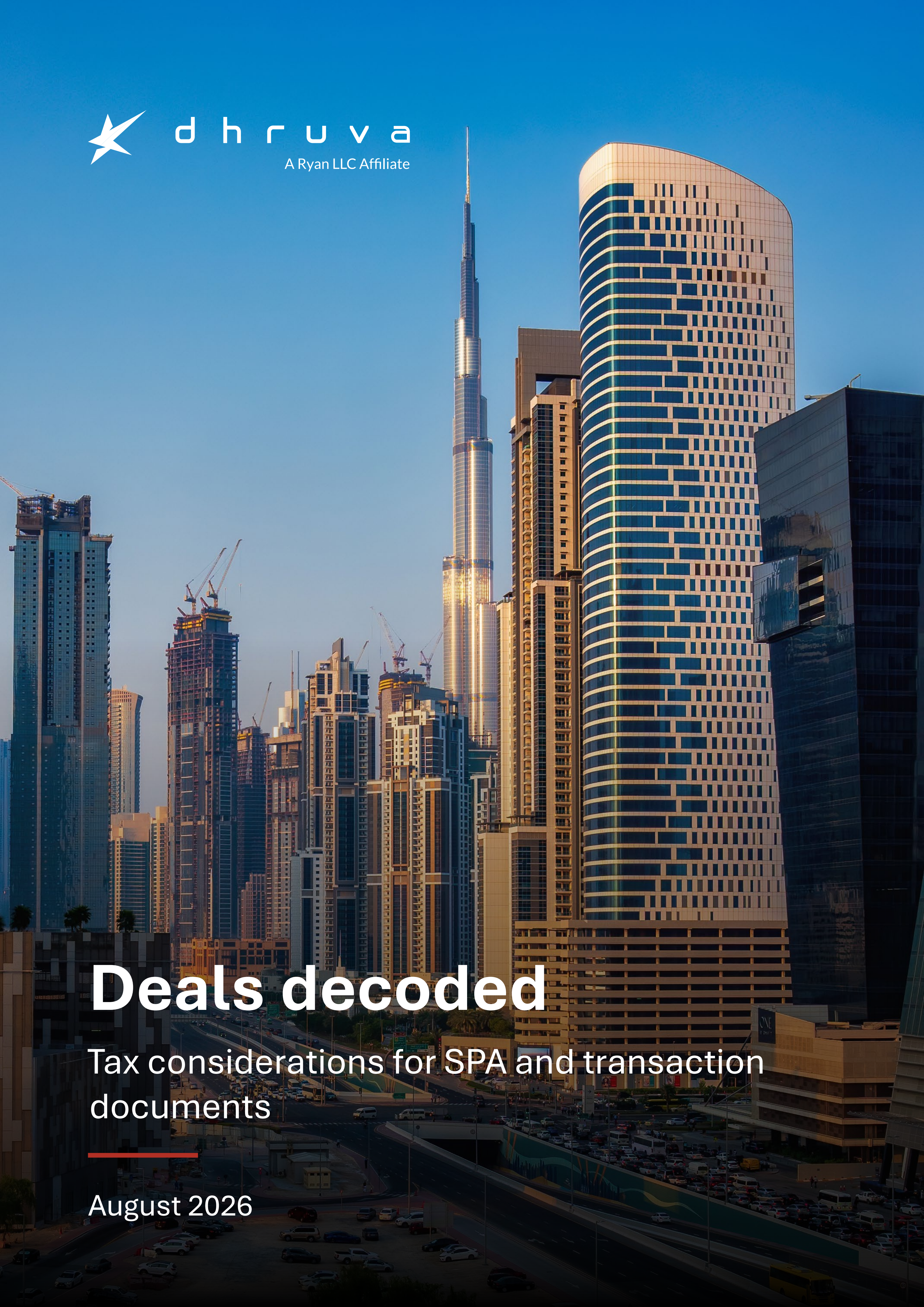

dhruva
A Ryan LLC Affiliate

Deals decoded

Tax considerations for SPA and transaction documents

