



MERGERS AND ACQUISITIONS

Venezuela

Taxation of Cross-Border
Mergers and Acquisitions

2010 Edition

TAX

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 will always attribute a commercial or business purpose to corporations and limited partnerships, except when they are engaged exclusively in agriculture or cattle-raising activities. Attributing a corporate purpose to a civil and commercial enterprise, which are governed by its bylaws or articles of association, the Commercial and Civil Codes, and the provisions of special laws that may be applicable to a particular business area, establishes its tax and legal characteristics.

Recent Developments

New thin-capitalization rules limit the interest deductibility for highly leveraged entities, and must be taken into account when making acquisitions in Venezuela and deciding their structure.

Foreign exchange gains and losses recognition for tax purposes has been changed to a paid basis principle.

Additional tax treaties have been signed and became effective during the 2008 and 2009 tax years.

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. From a tax perspective, the capital gains consequences, the likely recapture of capital allowances (tax depreciation), and possible double taxation on extracting the sales proceeds are all likely to make asset acquisitions less attractive for the seller. However, the benefits of asset acquisitions for the purchaser should not be ignored, particularly given that with a properly-designed tax strategy purchased goodwill may attract a tax deduction. Some of the tax considerations relevant to each method are discussed later in the chapter. The relative advantages are summarized at the end of the chapter.

Purchase of Assets

A purchase of assets will usually result 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 in the hands of the seller. In addition, 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 will have a cost basis in the hands of the buyer equal to the amount paid. The selling entity will realize a gain in the amount by which the purchase price exceeds the adjusted basis of the asset including any inflation adjustment. An asset purchase may provide buyers with the opportunity to buy only the assets actually desired and leave unwanted assets (and in many cases, unwanted liabilities) behind. An asset purchase may be highly advantageous when a target corporation has potential liabilities, although certain acquisitions of assets may involve an acquisition of a trading fund (see later in the chapter).

For tax purposes, it will be necessary to apportion the total consideration among the assets acquired. It is generally advisable for the purchase agreement to specify the allocation, which will normally be 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 that such goods 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 generally accepted Venezuelan accounting principles.

Tax Attributes

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

Value-Added Tax (VAT)

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. 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, are not subject to VAT.

Transfer Taxes

Fees for the registration of deeds may arise from the disposal of a going concern (Trading Fund – see later in the chapter) at the Subordinate Offices of Registry. Such fees generally amount to 1 percent when the value of the transaction exceeds VEB 2 million.

The Stamp Tax Law also provides, for an additional payment for 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 where 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 and, therefore, the 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 applicable 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.

No specific regulations govern the sale price of shares, other than transfer pricing regulations and the concept of a reasonable cost basis. However, a price far below market price can be deemed as a taxable event for gift tax purposes by the Venezuelan Tax Administration for the buyer. 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 have been 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 two consecutive calendar years;
- the sale price is in accordance with the market price, or bears a reasonable relationship to the book value; and
- the corporation whose shares are sold has carried out reasonably significant economic activities during the two 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. The purchaser will, therefore, normally require more extensive indemnities and warranties than in the case of 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 where warranties and indemnities would not be given. These situations typically would include the acquisition of a Venezuelan quoted 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

Carried-forward Venezuela tax losses generated by the target company will, in principle, transfer along with the company. A company's brought-forward income-type losses (such as trading losses) cannot be offset against the profits of other companies through group relief, because Venezuela does not allow consolidated tax returns. They can, however, be set against the company's own future profits. The alternative of merging the companies may serve for this purpose (see Merger).

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 period three years after the loss was suffered.

In this sense the Venezuela Income Tax Law stipulates that carry-forward net operating losses are authorized up to three years after the year in which such losses were suffered. 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 Article.

Finally, net non-compensated losses for inflation may only be carried forward one fiscal year.

Pre-Sale Dividend

Dividends would be taxable upon distribution, if any. Any increase in the price of the share based on potential dividends would be subject to capital gain tax rules.

Registration Fee

It is not necessary to register a sale of shares, but the document of incorporation and bylaws 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 (CPI).

After a change of shareholders in the Venezuelan subsidiary, the corporation must notify the Foreign Investments Superintendence (SIEX) of the change for registration within 60 days.

Updating of the Registration of Foreign Investment will trigger a stamp tax cost equivalent to 15 tax units. Registration generally takes two months.

