



# Taxation of cross-border mergers and acquisitions

**Venezuela**

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KPMG International



# Venezuela

## Introduction

The Commercial Code is the basic law applicable to companies incorporated in Venezuela. In general terms, companies or commercial associations have as their corporate purposes one or more commercial activities. However, Venezuelan law always attributes a commercial or business purpose to corporations and limited partnerships unless they are engaged exclusively in agriculture or cattle-raising activities. Attributing a corporate purpose to a civil and commercial enterprise — which is governed by its by-laws or articles of association, the Commercial and Civil Codes and special laws for particular business areas — establishes its tax and legal characteristics.

## Recent developments

Decree No. 2,163 of December 2015 amended the Income Tax Law; it increases the corporate income tax rate for companies in the financial and insurance sectors. The decree also eliminates new investment tax credits and removes the right of big taxpayers to use tax inflation adjustments.

Decree No. 2,169 of 2015 creates a new tax on of 0.75 percent on certain financial transactions performed by big taxpayers or their related entities.

Tax treaties were signed with Palestine and Saudi Arabia in May 2014 and November 2015 respectively, which are ratified but not currently in force.

## Asset purchase or share purchase

An acquisition in Venezuela usually takes the form of a purchase of the shares of a company, as opposed to its business and assets, because capital gains on the sale of shares may be exempt, depending on tax treaty provisions.

Asset acquisitions are likely less attractive for the seller from a tax perspective due to the capital gains consequences, probable recapture of capital allowances (tax depreciation), and possible double taxation on extracting the sales proceeds. However, the benefits of asset acquisitions for the purchaser should not be ignored. With a properly designed tax strategy, purchased goodwill may be tax-deductible.

Some of the tax considerations relevant to each method are discussed later in the report. The relative advantages are summarized at the end of the report.

### Purchase of assets

A purchase of assets usually results in an increase in the base cost of those assets for both capital gains tax and capital allowances purposes, although this increase is likely to be taxable to the seller. Historical tax liabilities generally remain with the company and are not transferred with the assets. Because defective tax practices or compliance procedures may still be inherited, the purchaser may wish to carry out some tax due diligence to identify and address such weaknesses.

### Purchase price

The tax effect of an asset purchase is that the purchased assets have a cost basis for the buyer equal to the amount paid. The selling entity realizes a gain in the amount by which the purchase price exceeds the tax basis of the asset, including the inflation adjustment for entities except for those in the financial and insurance sectors and those classified as big taxpayers. An asset purchase may give buyers the opportunity to buy only the assets actually desired and leave unwanted assets (and sometimes unwanted liabilities) behind. An asset purchase may be highly advantageous where a target corporation has potential liabilities, although certain acquisitions of assets may involve an acquisition of a trading fund (see later in the report).

For tax purposes, it is necessary to apportion the total consideration among the assets acquired. It is generally advisable for the purchase agreement to specify the allocation, which is normally acceptable for tax purposes provided it is commercially justifiable.

### Goodwill

Goodwill paid can be amortized for tax purposes over a term considered reasonable in the circumstances of each case.

### Depreciation

Venezuela's Income Tax Law allows reasonable deductions for tax purposes to cover the depreciation of permanent assets and the amortization of the cost of other elements used in the production of the income, provided the assets are located in the country and such deductions have not been charged to cost. To calculate depreciation, similar goods with similar expected lives may be grouped together.

The Income Tax Law regulations define 'depreciation' as the loss of the useful value in the taxable year of permanent corporate assets used for the production of income, caused by obsolescence, wear or deterioration in use, and the effects of time and the elements.

Amortization of goodwill and other intangibles may be deducted as long as they are reasonable amounts paid in accordance with Venezuelan generally accepted accounting principles (GAAP).

### **Tax attributes**

Tax losses and capital allowance pools are not transferred on an asset acquisition. They remain with the company or are extinguished. Where the purchaser wishes to use a company's tax losses, it would have to enter into a profit-sharing agreement or merge with the target's ongoing business.