August 2026

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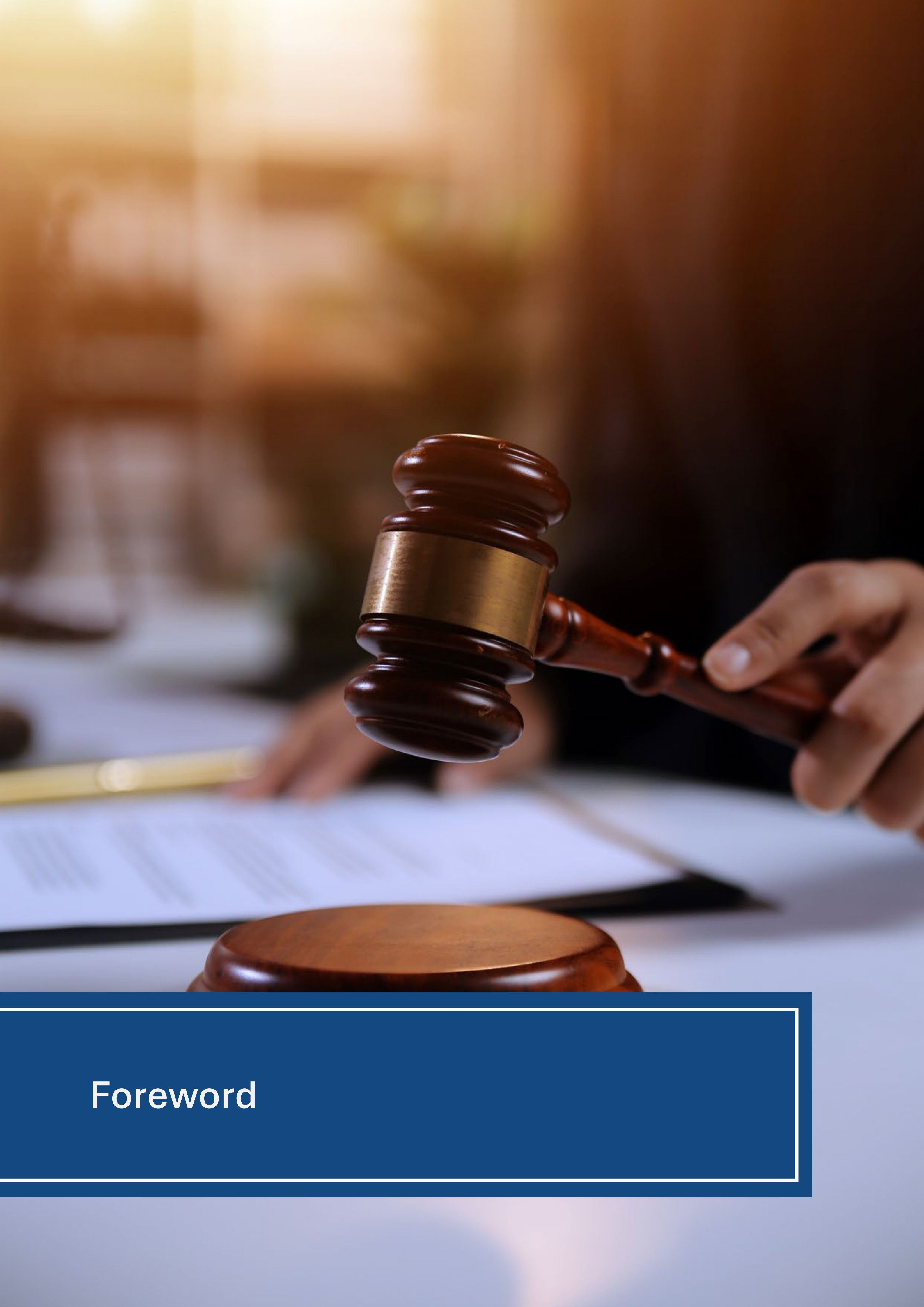