Stock Sold on the Venezuelan Stock Exchange

If 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 as a result of 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 his/her business activities, including both material objects (capital, physical facilities, etc.) and intangible items (clientele, trademarks, name, etc.).

A trading fund is represented by 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 when:

- 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 vivo act, regardless of whether it takes the form of a sale, donation, exchange, or contribution; and
- 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.

Upon 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 will be 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 one 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 1 percent when the value of the transaction exceeds VEB 2 million.

The Stamp Tax Law also provides, in Article 3, Part 8, 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 where the transaction is completed and registered.

Choice of Acquisition Vehicle

There are several potential acquisition vehicles available to a foreign purchaser and tax factors will 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 also 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, irrespective of whether their primary business operations are carried on in Venezuela. Foreign companies may adopt the following forms:

- A subsidiary company (a company with its own legal nature, independent from the parent company)
- A branch

- A representative office
- A permanent establishment 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 within 60 days.

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.

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 if the effective beneficiary and tax-resident principles are complied with. It should be noted, however, that the Venezuela Law contains treaty shopping provisions that may restrict the ability to structure a deal in a way designed solely to obtain tax benefits.

Venezuela 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 permanent establishment (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 of the excess of financial profits (as defined by Venezuelan GAAP) over taxable profits, which the branch must pay annually on behalf of stockholders. If profits are reinvested for a term of at least five years, this tax should not apply.

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

Joint Ventures

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 and 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 to determine distributions to its members.

Choice of Acquisition Funding

Generally, an acquiring corporation will fund an acquisition by issuing either debt or equity or a combination thereof. Interest on debt is usually allowed as a deduction to the paying corporation if 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 Deductibility of Interest later in the chapter). Another potential advantage of debt is the deductibility of expenses such as guarantee fees or bank fees in computing trading profits for tax purposes. The costs of a share issue, by contrast, are not deductible.

Debt may also generate an inflation gain, if it finances non-monetary assets, but thin-capitalization rules must be taken into account, because interest deductions could be limited if the debt-to-equity ratio is deemed to be excessive.

If it is decided to use debt, a further decision 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

Interest expenses, to be deductible, 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 an 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 new 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 (WHT) on Debt and Methods to Reduce or Eliminate

Payments of interest by a Venezuela company to a non-resident financial institution are subject to WHT at 4.95 percent. Payment to other non-resident entities is subject to WHT of 34 percent of 95 percent of the interest paid. The rate of WHT may be reduced or eliminated under a double tax treaty (DTA).

Checklist for Debt Funding

- The use of bank debt may avoid thin-capitalization and transfer pricing problems
- Consider whether the level of profits would enable tax relief for interest payments to be effective.
- It is possible that a tax deduction may be available at higher rates in other territories.
- WHT of 4.95 percent will apply 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 DTA.

Equity

Generally entities highly funded by equity either produce inflation tax losses or have a neutral inflation exposure. Inflation adjustment on equity and its increases would produce tax losses that can 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 on the portion of the debt re-characterized for deductions. In some cases this could be beneficial because of positive inflation effects.

Paid in capital requires registration and triggers a 1-percent stamp tax on capital registered.

Hybrids

Certain preferred shares may qualify as debt for tax purposes, based on 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: the stock corporation (the most common form of corporation used in Venezuela to do business), the limited liability company, the partnership, and the limited partnership.

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

A corporation must be established with at least two shareholders. However, once established, a corporation may continue to exist with one shareholder. In a corporation the 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 VEB 20,000 and a maximum of VEB 2 million. Additional capital contributions can be allowed as a surplus. Each participation quota must have a value of at least VEB 1,000. The partners must contribute the amount of the corporate capital in cash or pay 50 percent of the contributions in-kind.

Partnership (Compañía en Nombre Colectivo)

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, because partners are not only liable 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. A corporation is not an eligible partner.

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 active or joint partners, and the limited liability (up to a defined amount) of another category of partners designated 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 later in the chapter.

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 succeeds to 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; and
- 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 or liabilities should be carried 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, and may be carried forward to offset against the future taxable income of the acquiring corporation.