### **Value added tax**

Sales of tangible goods, including any part of their property rights as well as withdrawals or retirements of movable goods by taxpayers, are subject to value added tax (VAT). VAT does not apply to sales of intangible goods, such as fiscal rights, stocks, bonds, mortgage bonds, mercantile effects, other securities and personal goods in general that represent money, credit or rights other than property rights over tangible goods.

### **Transfer taxes**

Fees for the registration of deeds may arise from the disposal of a going concern (trading fund — see later in the report) at the Subordinate Offices of Registry. Such fees generally amount to 2 percent where the value of the transaction exceeds 2 million Venezuelan bolivars (VEB).

The Stamp Tax Law also provides for an additional payment on the sale of a trading fund or its stocks, in their entirety or in lots, amounting to five tax units plus 0.2 tax units for each tax unit or fraction thereof applied to the price of the transaction.

Since the stamp tax was transferred from the national to the state taxing jurisdiction, the tax can vary, depending on the state in which the transaction is completed and registered.

### **Purchase of shares**

A sale of a share of a Venezuelan company is a sale of rights on goods located in Venezuela, so income from their disposal is taxable in Venezuela.

Sellers are generally taxed on the excess of the purchase price over the tax basis in the shares sold. The tax rate on capital gains resulting from a sale of shares that are not publicly offered on the Venezuelan Stock Exchange ranges from 15 percent to 34 percent for corporations in general and 40 percent for insurance companies and financial institutions.

No specific regulations govern the sale price of shares, other than transfer pricing regulations and the concept of a reasonable cost basis. However, the Venezuelan Tax Administration may deem a price far below market price as a taxable event for the buyer for gift tax purposes.

The administration can also disregard the form in favor of the substance in cases where the incorporation and organization of entities, transactions, agreements or other legal business structures are adopted with the main purpose of reducing or avoiding taxes.

The deduction of any capital loss from the sale of shares carries the following conditions:

- Shares must be held for no less than 2 consecutive calendar years.
- The sale price must be in accordance with the market price or bear a reasonable relationship to the book value.
- The corporation whose shares are sold must have carried out reasonably significant economic activities during the 2 tax years immediately preceding the sale.

A disposal of Venezuelan shares is subject to withholding tax (WHT) of 5 percent of the amount paid.

### **Tax indemnities and warranties**

In a share acquisition, the purchaser is taking over the target company together with all related liabilities, including contingent liabilities. Therefore, the purchaser normally requires more extensive indemnities and warranties than in an asset acquisition.

Where significant sums are at issue, it is customary for the purchaser to initiate a due diligence exercise, which would normally incorporate a review of the target's tax affairs. However, there are a number of transactions where the principle of caveat emptor (let the buyer beware) normally applies and warranties and indemnities are not given. These situations typically include the acquisition of a Venezuelan quoted (listed) company, a purchase from a receiver or liquidator, and sometimes an acquisition of shares owned by individuals not involved in the management of the target.

### **Tax losses**

In principle, carried forward Venezuelan tax losses generated by the target company transfer along with the company. A company's brought forward income-type losses (e.g. trading losses) cannot be offset against the profits of other companies through group relief because Venezuela does not allow consolidated tax returns. Carried forward losses can be offset against the company's own future profits. The alternative of merging the companies may serve for this purpose (see this report's section on mergers).

Where a Venezuela target company with trading losses is acquired, whether directly or by the acquisition of its immediate or ultimate parent company, it may use those losses against its own future trading profits in the 3-year period after the loss was incurred.

The Venezuela Income Tax Law stipulates that carried forward net operating losses are authorized up to 3 years after the year in which the losses were incurred, provided the amount of the loss does not exceed 25 percent of the annual profits. Any losses from a foreign source may only be offset with income from foreign sources, on the same terms provided in the opening paragraph of this section.

Entities cannot carry forward net non-compensated losses arising from the adjustment for inflation.

### **Pre-sale dividend**

Dividends are taxable on any distribution that exceeds the corporate taxable income. This treatment avoids double economic taxation for dividends. Any increase in the price of the share based on potential dividends is subject to capital gain tax rules.

