorganize governance teams (or create them if necessary) and harmonize customs positions taken. To add complexity to M&A transaction planning, companies face diverse local, global trade, and other government agency regulations, including compliance requirements impacting operational decisions, costs, and timelines.

A key success factor for readiness planning is to involve trade teams in the early stages of PMI/divestiture processes

Proper planning can lead to new global trade opportunities through process and system efficiencies, duty savings and/or enhanced cash flow. For both PMI and divestiture projects, analyzing planning decisions such as legal entity structuring, contract changes, supply chain and sourcing footprints, and transaction structuring from a global trade perspective can help mitigate unintended supply chain consequences and often add incremental value. At the same time, identifying and addressing the impact on trade activities of changes to entities, company names, contracts, and resources is also important, given their potentially significant consequences for revenue, operations, etc.

The following illustrative points should be considered in an M&A transaction and highlight common pitfalls that can impact revenue, operations, and resourcing for companies when trade is not considered in early planning stages. Note, these examples are demonstrative of general common challenges, but the facts and circumstances of each transaction should be analyzed to help determine the impact on specific trade activities.

- **Revenue**
  - Newly established entities may often be unable to import products intended for sale in key countries. When set up as branches without a buy/sell structure, import responsibilities may need to fall on local customers when the branches are unable to be the importer of record. New entities in this situation should consider business impacts, including potential renegotiation of customer contracts to account for new responsibilities, which may impact customer prices and may lead to delays in shipments.
  - In some countries, new and changed contracts need to be registered with local government authorities, which can take months to complete. This can lead to significant delays importing goods and inability to sell goods to local customers. This may require the negotiation of side agreements at deal close to mitigate the impact of changes in roles and responsibilities.
- **Operations**
  - Due to Brexit, UK entities and their EU branches may face increased complexities to export goods from the European Union. It may be required to identify or create an EU-established entity that could act as the exporter from the European Union on behalf of the UK entities. This could require significant cross-functional coordination and additional efforts to establish new processes internally and with third-party service providers, and define new roles, responsibilities, and risks among the impacted entities.
  - Some government agency approvals required for import processes can be time consuming. When new entities are established and these approvals cannot be obtained timely, an alternative operating model may need to be deployed to close operation gaps.
- **Resourcing**
  - It is common to see divested/acquired companies have skeletal (or no) global trade resources conveyed under the agreement and/or buyers that have limited global trade knowledge or expertise. These scenarios may lead to a visibility gap during readiness planning that can cause unanticipated supply chain disruption.

– Divested companies often have limited global trade resources and management to oversee import and export operations across the world. This can lead to increased reliance on transition services from the seller, increased outsourcing to the service provider to be able to operate at deal close, and increased costs on Day 1.

– Failure to obtain necessary trade data (e.g., tariff classifications for existing product databases) as part of the deal close can cause disruptions with government import processes worldwide including potential import stoppages. It is important to consider the need for these data agreements as early as possible when negotiating transitional service.

Value creation

Global trade should not be viewed as a purely compliance and risk-management concern during an M&A transformation. Global trade operations opportunities can provide tremendous incremental value creation for companies during transformation. Examples include:

- **Cost reduction:** Companies may be able to leverage an acquisition's existing global trade automation solution to automate its legacy processes, resulting in a significant reduction in the number of full-time employees required to support transactional activities related to the trade function, as well as improved compliance.
- **Cashflow management:** An acquired company may be able to participate in a buyer's duty and import VAT deferral programs, thereby enhancing net working capital. In addition to an acquired company benefitting from existing programs, a buyer may be able to use the acquisition process as an opportunity to review and expand the number of deferral programs used.
- **Seamless transition:** Through proper planning, a new company can identify, plan, and prepare for potential global trade challenges and obtain the customs authorizations needed at deal close. This may allow new companies to avoid import and export clearance delays and supply chain disruptions.

Capturing the opportunities for seamless transition

It is critical to understand, as early as possible, the current and future global trade requirements in PMI or divestiture projects. Doing so may allow for sufficient lead time to address government and business requirements, enable overall business continuity, and add incremental value in the transformation.

Want to learn more?
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