Foreword

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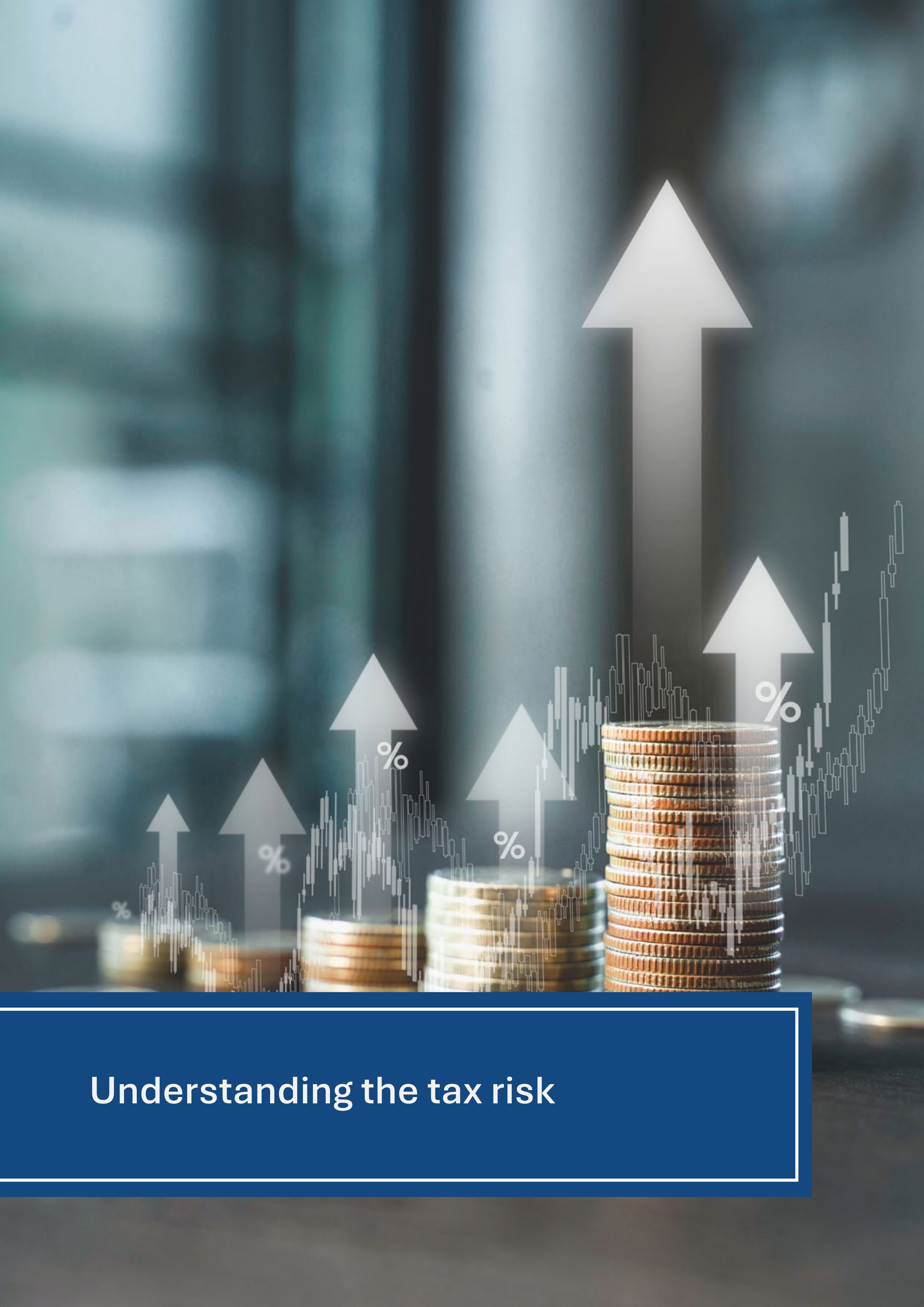
In an M&A transaction, a Tax Due Diligence (TDD) identifies tax risk. However, that is only half the story. It is the Share Purchase Agreement (SPA) that determines who ultimately bears the risks that are identified during the diligence stage.

This fundamental distinction is often overlooked. Considerable time and effort are typically spent identifying tax exposures during tax due diligence. However, the commercial outcome of those findings is ultimately determined by the SPA. Through its tax warranties, indemnities, covenants and purchase price adjustment mechanisms, the SPA allocates responsibility for known tax exposures and provides protection against risks that may only emerge after completion.

This has become increasingly important as the Gulf Cooperation Council (GCC) tax landscape continues to evolve. The introduction of UAE Corporate Tax (CT), the expansion of Value Added Tax (VAT), the implementation of Transfer Pricing (TP) requirements, the rollout of Pillar Two and the growing sophistication of tax authorities across the region mean that tax can now influence not only the structure of a transaction, but also its value, timing and post-completion economics.

Like any commercial agreement, the SPA is the product of negotiation. The final tax provisions will depend on the risks identified, the bargaining position of the parties, prevailing market practice and the commercial objectives of the transaction. Well-drafted tax provisions help preserve deal value, provide certainty and reduce the potential for costly disputes post completion.

In this edition of *Deals Decoded,* we examine the principal tax provisions commonly found in SPAs, why they matter from a commercial perspective and the key issues that buyers and sellers should consider when negotiating them.