### **Registration fee**

It is not necessary to register a sale of shares, but the document of incorporation and by-laws must be modified to identify the new shareholder and the modification must be recorded with the Mercantile Registry Office, which may generate registration fees by way of tax units. The tax unit value is adjusted annually in line with changes in the consumer price index.

After a change of shareholders in the Venezuelan subsidiary, the corporation must notify the Foreign Investments Superintendence (SIEF) of the change for registration.

Updating of the Registration of Foreign Investment triggers a stamp tax cost equivalent to 30 tax units. Registration generally takes 2 months.

### **Stock sold on the Venezuelan Stock Exchange**

Where the sale is made on the Venezuelan Stock Exchange, the shares are taxed at a flat rate of 1 percent of the gross purchase price of the shares. This tax must be withheld at source by the stock exchange on sale.

Any loss arising on the sale of these shares cannot be deducted from the taxpayer's other earnings. Accordingly, such losses can never be used.

## **Tax clearances**

### **Acquisition of trading fund or going concern (*Fondo de Comercio*)**

Venezuelan law defines a 'trading fund' as the set of goods organized by a merchant for the performance of their business activities, including both material objects (e.g. capital, physical facilities) and intangible items (e.g. clientele, trademarks, name).

A trading fund is the gathering of goods and services linked by a common economic purpose, that is, a going concern. However, a trading fund cannot be considered a good per se, separate and apart from its component assets. Accordingly, its transfer takes the form of the transfer of each of its components. There is no integrated transfer of an entity.

The Venezuelan Commercial Code provides that the disposal of a trading fund occurs where:

- There is an ownership transfer of the trading fund or of the assets in their entirety or in lots.
- The transfer is completed by an inter vivos act, regardless of whether it takes the form of a sale, donation, exchange or contribution.
- The seller ceases to be involved in the business of the trading fund.

Venezuelan courts have held that the cessation of a business need not refer to the entire seller's productive activity; it is sufficient for the seller to cease engaging in the business involved in the trading fund being transferred.

On the sale of a trading fund, the acquiring company is obliged to withhold income tax at a rate of 5 percent of the amount paid for acquisition of the trading fund.

The Tax Code stipulates that the acquirers of a trading fund are jointly liable for any unpaid tax, fines and interest, limited to the value of the goods acquired. The Tax Administration can request payment of tax debts for a period of 1 year from the date the operation was notified.

### **Transfer taxes**

Fees for the registration of deeds may arise on the disposal of a trading fund at the Subordinate Offices of Registry. Such fees generally amount to 2 percent of the value of the transaction.

The Stamp Tax Law (Article 3, Part 8) provides for an additional payment on the sale of a trading fund or its stocks, in their entirety or in lots, amounting to 5 tax units plus 0.2 tax units for each tax unit or fraction thereof applied to the price of the transaction.

Since the stamp tax was transferred from the national to the state taxing jurisdiction, the tax can vary, depending on the state where the transaction is completed and registered.

## **Choice of acquisition vehicle**

Several potential acquisition vehicles are available to a foreign purchaser, and tax factors often influence the choice.

### **Local holding company**

A Venezuelan holding company can be used for Venezuelan subsidiaries in cases where it can be anticipated that dividend income will not be taxable as it would come from profit taxed at the corporate level. There are also other options involving

transparent tax entities within a group that allow consolidation of the taxable income or result from the group into the holding company. A Venezuelan holding company is required to structure a share acquisition with the intention to use potential goodwill arising from the original acquisition.

### Foreign parent company

According to the Venezuelan Commerce Code, companies domiciled abroad are considered foreign companies, regardless of whether their primary business operations are carried on in Venezuela. Foreign companies may adopt the following forms:

- subsidiary company (a company with its own legal nature, independent from the parent company)
- branch
- representative office
- permanent establishment (PE) not registered.

The most common structures used by foreign companies are the subsidiary company and the branch.

A subsidiary company can be established without any change in the amount of registered foreign investment. The incorporation of subsidiaries must be reported to the SIEX.