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. Therefore, the merged company must file its income tax return for the last year in which it performed individual operations within the three 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 (including revaluation for inflation), that is, tax basis carry-over. 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 would be adjusted for inflation from the date of the merger. As a result of this treatment, there would not be major consequences of the fiscal inflation adjustment of fixed assets, as 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 payment would apply, in addition to a 0.5-percent withholding prepayment, in either cash or credit, for income tax assessed on the sale price. This prepayment will be credited to the income tax liability for the final income tax return of the year.

De-Merger

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

Other Considerations

When structuring a transaction Venezuela's extensive network of DTAs and Investment Protections Treaties should be taken into account.

Concerns of the Seller

A seller may be subject to tax when selling Venezuelan assets or shares. If the seller is domiciled in a foreign country with a DTA with Venezuela the sale of shares is unlikely to be taxable in Venezuela, but a sale of assets or trading fund will be a taxable event for the seller. The tax basis would admit inflation adjustments to reduce

any taxable gain on asset disposals. Depending on the type of assets sold, VAT may be applicable.

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

Municipal tax could be assessed on gross income from the sale of goods, but in some municipalities the sale of a trading fund would be deemed as 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

Under both the Venezuelan Income Tax Law and the Organization for Economic Cooperation and Development (OECD) guidelines, the arm's length principle is adopted as the international standard for the evaluation of intra-group pricing. Transactions comply with the arm's length principle when conditions imposed are comparable to those imposed by independent enterprises dealing with comparable transactions in comparable circumstances.

The pricing methods allowed by tax law are: comparable uncontrolled price method; re-sale price method; cost plus method; profit split method, and transactional net margin method.

Foreign Investments of a Local Target Company

If Venezuelan taxpayers possess investments in a low tax jurisdiction, they would be 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 taxpayer 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 will be imputed to the Venezuelan owner even if such income has not been distributed. Accordingly, the tax-haven entity is considered a pass-through entity, since its income, computed under the Venezuelan tax law rules, will be attributed to the Venezuelan owner.

Nevertheless, an entity will not be subject to the transparency regime if:

- 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); or
- its income does not represent a significant source of passive income (20-percent income test).

The Venezuelan tax authority has blacklists of countries and of structures that are potentially abusive.

Value-Added Tax (VAT)

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, sales of intangible goods, such as fiscal rights, stocks, bonds, mortgage bonds, mercantile effects, and other securities and personal goods in general that represent money, credit, or rights other than property rights over tangible goods, are not subject to VAT.

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 it would not be deemed that there had been a transfer of ownership of corporate goods attributable to a sale for purposes relating to the application of this tax.

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. If excess credits exist, the remaining credits may be 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 would apply 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

- If the assets involve a transfer of a going concern (trading fund), the buyer's liability would be limited up to the value of the transferred assets, and up to one year after the sale notification made to the Venezuela tax administration, 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 including real estate property are subject to proportional registration tax levied on the current value.
- The benefit of any losses and tax benefits incurred by the target company remains with the seller.
- VAT would be levied on the transfer of movable goods.
- A transfer of assets comprising a going concern (trading fund) are subject to tax withholdings.

Advantages of Share Purchase

- Likely to be more attractive to the seller.
- VAT would not be 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.
- In most circumstances shares held by residents of a country with a tax treaty in force with Venezuela

will not trigger a tax obligation in Venezuela when the shares are sold or transferred.

- No deduction for the purchase price.
- Share acquisitions are subject to tax withholdings.

Disadvantages of Share Purchase

- Liable for any claims or previous liabilities of the entity relating to fiscal years still subject to assessment.

Withholding Tax Rate Chart

The rate information and footnotes contained in this table are from the 2009 IBFD/KPMG Global Corporate Tax Handbook.