Understanding the tax risk

Understanding the tax risk

Identifying tax exposure is only the first step in an M&A transaction. The key question is how that exposure is dealt with. Every material tax issue requires a contractual outcome: whether through a warranty, an indemnity, a purchase price adjustment, pre-completion remediation or, in some cases, a conscious commercial decision by the buyer to accept the exposure. Where a risk is not appropriately reflected in the SPA, it often becomes an economic cost after completion, at a point when the buyer has little or no contractual recourse.

Before tax risk can be allocated it first needs to be properly defined. This begins with understanding which taxes fall within the scope of the SPA and how the transaction's chosen closing mechanism influences the point at which economic ownership and the associated tax exposures pass from seller to buyer.

Definition of 'Tax'

The definition of 'Tax' is one of the most fundamental provisions in the SPA. It establishes the perimeter of the contractual protection afforded to the buyer and should therefore be sufficiently broad to capture all taxes that apply (or could potentially apply) to the target across every relevant jurisdiction.

An incomplete definition can create unexpected gaps in protection. For example, if the definition only captures taxes for which the target is primarily liable, it may fail to extend to secondary or joint liabilities, such as obligations arising under a tax grouping regime. In those circumstances, the target may become liable for another group member's unpaid taxes, yet the buyer may have no contractual protection if that liability falls outside the SPA's definition of 'Tax'.

The Pillar Two angle

Pillar Two introduces another dimension to SPA negotiations. Its relevance will depend on whether the seller, the buyer or the target falls within the scope of the rules, and in some cases, whether the acquisition itself causes the buyer's group to become subject to the regime.

Where Pillar Two is relevant, the SPA should typically:

- Expand the definition of 'Tax' to expressly include Top-up Taxes arising under the OECD GloBE Rules, including any Qualifying Domestic Minimum Top-up Tax (QDMTT);
- Include warranties covering the target's historical Pillar Two compliance, calculations and underlying data;
- Clearly allocate responsibility for any pre-completion Pillar Two liabilities; and
- Include post-completion information-sharing obligations to enable ongoing compliance with the regime.

For a more detailed discussion of these issues, please refer to our publication on the [interplay between Pillar Two and M&A transactions] issued on 30 July 2026.

Tax vis-à-vis the closing mechanism

The chosen pricing mechanism has a direct bearing on how tax risk is allocated between buyer and seller.

Locked box

Under locked box mechanics, the purchase price is fixed by reference to historical accounts, with the buyer assuming the economic benefit and burden of the business from the locked box date.

From a tax perspective, this places considerable importance on the quality of the locked box accounts. If tax liabilities have been understated, there is generally no opportunity to revisit the purchase price after completion. The buyer therefore bears the economic consequences unless adequate contractual protection has been negotiated.

Particular attention should also be paid to the definition of Permitted Leakage. Care should be taken to ensure that tax settlements, voluntary disclosures, tax amnesty payments or other unusual tax outflows cannot be treated as permitted leakage without an appropriate adjustment to value.