For a foreign company to establish a branch, the company must register its Articles of Incorporation with the Mercantile Registry, translated into Spanish by a public interpreter and legalized by the Venezuelan consulate in the country of origin. The company must also indicate the capital allocated to the branch, which must be brought into the country and registered with the SIEX.

The SIEX is a unit attached to the National Center for Foreign Trade (CENCOEX). The SIEX provides the certifications required to permit foreign investments in Venezuela to obtain the certifications that permit enjoy the benefits included in the law to encourage foreign investment. Due to a recent amendment, to qualify as a foreign investment for this purpose, the contributions must be the equivalent to 1 million US dollars (USD), reduced in some cases to 10 percent of that amount (i.e., USD100,000). Where it is not possible to register the foreign investment, operations can still be established in Venezuela, although the benefits allowed for certified foreign investments will not be available.

### Non-resident intermediate holding company

An intermediate holding company resident in another country could be used to take advantage of a more favorable tax treaty with Venezuela, provided the effective beneficiary and tax-resident principles are complied with. Venezuelan tax law contains anti-treaty shopping provisions that may restrict the ability to structure a deal in a way designed solely to obtain tax benefits.

### Venezuelan branch

A foreign company needs to be registered in the Mercantile Registry to perform activities in Venezuela. It can choose to act through an affiliate or a branch. A PE with a legal representative does not require registration in the Mercantile Registry.

A branch is subject to tax under the corporate tax regime and to the equivalent of a dividend tax (branch profit tax) of 34 percent flat (other than hydrocarbons) of the excess of 'financial profits' (as defined by Venezuelan GAAP) over taxable profits, which the branch must pay annually on behalf of stockholders. Where profits are reinvested for a term of at least 5 years, this tax does not apply.

In determining the net income of the branch, local and foreign administration and management expenses can be deducted. However, payments to the parent company or related company for technical assistance, fees and royalties or rights to use patents or other rights or commissions are not deductible, unless they reimburse actual expenses.

### Joint venture

A consortium or joint venture is a form of association in which two or more companies act together under one direction and common rule, each conserving its nature and legal independence. The consortium has a tax identification number. Generally, all of its members are jointly liable. The terms of a joint venture may vary, depending on the private agreements and purposes of the partners. For example, either gross income or net results could be selected as the variable for determining distributions to its members.

## Choice of acquisition funding

Generally, an acquiring corporation funds an acquisition with debt, equity or a combination of both. Interest on debt is usually allowed as a deduction to the paying corporation, provided the capital is used in Venezuela to finance the corporation's regular taxable operations.

### Debt

The principal advantage of debt is the potential tax-deductibility of interest for the buyer (see the information on deductibility of interest later in the report). Another potential advantage of debt is the deductibility of expenses, such as guarantee fees or bank fees, in computing trading profits for tax purposes. By contrast, the costs of a share issue are not deductible.

For entities subject to the inflation adjustment system, debt may generate an inflation gain where it finances non-monetary assets. Thin capitalization rules must be taken into account because interest deductions could be limited where the debt-to-equity ratio is deemed to be excessive.

If it is decided to use debt, further decisions must be made as to which company should borrow and how the acquisition should be structured. To minimize the cost of debt, there must

be sufficient taxable profits against which interest payments can be offset. The purchaser cannot offset the interest payments against the Venezuelan target's taxable profits.

### **Deductibility of interest**

To be deductible, interest expenses must correspond to capital used to fund normal operations that produce taxable income.

Interest on a loan used to acquire shares may be rejected because dividend income is considered net income subject to a proportional tax rate. However, since a capital gain on the disposal of shares is ordinary income, the interest expense attributable to such a loan could be deductible.

Interest paid to related companies abroad is subject to transfer pricing provisions. The thin capitalization rule also limits the deduction of interest on debts with foreign-related parties. For interest on borrowings from related entities to be deductible, total debt should not exceed the net equity (1:1 ratio). Venezuelan law employs the concepts of average net equity and average unrelated debts.