Country	Dividends		Interest ¹ (%)	Royalties (%)
	Individuals, Companies (%)	Qualifying Companies ² (%)		
Austria	15	5 ³	0/4.95/10 ⁴⁵	5
Barbados	10	5 ⁶	5/15 ⁴	10
Belarus ⁷	15	5 ⁸	5	5/10 ⁹
Belgium	15	5 ⁸	0/10 ⁵	5
Canada	15	10 ⁸	10	5/10 ⁹
China (People's Rep.)	10	5	5/10 ⁴	10
Cuba	15	10 ⁸	0/10 ¹⁰	5
Czech Republic	10	5 ³	0/10 ¹⁰	12
Denmark	15	5 ⁸	0/5 ¹⁰	5/10 ¹¹
France	5	0	0/5 ¹⁰	5
Germany	15	5 ³	5	5
Indonesia	15	10	0/10 ¹⁰	10/20 ¹¹
Iran	10	5 ³	0/5 ⁴	5
Italy	10	10	0/10 ¹⁰	7/10 ¹²
Korea (Rep.)	10	5	5/10 ⁴	5/10 ¹³
Kuwait	10	5	5	20
Netherlands	10	0 ⁸	0/5 ¹⁰	5/7/10 ¹⁴
Malaysia	10	5 ²	15	10
Norway	10	5	0/5/15 ⁴¹⁰	9/12 ¹¹
Portugal	10	10	0/10 ¹⁰	10/12 ¹¹
Spain	10	0 ⁸	0/4.95/10 ¹⁵¹⁰	5
Sweden	10	5 ¹⁶	0/10 ¹⁶¹⁰	7/10 ¹⁶¹⁷
Switzerland	10	0 ⁸	0/5 ¹⁰	5
Trinidad and Tobago	10	5 ⁸	0/15 ¹⁰	10
United Kingdom	10	0	0/5 ¹⁰	5/7
United States	15	5	0/4.95/10 ⁴¹⁰¹⁸	5/10 ¹²

Notes

1. Many treaties provide for an exemption for certain types of interest, such as interest paid to government institutions or to state-owned institutions (including governmental financial institutions), in respect of commercial debt claims in the case of the supply of goods, or loans for development purposes or the promotion of exports, etc. Such exemptions are not considered in this column.
2. The rate generally applies under treaties with respect to participations of at least 10 percent of capital or voting power, as the case may be.
3. The rate applies with respect to participations of at least 15 percent of capital.
4. The lower rate applies to interest paid to banks or financial institutions.
5. The zero rate applies to interest paid by banks.
6. The rate applies with respect to participations of at least 5 percent of capital.
7. Effective as from 1 January 2010.
8. The rate applies with respect to participations of at least 25 percent of capital or voting power, as the case may be.
9. The lower rate applies to royalties paid in respect of computer software or any patent or information concerning industrial, commercial, or scientific experience.
10. The zero rate applies, inter alia, to interest paid by public bodies.
11. The lower rate applies to payments for technical assistance.
12. The lower rate applies to copyright royalties (including films and tapes for radio and television broadcast).
13. The lower rate applies to royalties for the use of, or the right to use, any industrial, commercial, or scientific equipment.
14. The lower rate applies to royalties for patents, leasing of equipment, and know-how, the 7-percent rate applies to trademark royalties and the 10-percent rate applies to copyright royalties (including films, and tapes for radio and television broadcast).
15. The rates under the treaty are 0 percent, 4.95 percent, and 10 percent. However, by virtue of a most-favored nation clause (Protocol Art. VII), the rate is reduced to 0 percent. Under the treaty between Spain and Malta, the rate is 0 percent. Unofficially the Venezuelan tax administration considers that the Spain-Malta treaty does not trigger the most-favored nation clause under the Spain-Venezuela treaty, because the former provides for exclusive taxation in the residence State, rather than shared taxation, but at a rate lower than that agreed under the Spain-Venezuela treaty.
16. A most-favored nation clause may be applicable with respect to dividends, interest and royalties.
17. The higher rate applies to copyright royalties (including films and tapes).
18. The lower rate applies to patents, trademarks and know-how royalties and the 7-percent rate applies to copyright royalties (including films and records for radio and television broadcast).

KPMG in Venezuela

Carlos Alberto Rojas M.
KPMG Alcaraz Cabrera Vazquez
Torre KPMG interseccion de las Av. Francisco de Miranda y Libertador, Chacao
Caracas
1010-A
Venezuela

Tel. +58 (212) 2777856
Fax +58 (212) 263-3827
e-Mail: carojas@kpmg.com

Daniel R. Leiva Hill
KPMG Alcaraz Cabrera Vazquez
Torre KPMG interseccion de las Av. Francisco de Miranda y Libertador, Chacao
Caracas
1010-A
Venezuela

Tel. +58 (212) 2777741
Fax +58 (212) 263-3827
e-Mail: dleiva@kpmg.com

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2010 Alcaraz Cabrera Vázquez, a Venezuela partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (KPMG International), a Swiss entity. All rights reserved.

KPMG and the KPMG logo are registered trademarks of KPMG International Cooperative ("KPMG International"), a Swiss entity.