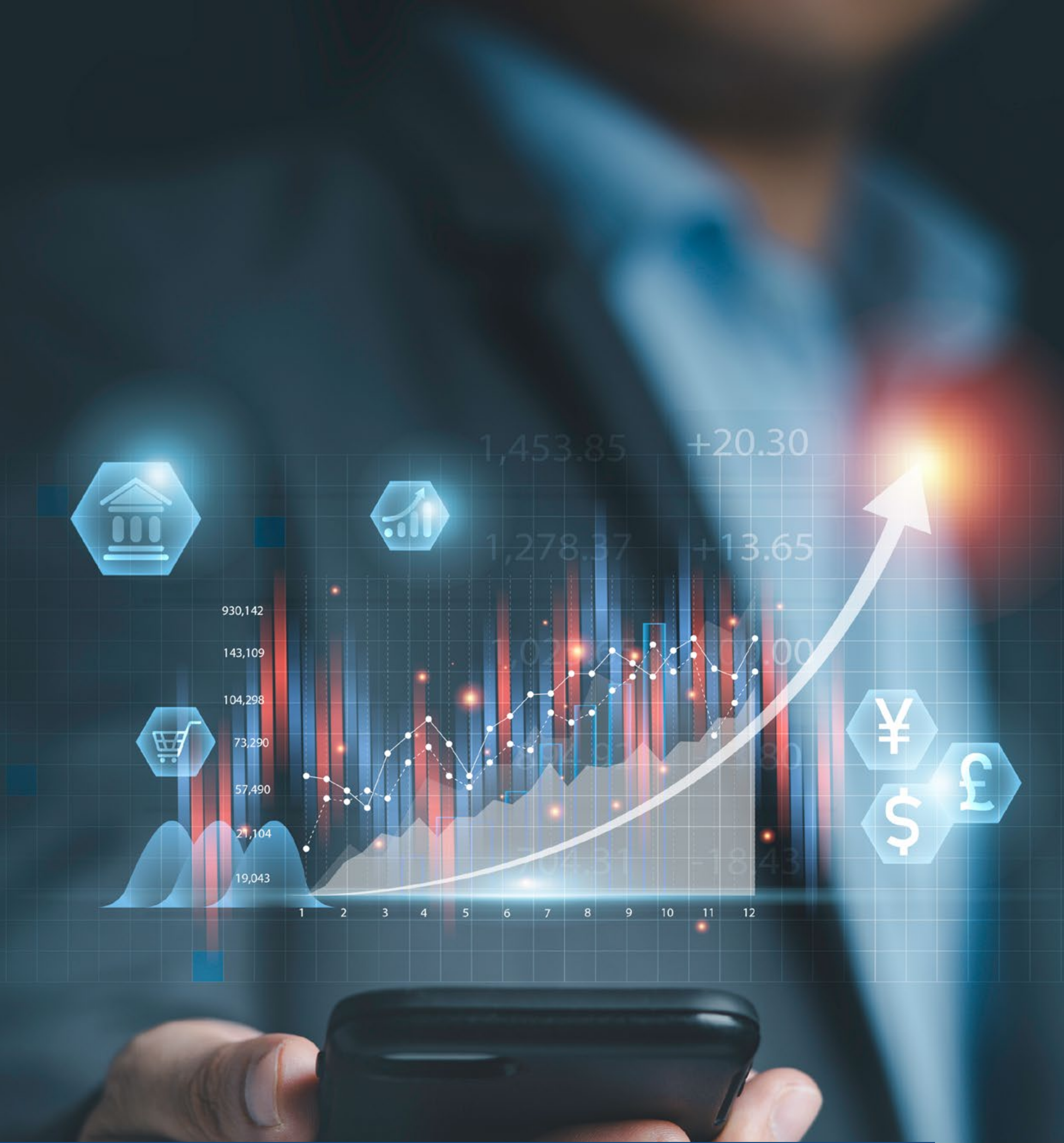
Completion accounts

Where completion accounts are used, the purchase price is adjusted after completion to reflect the target's actual financial position at closing. While this generally provides greater protection than a locked box structure, the tax figures included in the completion accounts become critically important.

Current tax liabilities, deferred tax balances and uncertain tax positions should all be clearly defined and consistently measured. Equally, any tax assets reflected in the completion accounts including tax losses and deferred tax assets should be carefully validated before value is attributed to them.

Key consideration:

The negotiation of tax risk often begins well before the tax covenant or indemnity is discussed. A definition of 'Tax' that is too narrow, or a closing mechanism that fails to establish an appropriate tax baseline, can transfer significant economic exposure to the buyer before the real negotiation has even started.



Allocating the tax risk

Allocating the tax risk

This is where tax moves beyond legal drafting and begins to influence deal economics. Once the tax risks have been identified, the SPA determines who ultimately bears them and whether they are reflected in the purchase price, contractual protections or both.

Ringfencing tax group liabilities

Where the target has been a member of a CT group or VAT group prior to completion, the SPA should clearly allocate responsibility for any historical group liabilities and any tax consequences arising from the target's departure from the group.

This is particularly important where group members are jointly and severally liable for tax obligations or where exiting a tax group could itself trigger a tax consequence. Appropriate contractual protections help ensure that the buyer does not inherit liabilities that relate to periods before completion.

Allocating transfer taxes

Share transfers in the UAE do not currently attract stamp duty. However, this position must be verified for every jurisdiction in which the target group operates, and the allocation of any transfer tax burden should be agreed expressly in the SPA. Where the target owns real estate, the applicable real estate transfer fees and which party would bear them must be identified and documented as part of the commercial negotiation.

Who bears the Withholding Tax (WHT) cost?

Where a non-resident seller receives consideration for the sale of shares, WHT applicability must be confirmed for each relevant jurisdiction, taking into account the availability of domestic exemptions and applicable double tax treaties.

The SPA should expressly state whether the agreed price is gross or net of WHT and identify which party bears any withholding obligation. Where treaty relief is expected to apply, the agreement should also address the practical requirements for claiming the reduced rate, including the provision of tax residency certificates and other supporting documentation.

Consideration should also be given to appropriate gross-up provisions and the consequences if the expected treaty benefit is subsequently denied. WHT implications on deferred consideration, earn-out payments, management fees and indemnity payments should also be analyzed and allocated between the parties before the SPA is finalized.