### **Withholding tax on debt and methods to reduce or eliminate it**

Payments of interest by a Venezuela company to a non-resident financial institution are subject to WHT at 4.95 percent.

Payments of interest to other non-resident entities are subject to WHT of 34 percent of 95 percent of the interest paid. The rate of WHT may be reduced or eliminated under a tax treaty.

### **Checklist for debt funding**

- The use of independent bank debt may avoid thin capitalization and transfer pricing problems.
- Consider whether the level of profits would enable effective tax relief for interest payments.
- A tax deduction may be available at higher rates in other territories.
- WHT of 4.95 percent applies on interest payments to non-Venezuela financial institutions; WHT of 34 percent of the interest is levied on loans from other non-Venezuela entities unless a lower rate applies under the relevant tax treaty.

### **Equity**

Generally, entities subject to the inflation adjustment system that are highly funded by equity either produce inflation tax losses or have a neutral inflation exposure. Inflation adjustment on equity and contributions to equity produce tax losses that can be offset against operating income in a tax period.

The thin capitalization rules allow the tax authority to re-characterize debt as equity and disallow interest deductions on the portion of the debt re-characterized. In some cases, this could be beneficial because of positive inflation effects.

Paid-in capital requires registration and triggers stamp tax on capital registered ranging from 1 to 2 percent.

### **Hybrids**

Certain preferred shares may qualify as debt for tax purposes, based on the substance-over-form approach stipulated in the Tax Code.

### **Discounted securities**

Market discounts are generally accepted for tax purposes.

## **Structuring the transaction**

### **Choice of entity**

The Venezuelan Commercial Code provides for four types of company:

- stock corporation, the most common form of corporation used in Venezuela to do business
- limited liability company
- partnership
- limited partnership.

### **Corporation (*Sociedad Anónima – S.A., or Compañía Anónima – C.A.*)**

A corporation must be established with at least two shareholders. Once established, a corporation may continue to exist with one shareholder. A corporation's liabilities are guaranteed by the authorized corporate capital.

### **Limited liability company (*Sociedad de Responsabilidad Limitada – SRL*)**

In an SRL, the social obligations are guaranteed by an authorized capital divided into participation quotas (units), which may not be represented by shares or negotiable titles. SRL capital must be at least VEB20 and at most VEB2 thousand. Additional capital contributions can be allowed as a surplus. Each participation quota must have a value of at least VEB1. The partners must contribute the amount of the corporate capital in cash or pay 50 percent of the contributions in kind. Currently, the Mercantile Registry does not allow the incorporation of this type of entity.

### **Partnership**

A general partnership is a group of individuals who come together with the purpose of conducting business operations through a partnership entity. The partnership's obligations are backed or secured by the unlimited and joint liability of each partner. Each partner's individual liability is unlimited. Partners are liable not only up to the amount of their respective contributions but also up to the amount of their personal wealth that has not been contributed to the partnership. Liability is joint because the creditors can enforce their rights against any of the partners for the entire amount owed.

## Limited partnership (*Compañía en Comandita*)

A limited partnership is also a society of persons. In this case, the partnership's obligations are secured by the joint, unlimited and subsidiary liability of a type or class of partners designated as active or joint partners and by the limited liability (up to a defined amount) of another category of partners designated as silent partners. The capital of the silent partners may be divided into shares.

## Other business arrangements

Business can also be carried out through other legal and independent vehicles as described below.

## Participation accounts (*Cuenta en Participación*)

A partner or corporation may grant a contract, referred as share profit agreement or participation account agreement, where the parties have a right on the results (profits and losses) for one or more operations of a business.

## Tax-free corporate reorganizations

### Merger

In Venezuela, mergers are governed by the Code of Commerce, which stipulates that the surviving entity assumes the rights and obligations of the dissolving companies in the merger process.

A merger is a legal operation consisting of an agreement between two or more legally independent companies to combine operations into a single entity. Venezuelan law provides for two types of mergers:

- merger by absorption, which occurs when two or more companies merge into a single, previously existing company
- two or more companies merge to establish a new company that did not exist at the time the merger took place.

