

M&A Tax Services

Phaidon structuring Strawman structure

*Strictly private
and confidential
Draft*

27 August 2012

pwc

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Overview

- The following pages set out a proposed strawman structure for the acquisition of the Target. We understand that FHS Services SAGL is not being acquired by the target and we await details from the seller as to how this entity will be removed from the Group prior to acquisition.
- The use of the proposed structure allows some flexibility in how the acquisition may be financed which may be achieved through a mixture of debt and equity. If debt is introduced into the structure we would expect that interest on the debt can be offset in total or in part against the operating income of PPL through the use of UK group relief to surrender tax losses between UK group companies. The level of interest deductibility will be subject to the UK transfer pricing rules, refer to page 4 for further details.

Objectives

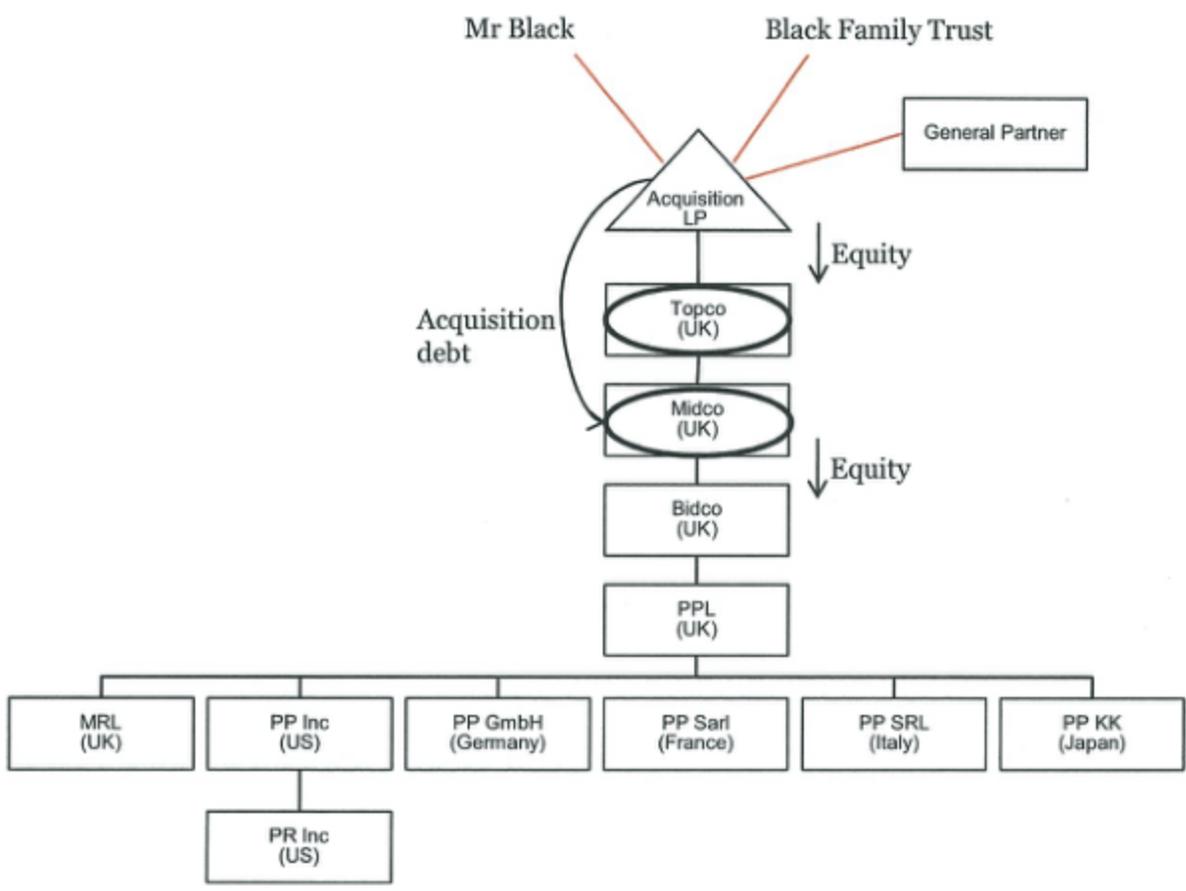
The key objectives of the structure will be to:

- To ensure tax efficient offset of interest costs on shareholder debt against operating profits;
- Allow for flexibility for investing into the structure and allow for Section 338g election to be made for US tax purposes treating the acquisition as an asset deal rather than a stock transaction allowing step up in tax basis for the acquisition;
- Provide for tax efficient repatriation of profits to UK Bidco from operating group;
- Allow for future disposal of PPL without UK tax cost subject to availability of UK substantial shareholding exemption.

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Luke Johnson
in Board

Barclays in Jersey
Trust via
via BVI

Steps

- The acquisition structure is formed through a Scottish Limited Partnership (SLP) owning 3 newly formed UK companies (Topco, Midco and Bidco). UK Topco and UK Midco will be disregarded for US tax purposes.
- UK Topco will be funded by equity. UK Topco will then subscribe for equity in UK Midco and the SLP will provide shareholder debt to UK Midco. UK Midco will then subscribe for equity in UK Bidco with UK Bidco then uses the proceeds to purchase the target.
- The debt requires to be on suitable arm's length terms for UK transfer pricing purposes. As such the level of debt, the terms and the rate of interest require to be equivalent to what a 3rd party would be prepared to provide. Our understanding is that the intention would be to put a sustainable level of debt into the structure based on the anticipated performance of the business.
- Acquisition debt from the SLP to UK Midco provides for tax relief for interest with interest income not being subject to US federal income tax due to the election to disregard UK Topco and UK Midco. UK withholding tax requires to be managed on payments of interest from UK Midco to the SLP however it should be possible to structure this in a tax efficient manner.
- To the extent that the interest expense creates tax losses in UK Bidco, the losses may be available to offset taxable profits of PPL through the surrender of UK group relief. UK Topco and UK Midco should have no net interest cost or income for UK tax purposes.
- Allows for a Section 338g election for US tax purposes to provide a step up in the PPLs assets to FMV. The subsequent depreciation and amortisation on the assets reduces US E&P in PPL.
- UK Bidco will be able to receive dividends from subsidiaries free of UK corporation tax whilst a future disposal of the shares of PPL may qualify for the UK substantial shareholding exemption to exempt any gains from UK corporation tax.
- Consideration could be given to disregarding the target and its subsidiaries for US tax purposes.
- UK Bidco will be a "controlled foreign corporation" for U.S. federal income tax purposes. As a result, Mr. Black (and any other U.S. person that holds at least 10% of Bidco (looking through Acquisition LP, UK Topco, UK Midco and any other foreign intermediary)) will have to include his pro rata share of Bidco's "subpart F income" -- a category that generally includes dividends, interest, royalties and foreign currency gains.
- A portion of any gain on exit (to the extent of earnings and profits are accumulated while Mr. Black held the company) will be recharacterized as dividend income rather than capital gain. Such dividends should constitute "qualified dividend income," which under current law is taxed at a maximum U.S. federal income tax rate of 15%.