The EV-to-Equity bridge

The bridge from Enterprise Value (EV) to equity value and therefore to the consideration the seller actually receives, is where tax has its most immediate and quantifiable financial impact on a transaction.

The formula is:

Equity Value = EV − Net Debt ± Working Capital Adjustment ± Other Agreed Items

Net debt is deal-defined and materially broader than bank borrowings alone.

Tax items appear across every component of the bridge as debt-like deductions, cash-like additions and working capital line items and are consistently among the most heavily negotiated items at completion. Each tax item must be mapped to precisely one place in the bridge; double-counting and omission are equally damaging.

Regardless of the closing mechanism adopted, the definitions of net debt and working capital and the treatment of tax items within each must be aligned with the commercial negotiations before the SPA is signed. Misalignment between the model and the legal definitions is one of the most common sources of completion disputes and one of the most avoidable.

What to watch

The same tax item counted twice, or dropped entirely, because the model and the SPA definitions of net debt and working capital were never reconciled.

Securing the agreed position

Securing the agreed position

Scope and price mean little if the protections cannot be enforced when they are needed. This section covers the mechanics that make the deal hold after signing.

Warranties vs. Indemnities

A **tax warranty** is a statement of fact. In case of breach, the buyer can claim damages subject to demonstrating the loss, typically a diminution in value by way of an increase in liability / reduction of assets. Warranties are typically subject to the disclosures.

Tax indemnity is a dollar-for-dollar reimbursement obligation. There is no burden of proving loss in value on the buyer and the mere arising of liability is the trigger.

The disclosure interplay: A 'fair disclosure' in the letter defeats a warranty claim for that specific matter and the risk passes to the buyer as part of the agreed deal.

Key consideration:

Even the most carefully negotiated warranty and indemnity package is only as strong as the claim mechanism behind it if the procedural requirements for bringing a claim are too narrow, the notification periods too short, or the language of the tax covenant insufficiently broad, a buyer may find itself holding a protection it cannot enforce at the very moment it needs it the most.

Warranties & Indemnities (W&I) Insurance - Know the gaps

What does it mean: W&I insurance generally comes into play once the SPA warranties and indemnities have been negotiated and agreed. Rather than the buyer pursuing the seller directly for a breach of warranty or a tax covenant claim, the policy transfers that economic risk to an insurer and the buyer claims against the policy, and the seller's residual liability under the SPA is typically capped at a nominal amount, often as low as USD 1.

Exclusions: Certain categories of risk such as known TDD risks, ongoing tax litigation, TP, forward-looking warranties, fraud, and secondary tax liabilities are generally excluded from coverage.

Interplay with TDD: The depth of diligence undertaken will directly shape what the insurer is willing to cover. For this reason, W&I should not be an afterthought, it should be kept in mind from the outset, including when determining the scope of TDD.

Key consideration:

W&I insurance itself is a negotiated contract. While certain pillars are standard across most policies, the breadth of coverage ultimately depends on the comfort that can be provided to the insurer during the underwriting process.

Documenting the agreed structural and model assumptions

Where the financial model is premised on a structural tax assumption, it requires corresponding contractual protection in the SPA. For example, if a company qualifies as a qualifying free zone person, the structural assumption that the conditions for availing 0% CT rate are satisfied should be documented.

Structural tax assumptions that are not contractually anchored are commercial positions without a remedy if they prove incorrect.