The Income Tax Law establishes that any benefits and liabilities should carry over to the surviving company. The surviving company inherits the target company's existing rights and obligations, as well as future obligations and responsibilities that may arise after the merger, as determined by the relevant authorities.

The target company's tax losses may be used to offset any outstanding tax obligations that exist on the day of the merger. These losses also may be carried forward for offset against the future taxable income of the acquiring corporation within 3 tax periods after the period in which the loss occurred, but the attribution may not exceed 25 percent of the enrichment achieved in subsequent periods. A merger by absorption interrupts the current fiscal year and begins a new fiscal year for the combined operations of the merging companies. The absorbed company ceases its operations, and the surviving company incorporates into its equity the respective capital of the merged company. The merged company must file its income tax return for the last year in which it performed individual operations within 3 months immediately following the cessation of its activities.

For tax purposes, in a merger by absorption, the fixed assets and liabilities of the merged company maintain their tax cost basis (i.e. tax basis carryover), including revaluation for inflation for entities subject to the inflation adjustment system. Such assets and liabilities may be restated for inflation at the first fiscal year-end following the date on which the merger took place. Non-monetary items are adjusted for inflation from the date of the merger. As a result of this treatment, there are no major consequences from the fiscal inflation adjustment of fixed assets because they would have the same date of acquisition, historical costs and fiscal adjusted values held in the books of the merged company.

## Other taxes

Real estate transfer taxes are due and payable by the transferring company on the transfer of assets from the target company to the acquiring company. Normally, on the registration of purchase-sale documents for real property and any other events, a 1 percent fee on the value of the property must be paid.

In the case of a sale of real property to a third party, the 1 percent income tax payment applies in addition to a 0.5 percent withholding prepayment, in either cash or credit, for income tax assessed on the sale price. This prepayment is credited to the income tax liability for the final income tax return of the year.

## Demerger

Venezuelan tax law does not provide for a tax-free separation of a business, commonly referred to as a demerger.

## Other considerations

When structuring a transaction, Venezuela's extensive network of tax treaties and investment protection treaties should be taken into account.

## Concerns of the seller

A seller may be subject to tax when selling Venezuelan assets or shares. Where the seller is domiciled in a foreign country with a tax treaty with Venezuela, the sale of shares is unlikely to be taxable in Venezuela (depending on the type of company). However, a sale of assets or trading fund is taxable for the seller. For entities subject to the inflation adjustment system, the tax basis can be inflation-adjusted to reduce any taxable gain on asset disposals.

Depending on the type of assets sold, VAT may apply.

Disposals of shares and trading funds are subject to income tax withholding. VAT withholding may apply on the sale of goods.

Municipal tax could be assessed on gross income from the sale of goods. In some municipalities, the sale of a trading fund is deemed to be an extraordinary transaction and thus not subject to municipal tax.

## Company law and accounting

A Venezuelan entity must prepare its financial statements according to Venezuela GAAP to determine its taxable income and the profit base for dividend distribution. The company by-laws would be included in the incorporation document.

## Group relief/consolidation

Venezuelan legislation does not provide for affiliated companies to be taxed on their income as a group. All companies are taxed separately.

## Transfer pricing

The Venezuelan Income Tax Law and the Organisation for Economic Co-operation and Development (OECD) transfer pricing guidelines both adopt the arm's length principle as the standard for evaluating international intergroup pricing. Transactions comply with the arm's length principle where conditions imposed are comparable to those imposed by independent enterprises dealing with comparable transactions in comparable circumstances.

The pricing methods allowed by the tax law are:

- comparable uncontrolled price method
- re-sale price method
- cost plus method
- profit split method
- transactional net margin method.

## Foreign investments of a local target company

Where Venezuelan taxpayers possess investments in a low-tax jurisdiction, they are subject to the transparency tax regime.

Income from foreign investment is subject to tax in Venezuela according to the worldwide tax regime. Tax treaty dispositions applied by a Venezuelan taxpayer could result in no or limited taxation in the country of source. The foreign tax credit system allows Venezuelan taxpayers to avoid or minimize double taxation by crediting foreign tax paid.