Limitation of liability

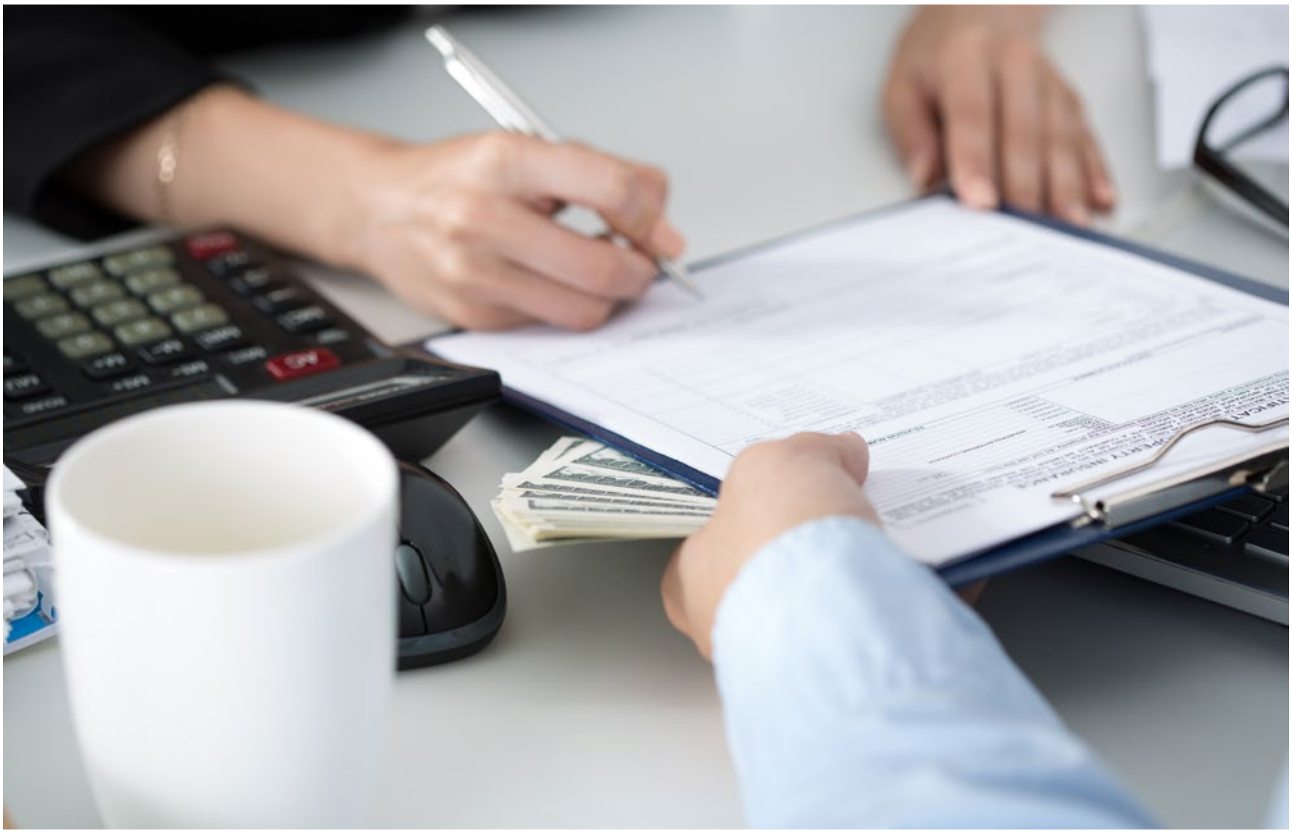
The seller is not liable for any tax claim unless written notice is given within the agreed limitation period following completion. That period should be negotiated with reference to the statute of limitations applicable to tax matters in the relevant jurisdiction.

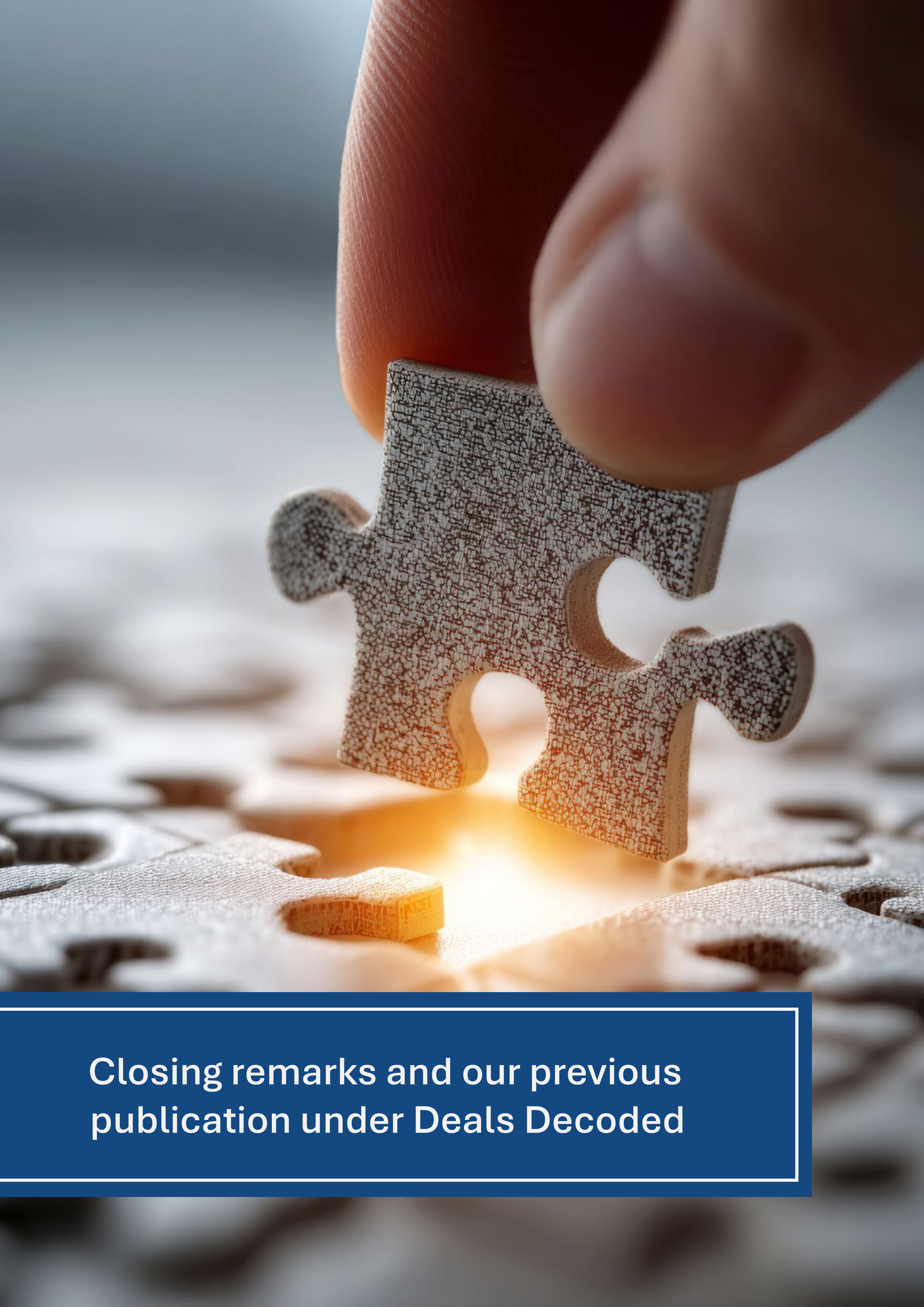
The window within which a tax authority may raise an assessment, open an enquiry, or recover unpaid tax varies by jurisdiction and by tax type, and is often extended in cases of fraud, negligence, or non-disclosure. The contractual limitation period should track the outer limit of that exposure, so the seller remains obligated for as long as the target does.

Where the target operates across multiple jurisdictions, the longest applicable statutory period should drive the drafting, or separate periods should be agreed for each relevant tax and territory.

What to watch

A period that expires before the statutory assessment window closes leaves the buyer exposed to a potential liability with no contractual recourse.





Closing remarks and our previous publication under Deals Decoded

Closing remarks

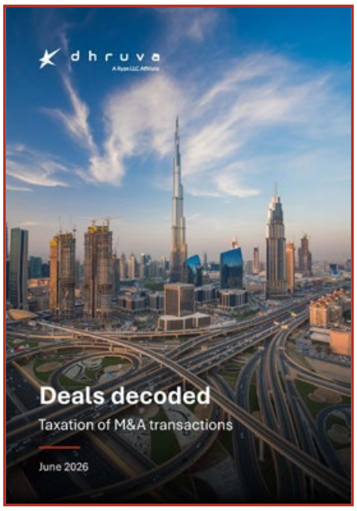
Tax input should run in parallel with legal drafting, not after it.

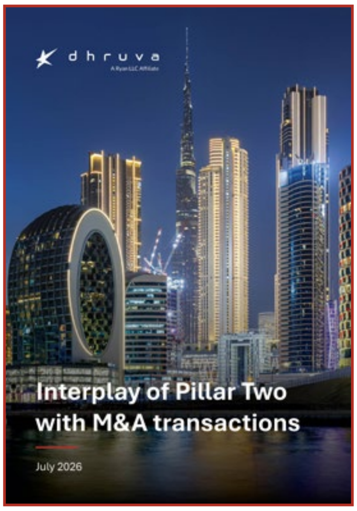
A buyer that understands the tax risk it is assuming is in a materially stronger position to push for the protection it needs. A seller that has done its own preparation will know which positions are genuinely market standard and which are being pushed beyond what is reasonable.

Engaging early, understanding the issues before negotiation starts, and resisting the pressure to push tax to the back of the process is one of the most important things a deal team can do.

Future editions of our Deals Decoded series will continue to explore the tax considerations shaping transactions across the UAE and beyond.

Our previous publication under Deals Decoded





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