## Transparency tax regime

Venezuela has enacted a look-through provision that imputes income arising from an entity residing or located in a country with a privileged tax regime (a tax haven) to a Venezuelan resident (individual or company) that directly or indirectly controls the foreign company. The tax haven entity's income is imputed to the Venezuelan owner even where such income is not distributed. Accordingly, the tax haven entity is considered a pass-through entity since its income, computed under the Venezuelan tax law rules, is attributed to the Venezuelan owner.

An entity is not subject to the transparency regime where:

- It carries on industrial or commercial activity in the country where it is located, measured by the proportion of fixed assets held by the entity (50 percent asset test).
- Its income does not represent a significant source of passive income (20 percent income test).

The Venezuelan tax authority maintains a blacklist of tax haven countries.

## Value added tax

The VAT law stipulates that sales of tangible goods, including any part of their property rights as well as withdrawals or retirements of movable goods by taxpayers, are subject to VAT. However, VAT does not apply to sales of intangible goods, such as fiscal rights, stocks, bonds, mortgage bonds, mercantile effects and other securities, or to personal goods in general that represent money, credit or rights other than property rights over tangible goods.

VAT is applicable to property transferred to the merging company unless the surviving company carries on with the same purpose or activities that the dissolving company pursued, wholly or partially. In this case, there is no deemed transfer of ownership of corporate goods attributable to a sale for VAT purposes.

The surviving company may use the target company's VAT credits. VAT credits arise from the acquisition of goods and services. VAT debits arise from the sale of goods and services, and credits and debits are offset on a monthly basis. Excess credits are carried forward.

The sale of a trading fund may not be subject to VAT, except for the tangible goods involved in the sale. No VAT applies on the sale of a trading fund that may be considered a transfer of intangible good(s).

## Comparison of asset and share purchases

### Advantages of asset purchase

- Depreciation/amortization of the price paid for the transferred assets (including acquired goodwill) is deductible.
- Possibility of acquiring only part of a business.
- A transfer of assets not comprising a going concern (trading fund) is not subject to tax withholdings.

### Disadvantages of asset purchase

- Where the assets involve a transfer of a going concern (trading fund), the buyer's liability is limited up to the value of the transferred assets and, for up to 1 year after the Venezuela tax administration is notified of the sale, for tax debts owed by the seller in open previous years.
- Possible need to renegotiate supply, employment and technology agreements.
- Asset purchase may be unattractive to the seller, thereby increasing the price.
- Transactions involving real estate property are subject to proportional registration tax levied on the current value.
- Benefit of any losses and tax benefits incurred by the target company remains with the seller.
- VAT is levied on the transfer of movable goods.
- A transfer of assets comprising a going concern (trading fund) is subject to tax withholdings.

## **Advantages of share purchase**

- Likely to be more attractive to the seller.
- VAT is not levied on the transfer of shares.
- May benefit from tax losses of target company after reorganization.
- May gain benefit of existing supply or technology contracts.
- Sale or transfer of shares held by residents of a country with a tax treaty in force with Venezuela usually does not trigger a tax obligation in Venezuela.

## **Disadvantages of share purchase**

- Liable for any claims or previous liabilities of the entity relating to fiscal years still open to assessment.
- No deduction for the purchase price.
- Share acquisitions are subject to tax withholdings.



## KPMG in Venezuela

### **Carlos Alberto Rojas M.**

KPMG Rodriguez Velázquez & Asociados  
Torre KPMG interseccion de las Av. Francisco  
de Miranda y Libertador, Chacao  
Caracas  
1010-A  
Venezuela

**T:** +58 212 2777856

**E:** carojas@kpmg.com

### **Alejandro Gómez G.**

KPMG Rodriguez Velázquez & Asociados  
Torre KPMG interseccion de las Av. Francisco  
de Miranda y Libertador, Chacao  
Caracas  
1010-A  
Venezuela

**T:** +58 212 2774190

**E:** adgomez@kpmg.com

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